

Amendment No. 724

Assembly Amendment to Senate Bill No. 27 First Reprint (BDR 3-219)

Proposed by: Assemblyman Horne

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

BFG



Date: 5/17/2013

S.B. No. 27—Revises provisions relating to the legal representation of certain persons by the Attorney General or the chief legal officer of a political subdivision of this State in certain civil actions.
(BDR 3-219)



SENATE BILL NO. 27—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2012

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to ~~the~~ legal representation ~~of certain persons by the Attorney General or the chief legal officer of a political subdivision of this State in certain civil actions.~~ (BDR 3-219)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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 legal representation; revising provisions governing the legal representation of certain persons by the Attorney General or the chief legal officer of a political subdivision in civil actions relating to certain public duties or employment; revising provisions concerning the crime of unlawfully soliciting legal business; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Attorney General provides legal counsel to any present or former officer or employee of the State, any immune contractor or any State Legislator in a civil action brought against that person based on any alleged act or omission relating to that person's public duty or employment if: (1) the person submits a written request for such legal counsel; and (2) the Attorney General determines that it appears that the person was acting within the course and scope of his or her public duty or employment and in good faith. In addition, under existing law, the chief legal officer or other authorized legal representative of a political subdivision of this State provides legal counsel to any present or former officer of that political subdivision or a present or former member of a local board or commission if: (1) the person submits a written request for such legal counsel; and (2) the chief legal officer or authorized legal representative determines that it appears that the person was acting within the scope of his or her public duty or employment and in good faith. (NRS 41.0339)

Sections 2-3 and 3.7-8 of this bill clarify existing law by specifically requiring: (1) the Attorney General to provide legal counsel under these circumstances to any present or former justice of the Supreme Court, senior justice, judge of a district court or senior judge; and (2) the chief legal officer or other authorized legal representative of a political subdivision of this State to provide legal counsel under these circumstances to any present or former justice of the peace, senior justice of the peace, municipal judge or senior municipal judge of that political subdivision. In addition, **sections 2-3 and 3.7-8** require the Attorney General or the chief legal officer or other authorized legal representative of a political subdivision of this State to provide counsel for certain persons who are not employees or officers of the State or political subdivision but who are named as defendants in a civil action solely because of an

alleged act or omission relating to the public duties or employment of certain officers or employees of the State or political subdivision.

Section 3.3 of this bill clarifies that the statutory provisions relating to legal representation in civil actions relating to the public duties or employment of such persons do not abrogate, alter or affect the immunity of such persons under other law.

Existing law establishes the crime of unlawful solicitation of legal business and provides that a person who commits this crime is guilty of a misdemeanor. (NRS 7.045) Section 8.3 of this bill revises the acts which constitute the crime of unlawful solicitation of legal business and provides that a second or subsequent violation of this crime is a gross misdemeanor.

Section 8.5 of this bill provides that for the 78th Session of the Nevada Legislature, the Director of the Department of Administration must include the biennial cost of implementing this bill in the Attorney General's cost allocation plan.

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 3.3, inclusive, of this act.

Sec. 2. *As used in NRS 41.0338 to 41.0347, inclusive, and sections 2 to 3.3, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 41.0338 and sections 2.5 and 3 of this act have the meanings ascribed to them in those sections.*

Sec. 2.5. *"Local judicial officer" means a justice of the peace, senior justice of the peace, municipal judge or senior municipal judge.*

Sec. 3. *"State judicial officer" means a justice of the Supreme Court, senior justice, judge of a district court or senior judge.*

Sec. 3.3. *The provisions of NRS 41.0338 to 41.0347, inclusive, and sections 2 to 3.3, inclusive, of this act do not abrogate or otherwise alter or affect any immunity from, or protection against, any civil action or civil liability which is provided by law to a local judicial officer, state judicial officer, officer or employee of this State or a political subdivision of this State, immune contractor, State Legislator, member of a state board or commission or member of a local board or commission for any act or omission relating to the person's public duties or employment.*

Sec. 3.7. NRS 41.0337 is hereby amended to read as follows:

41.0337 **1.** No tort action arising out of an act or omission within the scope of a person's public duties or employment may be brought against any present or former:

~~1-1~~ **(a)** *Local judicial officer or state judicial officer;*

~~1-2~~ **(b)** *Officer or employee of the State or of any political subdivision;*

~~1-3~~ **(c)** *Immune contractor; or*

~~1-4~~ **(d)** *State Legislator,*

↪ unless the State or appropriate political subdivision is named a party defendant under NRS 41.031.

2. *No tort action may be brought against a person who is named as a defendant in the action solely because of an alleged act or omission relating to the public duties or employment of any present or former:*

(a) *Local judicial officer or state judicial officer;*

(b) *Officer or employee of the State or of any political subdivision;*

(c) *Immune contractor; or*

(d) *State Legislator,*

1 *unless the State or appropriate political subdivision is named a party defendant*
2 *under NRS 41.031.*

3 3. *As used in this section:*

4 (a) *“Local judicial officer” has the meaning ascribed to it in section 2.5 of*
5 *this act.*

6 (b) *“State judicial officer” has the meaning ascribed to it in section 3 of this*
7 *act.*

8 **Sec. 4.** NRS 41.0338 is hereby amended to read as follows:

9 41.0338 ~~{As used in NRS 41.0338 to 41.0347, inclusive, unless the context~~
10 ~~otherwise requires, “official”~~ **“Official** attorney” means:

11 1. The Attorney General, in an action which involves ~~{a}~~ :

12 (a) *A present or former state judicial officer, State Legislator, officer or*
13 *employee of this State, immune contractor or member of a state board or*
14 *commission* ~~{a}~~ ; *or*

15 (b) *A person who is named as a defendant in the action solely because of an*
16 *alleged act or omission relating to the public duties or employment of a person*
17 *listed in paragraph (a).*

18 2. The chief legal officer or other authorized legal representative of a political
19 subdivision, in an action which involves ~~{a}~~ :

20 (a) *A present or former local judicial officer of that political subdivision, a*
21 *present or former* officer or employee of that political subdivision or a present or
22 former member of a local board or commission ~~{a}~~ ; *or*

23 (b) *A person who is named as a defendant in the action solely because of an*
24 *alleged act or omission relating to the public duties or employment of a person*
25 *listed in paragraph (a).*

26 **Sec. 5.** NRS 41.0339 is hereby amended to read as follows:

27 41.0339 1. The official attorney shall provide for the defense, including the
28 defense of cross-claims and counterclaims, of any present or former *local judicial*
29 *officer, state judicial officer,* officer or employee of the State or a political
30 subdivision, immune contractor or State Legislator in any civil action brought
31 against that person based on any alleged act or omission relating to the person’s
32 public duties or employment , *or any other person who is named as a defendant in*
33 *a civil action solely because of an alleged act or omission relating to the public*
34 *duties or employment of a local judicial officer, state judicial officer, officer or*
35 *employee of the State or a political subdivision, immune contractor or State*
36 *Legislator, if:*

37 ~~{a}~~ (a) Within 15 days after service of a copy of the summons and complaint
38 or other legal document commencing the action, the person submits a written
39 request for defense:

40 ~~{a)}~~ (1) To the official attorney; or

41 ~~{b)}~~ (2) If the officer, employee or immune contractor has an administrative
42 superior, to the administrator of the person’s agency and the official attorney; and

43 ~~{2}~~ (b) The official attorney has determined that the act or omission on which
44 the action is based appears to be within the course and scope of public duty or
45 employment and appears to have been performed or omitted in good faith.

46 2. *If the official attorney determines that it is impracticable, uneconomical*
47 *or could constitute a conflict of interest for the legal service to be rendered by the*
48 *official attorney or a deputy of the official attorney, the official attorney must*
49 *employ special counsel pursuant to NRS 41.03435 or 41.0344, whichever is*
50 *applicable.*

51 **Sec. 6.** NRS 41.0341 is hereby amended to read as follows:

52 41.0341 If the complaint is filed in a court of this state:

1. The *local judicial officer, state judicial officer*, officer, employee, board or commission member, ~~or~~ State Legislator ~~or~~ *or other person for whom the official attorney is required to provide a defense pursuant to NRS 41.0339;* and

2. The state or any political subdivision named as a party defendant, each has 45 days after their respective dates of service to file an answer or other responsive pleading.

Sec. 7. NRS 41.0346 is hereby amended to read as follows:

41.0346 1. At any time after the official attorney has appeared in any civil action and commenced to defend any person sued as a *local judicial officer, state judicial officer*, public officer, employee, immune contractor, member of a board or commission, ~~or~~ State Legislator ~~or~~ *or any other person defended by the official attorney pursuant to NRS 41.0339,* the official attorney may apply to any court to withdraw as the attorney of record for that person based upon:

(a) Discovery of any new material fact which was not known at the time the defense was tendered and which would have altered the decision to tender the defense;

(b) Misrepresentation of any material fact by the person requesting the defense, if that fact would have altered the decision to tender the defense if the misrepresentation had not occurred;

(c) Discovery of any mistake of fact which was material to the decision to tender the defense and which would have altered the decision but for the mistake;

(d) Discovery of any fact which indicates that the act or omission on which the civil action is based was not within the course and scope of public duty or employment or was wanton or malicious;

(e) Failure of the defendant to cooperate in good faith with the defense of the case; or

(f) If the action has been brought in a court of competent jurisdiction of this state, failure to name the State or political subdivision as a party defendant, if there is sufficient evidence to establish that the civil action is clearly not based on any act or omission relating to the ~~defendant's~~ public ~~duty~~ *duties* or employment ~~of a local judicial officer, state judicial officer, public officer, employee, immune contractor, member of a board or commission or State Legislator.~~

2. If any court grants a motion to withdraw on any of the grounds set forth in subsection 1 brought by the official attorney, the State or political subdivision has no duty to continue to defend any person who is the subject of the motion to withdraw.

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

41.0347 1. If the official attorney does not provide for the defense of a present or former *local judicial officer, state judicial officer*, officer, employee, immune contractor, member of a board or commission of the State or any political subdivision or ~~or~~ State Legislator in any civil action in which the State or political subdivision is also a named defendant, or which was brought in a court other than a court of competent jurisdiction of this state, and if it is judicially determined that the injuries arose out of an act or omission of that person during the performance of any duty within the course and scope of the person's public duty or employment and that the person's act or omission was not wanton or malicious:

~~or~~ (a) If the Attorney General was responsible for providing the defense, the State is liable to that person for reasonable expenses in prosecuting the person's own defense, including court costs and attorney's fees. These expenses must be paid, upon approval by the State Board of Examiners, from the Reserve for Statutory Contingency Account.

~~or~~ (b) If the chief legal officer or attorney of a political subdivision was responsible for providing the defense, the political subdivision is liable to that

person for reasonable expenses in carrying on the person's own defense, including court costs and attorney's fees.

2. *If the official attorney does not provide for the defense of a person who is named a defendant in any civil action solely because of an alleged act or omission relating to the public duties or employment of a present or former local judicial officer, state judicial officer, officer or employee of the State or any political subdivision, immune contractor or State Legislator and the State or political subdivision is also named a defendant, or the civil action was brought in a court other than a court of competent jurisdiction of this State, and if it is judicially determined that the injuries arose out of an act or omission of a local judicial officer, state judicial officer, officer or employee of the State or any political subdivision, immune contractor or State Legislator during the performance of any duty within the course and scope of such a person's public duty or employment and that the person's act or omission was not wanton or malicious:*

(a) *If the Attorney General was responsible for providing the defense, the State is liable to the person for reasonable expenses in prosecuting the person's own defense, including court costs and attorney's fees. These expenses must be paid, upon approval by the State Board of Examiners, from the Reserve for Statutory Contingency Account.*

(b) *If the chief legal officer or attorney of a political subdivision was responsible for providing the defense, the political subdivision is liable to that person for reasonable expenses in carrying on the person's own defense, including court costs and attorney's fees.*

Sec. 8.3. NRS 7.045 is hereby amended to read as follows:

7.045 1. ~~It is unlawful for any person or persons within the State of Nevada, unless the person or persons be an attorney at law or attorneys at law, licensed and entitled to practice law under and by virtue of the laws of the State of Nevada, to solicit, influence or procure, or aid or participate in soliciting, influencing or procuring any person within this state to employ, hire or retain any attorney at law within this state for any legal service whatsoever, when such person or persons first hereinabove mentioned shall have, either before or after so soliciting, influencing or procuring, or aiding or participating therein as aforesaid, accepted or received or have been offered or promised from such attorney last mentioned, either directly or indirectly, any benefit, service, money, commission, property or any other thing of value, as consideration therefor, or compensation therefor, or reward therefor, or remuneration therefor, or in recognition thereof.~~ a person, in exchange for compensation, to solicit, influence or procure, or aid or participate in soliciting, influencing or procuring any person within this state a tort victim to employ, hire or retain any attorney at law within this state for any legal service whatsoever, when such person or persons first hereinabove mentioned shall have, either before or after so soliciting, influencing or procuring, or aiding or participating therein as aforesaid, accepted or received or have been offered or promised from such attorney last mentioned, either directly or indirectly, any benefit, service, money, commission, property or any other thing of value, as consideration therefor, or compensation therefor, or reward therefor, or remuneration therefor, or in recognition thereof., or to offer, accept or receive any compensation for the solicitation of another person to employ, hire or retain any attorney at law;

(a) At the scene of a traffic accident that may result in a civil action;

(b) At a county or city jail or detention facility; or

(c) At a health care facility.

2. It is unlawful for a person to conspire with another person, including, without limitation, a health care professional, an employee of a health care professional or health care facility, a body shop licensed pursuant to chapter 487 of NRS, an ambulance service, a tow car operator, an insurance company, or any other person routinely associated with the delivery of legal services, to commit an act which violates the provisions of subsection 1.

3. This section does not prohibit or restrict:

(a) A recommendation for the employment, hiring or retention of an attorney at law in a manner that complies with the Nevada Rules of Professional Conduct.

(b) The solicitation of motor vehicle repair or storage services by a tow car operator.

(c) Any activity engaged in by police, fire or emergency medical personnel acting in the normal course of duty.

(d) A communication by a tort victim with the tort victim's insurer concerning the investigation of a claim or settlement of a claim for property damage.

(e) Any inquiries or advertisements performed in the ordinary course of a person's business.

4. A tort victim may void any contract, agreement or obligation that is made, obtained, procured or incurred in violation of this section.

5. Any person who violates any of the provisions of ~~subsection 4~~ shall be subject to this section:

(a) For the first offense, is guilty of a misdemeanor.

(b) For a second or subsequent offense, is guilty of a gross misdemeanor.

6. As used in this section:

(a) "Compensation" means the direct or indirect promise or payment of any fee, salary, wage, commission, bonus, rebate, refund, dividend or discount.

(b) "Solicit" or "solicitation" means directly or indirectly:

(1) Touting, promoting, recommending, suggesting or offering goods or services; or

(2) Selecting, obtaining or procuring goods or services.

(c) "Tort victim" means a person:

(1) Whose property has been damaged as a result of any accident that may result in a civil action, criminal action or claim for tort damages by or against another person;

(2) Who has been injured or killed as a result of any accident that may result in a civil action, criminal action or claim for tort damages by or against another person; or

(3) A parent, guardian, spouse, sibling or child of a person who has died as a result of any accident that may result in a civil action, criminal action or claim for tort damages by or against another person.

Sec. 8.5. For the 78th Session of the Nevada Legislature, in accordance with the provisions of subsection 2 of NRS 228.113, the Director of the Department of Administration shall include the biennial cost of implementing the provisions of this act in the Attorney General's cost allocation plan.

Sec. 9. This act becomes effective on July 1, 2013.