

SENATE BILL NO. 67—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 20, 2024

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain actions and proceedings. (BDR 3-447)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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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; revising provisions governing the legal representation of certain persons by the Attorney General or the chief legal officer or authorized legal representative of a political subdivision; revising requirements relating to a special verdict form in certain actions; revising provisions governing indemnification of certain persons in certain civil actions; revising provisions governing civil liability of public employers for certain conduct of employees; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law requires the Attorney General or the chief legal officer or other  
2 authorized representative of a political subdivision of this State to provide legal  
3 representation for the defense of officers or employees of the State or a political  
4 subdivision of the State who are named as defendants in a civil action and certain  
5 other persons. Under existing law, a person who wishes to receive such services  
6 must submit a written request for defense within 15 days after service of a copy of  
7 the summons and complaint or other legal document commencing the action. (NRS  
8 41.0339) **Section 1** of this bill instead requires the submission of a written request  
9 for defense within 15 days after the date on which: (1) the person receives service  
10 of a copy of the summons and complaint or other legal document commencing the  
11 action or waives such service; or (2) a court of competent jurisdiction enters an  
12 order finding that the person was served by an alternative service method.

13 Existing law: (1) authorizes a person who submits a written request for defense  
14 to employ his or her own counsel at any time after the request is submitted; and (2)  
15 relieves the State or political subdivision of the State of any further duty to  
16 represent the person at the time at which the person employs his or her own



17 counsel. (NRS 41.03455) **Section 2** of this bill eliminates language authorizing a  
18 person to employ his or her own legal counsel at any time after the submission of a  
19 written request for defense. **Section 2** thereby: (1) authorizes a person who has not  
20 submitted a written request for defense to employ his or her own counsel; and (2)  
21 relieves the State or political subdivision of the State of any duty to represent a  
22 person who employs his or her own counsel at the time at which the person retains  
23 such counsel, regardless of whether the person has submitted a written request for  
24 defense on or before that date.

25 In certain cases in which the State or a political subdivision of the State are  
26 named defendants, existing law requires a court or jury of this State to return a  
27 special verdict in the form of certain specific written findings. (NRS 41.0348)  
28 **Section 3** of this bill revises the required written findings. **Section 3** also removes  
29 specific language referring to a court or jury of this State, which could make the  
30 special verdict requirement applicable to a case in another jurisdiction if Nevada  
31 law is applied in such a case.

32 Existing law requires the State or a political subdivision of the State to  
33 indemnify certain officers or employees of the State or a political subdivision of the  
34 State for damages caused by any act or omission relating to the public duty or  
35 employment of the person, unless an exception applies. (NRS 41.0349) **Section 4**  
36 of this bill revises the circumstances under which the State or a political subdivision  
37 of the State is exempt from the requirement to indemnify a person. **Section 4** also  
38 authorizes the State or a political subdivision of the State to indemnify a person  
39 against liability for exemplary or punitive damages under certain circumstances.

40 Existing law generally protects a public employer from liability for harm or  
41 injury caused by the conduct of a person that was outside the course and scope of  
42 the public duties or employment of the person and was not reasonably foreseeable.  
43 (NRS 41.03475, 41.745) **Section 5** of this bill additionally protects a public  
44 employer from liability for a deprivation of constitutional rights caused by the  
45 conduct of an employee or officer of the public employer unless: (1) the public  
46 employer was personally involved in the deprivation; or (2) a sufficient causal  
47 connection exists between wrongful conduct of the public employer and the  
48 deprivation.

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

1 **Section 1.** NRS 41.0339 is hereby amended to read as follows:  
2 41.0339 1. The official attorney shall provide for the defense,  
3 including the defense of cross-claims and counterclaims, of any  
4 present or former local judicial officer, state judicial officer, officer  
5 or employee of the State or a political subdivision, immune  
6 contractor or State Legislator in any civil action brought against that  
7 person based on any alleged act or omission relating to the person's  
8 public duties or employment, or any other person who is named as a  
9 defendant in a civil action solely because of an alleged act or  
10 omission relating to the public duties or employment of a local  
11 judicial officer, state judicial officer, officer or employee of the  
12 State or a political subdivision, immune contractor or State  
13 Legislator, if:



1 (a) ~~[Within 15 days after service of a copy of the summons and~~  
2 ~~complaint or other legal document commencing the action, the]~~ *The*  
3 person submits a written request for defense ~~[:]~~ *within the time*  
4 *specified in subsection 2:*

5 (1) To the official attorney; or

6 (2) If the officer, employee or immune contractor has an  
7 administrative superior, to the administrator of the person's agency  
8 and the official attorney; and

9 (b) The official attorney has determined that the act or omission  
10 on which the action is based appears to be within the course and  
11 scope of public duty or employment and appears to have been  
12 performed or omitted in good faith.

13 2. *Regardless of the date on which the Attorney General,*  
14 *person designated by the Attorney General or person serving in*  
15 *the office of administrative head of the named agency receives*  
16 *service pursuant to subsection 2 of NRS 41.031, a written request*  
17 *for defense pursuant to subsection 1 must be submitted to the*  
18 *official attorney and, if applicable, the administrator of the*  
19 *person's agency, within 15 days after the date on which:*

20 (a) *The person receives service of a copy of the summons and*  
21 *complaint or other legal document commencing the action or*  
22 *waives such service; or*

23 (b) *A court of competent jurisdiction enters an order finding*  
24 *that the person was served by an alternative service method*  
25 *pursuant to the Nevada Rules of Civil Procedure.*

26 3. If the official attorney determines that it is impracticable,  
27 uneconomical or could constitute a conflict of interest for the legal  
28 service to be rendered by the official attorney or a deputy of the  
29 official attorney, the official attorney must employ special counsel  
30 pursuant to NRS 41.03435 or 41.0344, whichever is applicable.

31 **Sec. 2.** NRS 41.03455 is hereby amended to read as follows:

32 41.03455 ~~[At any time after:]~~ *A person authorized to submit* a  
33 written request for defense ~~[is submitted]~~ *pursuant to* ~~[the official~~  
34 ~~attorney, the person requesting the defense]~~ *NRS 41.0339* may  
35 employ his or her own counsel to defend the action. ~~[At that time,]~~  
36 *Upon the retention by a person of his or her own legal counsel,* the  
37 State or political subdivision is excused from any further duty to  
38 represent ~~[that]~~ *the* person and is not liable for any expenses in  
39 defending the action, including court costs and attorney's fees.

40 **Sec. 3.** NRS 41.0348 is hereby amended to read as follows:

41 41.0348 In every action or proceeding in any court ~~[of this~~  
42 ~~state]~~ in which both the State or political subdivision and any  
43 present or former officer, employee, immune contractor or member  
44 of a board or commission thereof or any present or former State  
45 Legislator are named defendants, the court or jury in rendering any



1 final judgment, verdict, or other disposition shall return a special  
2 verdict in the form of written findings which determine whether:

3 1. The individual defendant was acting within the scope of the  
4 defendant's public duty or employment; and

5 2. ~~[The]~~ *Clear and convincing evidence establishes that the*  
6 *alleged act or omission by the individual defendant ~~[was wanton]~~*  
7 *involved oppression, fraud or ~~[malicious.]~~ malice, express or*  
8 *implied, as those terms are defined in NRS 42.001.*

9 **Sec. 4.** NRS 41.0349 is hereby amended to read as follows:

10 41.0349 1. ~~[H]~~ *Except as otherwise provided in subsection*  
11 *2, any civil action brought against any present or former officer,*  
12 *employee, immune contractor, member of a board or commission of*  
13 *the State or a political subdivision or State Legislator, in which a*  
14 *judgment is entered against the person based on any act or omission*  
15 *relating to the person's public duty or employment, the State or*  
16 *political subdivision shall indemnify the person unless:*

17 ~~[1.]~~ *(a) The person failed to submit a timely request for*  
18 *defense;*

19 ~~[2.]~~ *(b) The person failed to cooperate in good faith in the*  
20 *defense of the action;*

21 ~~[3.]~~ *(c) The act or omission of the person was not within the*  
22 *scope of the person's public duty or employment ~~[; or~~*  
23 *—4.] , including, without limitation, where the person was*  
24 *terminated from employment or resigned in lieu of termination*  
25 *based upon a determination by the State or political subdivision*  
26 *that the act or omission was not within the scope of the person's*  
27 *public duty or employment;*

28 *(d) The person has been held criminally liable for the act or*  
29 *omission which is the subject of the civil action; or*

30 *(e) The act or omission of the person ~~[was wanton]~~ results in*  
31 *exemplary or ~~[malicious.]~~ punitive damages.*

32 2. *The State or political subdivision may indemnify a person*  
33 *if:*

34 *(a) The exemplary or punitive damages are related to a*  
35 *violation of state or federal law; and*

36 *(b) In the opinion of the official attorney:*

37 *(1) The act or omission upon which the damages are based*  
38 *did not involve conscious disregard, fraud, malice or oppression,*  
39 *as those terms are defined in NRS 42.001;*

40 *(2) The act or omission of the person was performed in*  
41 *good faith; and*

42 *(3) Payment of the judgment or settlement is in the best*  
43 *interest of the State or political subdivision.*

44 3. *Nothing in this section shall be construed to require the*  
45 *State or political subdivision to indemnify a person against*



1 *exemplary or punitive damages which are related to the*  
2 *commission of a crime.*

3 *4. As used in this section, "official attorney" has the meaning*  
4 *ascribed to it in NRS 41.0338.*

5 **Sec. 5.** NRS 41.745 is hereby amended to read as follows:

6 41.745 1. An employer is not liable for harm or injury caused  
7 by the intentional conduct of an employee if the conduct of the  
8 employee:

9 (a) Was a truly independent venture of the employee;

10 (b) Was not committed in the course of the very task assigned to  
11 the employee; and

12 (c) Was not reasonably foreseeable under the facts and  
13 circumstances of the case considering the nature and scope of his or  
14 her employment.

15 ➔ For the purposes of this subsection, conduct of an employee is  
16 reasonably foreseeable if a person of ordinary intelligence and  
17 prudence could have reasonably anticipated the conduct and the  
18 probability of injury.

19 2. Nothing in this section imposes strict liability on an  
20 employer for any unforeseeable intentional act of an employee.

21 3. *A public employer shall not be subject to liability based*  
22 *exclusively on a theory of respondeat superior or vicarious*  
23 *liability. Nothing in this section shall be construed to impose*  
24 *liability on a public employer for a deprivation of constitutional*  
25 *rights which is caused by the conduct of an employee or officer*  
26 *unless:*

27 (a) *The public employer was personally involved in the*  
28 *deprivation; or*

29 (b) *A sufficient causal connection exists between wrongful*  
30 *conduct of the public employer and the deprivation.*

31 4. For the purposes of this section:

32 (a) "Employee" means any person who is employed by an  
33 employer, including, without limitation, any present or former  
34 officer or employee, immune contractor, an employee of a  
35 university school for profoundly gifted pupils described in chapter  
36 388C of NRS or a member of a board or commission or Legislator  
37 in this State.

38 (b) "Employer" means any public or private employer in this  
39 State, including, without limitation, the State of Nevada, a university  
40 school for profoundly gifted pupils described in chapter 388C of  
41 NRS, any agency of this State and any political subdivision of the  
42 State.

43 (c) "Immune contractor" has the meaning ascribed to it in  
44 subsection 3 of NRS 41.0307.



1 (d) “Officer” has the meaning ascribed to it in subsection 4 of  
2 NRS 41.0307.

3 **Sec. 6.** The amendatory provisions of this act apply to any  
4 cause of action or claim that accrues on or after October 1, 2025.





