
SENATE BILL NO. 358—COMMITTEE ON JUDICIARY

MARCH 10, 1999

Referred to Committee on Judiciary

SUMMARY—Enacts provisions regarding manner in which civil action brought against official attorney will be defended. (BDR 3-1240)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to civil actions; enacting provisions regarding the manner in which a civil action against an official attorney will be defended; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 41 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 *If a civil action is brought against an official attorney based on an*
4 *alleged act or omission related to his public duties or employment, and*
5 *the official attorney is the:*
6 1. *Attorney general, the attorney general shall provide written notice*
7 *of the action to the state board of examiners within 15 days after service*
8 *of a copy of the summons and complaint or other legal document*
9 *commencing the action. The board shall determine, as promptly as*
10 *possible and not later than 10 days before the date an answer or other*
11 *responsive pleading must be filed with the court, whether to authorize the*
12 *attorney general to defend this action through his office, employ special*
13 *counsel, or tender the defense to an insurer who, pursuant to a contract*
14 *of insurance, is authorized to defend the action. If the board decides to*
15 *employ special counsel, the board shall fix the compensation for special*
16 *counsel, which must be paid out of the reserve for statutory contingency*
17 *account.*
18 2. *Chief legal officer or other authorized legal representative of a*
19 *political subdivision, the chief legal officer or legal representative shall*

1 *provide written notice of the action to the governing body of the political*
2 *subdivision within 15 days after service of a copy of the summons and*
3 *complaint or other legal document commencing the action. The*
4 *governing body shall determine, as promptly as possible and not later*
5 *than 10 days before the date an answer or other responsive pleading*
6 *must be filed with the court, whether to authorize the chief legal officer*
7 *or legal representative to defend the action through his office, employ*
8 *special counsel, or tender the defense to an insurer who, pursuant to a*
9 *contract of insurance, is authorized to defend the action. If the governing*
10 *body decides to employ special counsel, the governing body shall fix the*
11 *compensation for special counsel, which must be paid by the political*
12 *subdivision.*

13 **Sec. 2.** NRS 41.0338 is hereby amended to read as follows:

14 41.0338 As used in NRS 41.0339 to 41.0349, inclusive, *and section 1*
15 *of this act*, “official attorney” means:

16 1. The attorney general, in an action which involves a present or
17 former legislator, officer or employee of this state, immune contractor or
18 member of a state board or commission.

19 2. The chief legal officer or other authorized legal representative of a
20 political subdivision, in an action which involves a present or former
21 officer or employee of that political subdivision or a present or former
22 member of a local board or commission.

23 **Sec. 3.** NRS 41.0339 is hereby amended to read as follows:

24 41.0339 ~~{The}~~ *Except under the circumstances described in section 1*
25 *of this act, the* official attorney shall provide for the defense, including the
26 defense of cross-claims and counterclaims, of any present or former officer
27 or employee of the state or a political subdivision, immune contractor or
28 state legislator in any civil action brought against that person based on any
29 alleged act or omission relating to his public duties or employment if:

30 1. Within 15 days after service of a copy of the summons and
31 complaint or other legal document commencing the action, he submits a
32 written request for defense:

33 (a) To the official attorney; or

34 (b) If the officer, employee or immune contractor has an administrative
35 superior, to the administrator of his agency and the official attorney; and

36 2. The official attorney has determined that the act or omission on
37 which the action is based appears to be within the course and scope of
38 public duty or employment and appears to have been performed or omitted
39 in good faith.

40 **Sec. 4.** NRS 41.03415 is hereby amended to read as follows:

41 41.03415 *Except under the circumstances described in section 1 of*
42 *this*

act:

1 1. The official attorney shall determine as promptly as possible
2 whether or not to tender the defense of the person submitting the request.
3 Until the decision is made, the official attorney shall take appropriate action
4 to defend or otherwise protect the time of the person submitting the request
5 to file a responsive pleading.

6 2. In any case in which the official attorney determines not to defend,
7 he shall give written notice to the person who requested the defense either:

8 (a) Ten days before the date an answer or other responsive pleading
9 must be filed with the court; or

10 (b) If the defense has been commenced, 20 days before the time an
11 application is made with the court to withdraw as the attorney of record in
12 accordance with NRS 41.0346.

13 **Sec. 5.** NRS 41.03435 is hereby amended to read as follows:

14 41.03435 ~~{The}~~ *Except under the circumstances described in section*
15 *1 of this act, the* attorney general may employ special counsel whose
16 compensation must be fixed by the attorney general, subject to the approval
17 of the state board of examiners, if the attorney general determines at any
18 time prior to trial that it is impracticable, uneconomical or could constitute
19 a conflict of interest for the legal service to be rendered by the attorney
20 general or a deputy attorney general. Compensation for special counsel
21 must be paid out of the reserve for statutory contingency account.

22 **Sec. 6.** NRS 41.0344 is hereby amended to read as follows:

23 41.0344 ~~{The}~~ *Except under the circumstances described in section 1*
24 *of this act, the* chief legal officer or attorney of a political subdivision may
25 employ special counsel whose compensation must be fixed by the
26 governing body of the political subdivision if he determines at any time
27 prior to trial that it is impracticable or could constitute a conflict of interest
28 for the legal services to be rendered by him. Compensation for special
29 counsel must be paid by the political subdivision.

30 **Sec. 7.** NRS 41.0345 is hereby amended to read as follows:

31 41.0345 ~~{The}~~ *Except under the circumstances described in section 1*
32 *of this act, the* official attorney may provide for the defense of any person
33 who is entitled to a defense from the state or political subdivision by
34 tendering the defense to an insurer who, pursuant to a contract of insurance,
35 is authorized to defend the action.

36 **Sec. 8.** NRS 41.0347 is hereby amended to read as follows:

37 41.0347 ~~{If}~~ *Except under the circumstances described in section 1 of*
38 *this act, if* the official attorney does not provide for the defense of a present
39 or former officer, employee, immune contractor, member of a board or
40 commission of the state or any political subdivision or of a legislator in any
41 civil action in which the state or political subdivision is also a named
42 defendant, or which was brought in a court other than a court of competent
43 jurisdiction of this state, and if it is judicially determined that the injuries

1 arose out of an act or omission of that person during the performance of
2 any duty within the course and scope of his public duty or employment and
3 that his act or omission was not wanton or malicious:

4 1. If the attorney general was responsible for providing the defense, the
5 state is liable to that person for reasonable expenses in prosecuting his own
6 defense, including court costs and attorney's fees. These expenses must be
7 paid, upon approval by the state board of examiners, from the reserve for
8 statutory contingency account.

9 2. If the chief legal officer or attorney of a political subdivision was
10 responsible for providing the defense, the political subdivision is liable to
11 that person for reasonable expenses in carrying on his own defense,
12 including court costs and attorney's fees.

13 **Sec. 9.** NRS 353.264 is hereby amended to read as follows:

14 353.264 1. The reserve for statutory contingency account is hereby
15 created in the state general fund.

16 2. The state board of examiners shall administer the reserve for
17 statutory contingency account, and the money in the account must be
18 expended only for:

19 (a) The payment of claims which are obligations of the state pursuant to
20 NRS 41.03435, 41.0347, 176.485, 179.310, 212.040, 212.050, 212.070,
21 214.040, 281.174, 282.290, 282.315, 288.203, 293.253, 293.405, 353.120,
22 353.262, 412.154 and 475.235 ~~and~~ **and section 1 of this act;**

23 (b) The payment of claims which are obligations of the state pursuant to:

24 (1) Chapter 472 of NRS arising from operations of the division of
25 forestry of the state department of conservation and natural resources
26 directly involving the protection of life and property; and

27 (2) NRS 7.155, 34.750, 176A.640, 178.465, 179.225, 213.153 and
28 293B.210,

29 but the claims must be approved for the respective purposes listed in this
30 paragraph only when the money otherwise appropriated for those purposes
31 has been exhausted;

32 (c) The payment of claims which are obligations of the state pursuant to
33 NRS 41.0349 and 41.037, but only to the extent that the money in the fund
34 for insurance premiums is insufficient to pay the claims; and

35 (d) The payment of claims which are obligations of the state pursuant to
36 NRS 535.030 arising from remedial actions taken by the state engineer
37 when the condition of a dam becomes dangerous to the safety of life or
38 property.

39 **Sec. 10.** This act becomes effective on July 1, 1999.