

*Limitations on Damages  
That May be Awarded Against the  
State and Its Political Subdivisions*



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**STATUTORY LIMITATION ON DAMAGES THAT MAY BE AWARDED  
TO A PERSON IN A TORT ACTION AGAINST THE STATE OF NEVADA,  
ITS POLITICAL SUBDIVISIONS OR CERTAIN OTHER PERSONS**

**BULLETIN NO. 01-14**

**JANUARY 2001**



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## SUMMARY OF RECOMMENDATIONS

### LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE STATUTORY LIMITATIONS ON DAMAGES THAT MAY BE AWARDED TO A PERSON IN A TORT ACTION AGAINST THE STATE OF NEVADA, ITS POLITICAL SUBDIVISIONS OR CERTAIN OTHER PERSONS

This Summary presents the recommendation approved by the Legislative Commission's Subcommittee to Study the Statutory Limitation on Damages that may be Awarded to a Person in a Tort Action Against the State of Nevada, its Political Subdivisions or Certain Other Persons (Assembly Concurrent Resolution No. 46, File No. 140, *Statutes of Nevada 1999*). The Subcommittee recommends that the 71<sup>st</sup> Session of the Nevada Legislature:

**Enact legislation to amend *Nevada Revised Statutes* (NRS) 41.035, "Limitation on award for damages in tort actions," to increase the cap on damages and to create a special fund for persons injured by public agencies as follows:**

**A. Increase Tort Cap and Create Special Fund for Certain Cases.**

- I. Increase the cap set forth in NRS 41.035 and limit the amount of damages in tort actions: For any accident or occurrence on or after October 1, 2001, except as provided in A.II, an award for tort damages against a present or former officer or an employee of the state or any political subdivision, immune contractor or state legislator arising out of an act or omission within the scope of his public duties or employment may not exceed \$75,000, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant, subject to a total limit of \$150,000 in the aggregate for all separate, distinct, and independent causes of action or number of state actors involved for any one person arising out of said accident or occurrence. An award may not include any amount for prejudgment interest or as exemplary or punitive damages.**
- II. Certain persons may apply for money from special fund: For any accident or occurrence on or after October 1, 2001, a person injured in any occurrence involving a public agency, including the state or any political subdivision of the state, which results in paraplegia, quadriplegia, a persistive vegetative state, permanent total physical incapacitation from any gainful employment or death, may apply to the Special Fund for Persons Injured by Public Agencies for payment up to \$250,000 for medical expenses and loss of earnings damages combined that exceed the amount resulting from the application of the limitation on damages pursuant to NRS 41.035 concluded by settlement or judgment.**

**B. Eligibility for Payment from Special Fund.**

- I. Determination of damages: Eligibility to make application to the Special Fund for medical expenses and loss of earnings damages must be certified in writing to the Board of Trustees by the public agency in the settlement agreement or be adjudicated by the court. In the event the parties to a settlement cannot agree as to the amount of such damages, the parties may agree to petition the court for a determination of the amount of damages incurred, which determination shall be binding upon the parties. In the alternative, either party may request a jury trial to determine both liability and damages, if any. “Medical expenses and loss of earnings damages” means damages that are specifically claimed and proven and shown to have been sustained in the circumstances of the particular wrong and may include future loss of earnings and medical expenses.**
- II. Application process: The Board of Trustees of the Special Fund shall review the application and approve or disapprove reimbursement of all or part of the unpaid medical expenses or loss of earnings damages. Applications must be filed with the Board within 30 days after a final determination of damages has been made. If reimbursement or partial reimbursement is approved, payment of such damages to the person injured must be made from the fund, to the extent money is available in the fund for this purpose. Within 30 days after the close of a fiscal year, the Board shall determine the amount of money on hand as of the close of the fiscal year. If claims against the fund in any given year exceed the amount of money available at the close of the fiscal year, the available money shall be distributed on a pro rata basis among all recipients eligible in that year. The method of determining the prorated division of money in the Special Fund shall be fixed by regulations adopted by the Board. An applicant is eligible to receive payment from the Special Fund for an accident or occurrence only once. The determination by the Board of Trustees as to the amount of money available for reimbursement or partial reimbursement of medical expenses and loss of earnings damages is made in the sole discretion of the board and is final and binding on the applicant.**
- III. The application to the Board must be in such form and contain such information as the Board requires by regulation. No application will be processed without a certification of medical expenses and loss of earnings damages by the public agency.**

**C. Creation and Powers of Board of Trustees.**

**The Board of Trustees shall consist of five members of which one member shall be from each county with a population of 100,000 or greater, two shall be from**

counties with a population of less than 100,000, and one shall be a representative from the State Board of Examiners. The Board shall have the same powers as the Board of Trustees for the Fund for Hospital Care to Indigent Persons as set forth in NRS 428.205.

**D. Reimbursement of Medical Expenses or Loss of Earnings; Board Subrogated to Right of Applicant.**

Upon payment of medical expenses or loss of earnings to the applicant, the Board of Trustees is subrogated to the right of the applicant to recover the unpaid charges from any responsible party other than the certifying public agency or the applicant to the extent of the reimbursement or partial reimbursement paid, and may maintain an independent action therefore in a manner similar to that employed by the Board of Trustees for the Fund for Hospital Care to Indigent Persons pursuant to NRS 428.245.

**E. Funding for Special Fund**

From the taxes levied pursuant to NRS 428.185 and any tax levied pursuant to NRS 450.425, the board of county commissioners of each county shall set aside money from the ad valorem tax at a rate of 0.25 cents (one-quarter of a cent).

If a permanent source of money is identified in the legislation to match the money contributed to the Special Fund by the earmarking of the 0.25 cents from the ad valorem tax, then the bill will be drafted so that a person injured by an employee of the state may apply for money under the Special Fund. This permanent source of money could include dedicating a portion of an existing state tax or creating a new tax for this purpose.



**REPORT TO THE 71<sup>st</sup> SESSION OF THE NEVADA LEGISLATURE BY THE  
LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE  
STATUTORY LIMITATION ON DAMAGES THAT MAY BE AWARDED  
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ITS POLITICAL SUBDIVISIONS OR CERTAIN OTHER PERSONS**

**I. INTRODUCTION**

The 70<sup>th</sup> Session of the Nevada Legislature adopted Assembly Concurrent Resolution No. 46 (File No. 140, *Statutes of Nevada 1999*, pages 4048 and 4049), which directed the Legislative Commission to conduct an interim study of the adequacy of compensation available in tort actions to people injured by public entities as well as the fiscal impact on governmental bodies if the statutory limits on such damages were changed. The commission appointed a Subcommittee of eight legislators to carry out the provisions of the resolution. A copy of A.C.R. 46 is contained in Appendix A.

The Legislative Commission appointed the following legislators to serve on the Subcommittee:

Assemblyman Bernie Anderson, Chairman  
Senator Maurice E. Washington, Vice Chairman  
Senator Mike McGinness  
Senator Dean A. Rhoads  
Senator Michael A. Schneider  
Assemblyman John C. Carpenter  
Assemblyman Jerry D. Claborn  
Assemblywoman Genie Ohrenschall

Additionally, the Legislative Commission appointed an eight-member Advisory Committee pursuant to the provisions of A.C.R. 46. The Advisory Committee consisted of the following people:

Bill Bradley, Co-Chairman, Representing the Nevada Trial Lawyers Association  
Bill Isaeff, Co-Chairman, Representing the Nevada League of Cities  
J.R. Crockett, Jr., Representing the Nevada Trial Lawyers Association  
Mike Davidson, Representing the Nevada Association of Counties  
P. Mark Ghan, Representing the Office of the Attorney General  
Bill Hoffman, Representing the Nevada Association of School Boards  
Shauna Hughes, Representing the Nevada League of Cities  
Madelyn Shipman, Representing the Nevada Association of Counties

Legislative Counsel Bureau (LCB) staff services for the Subcommittee were provided by:

Scott Young, Principal Research Analyst  
Risa B. Lang, Principal Deputy Legislative Counsel  
R. Rene Yeckley, Senior Deputy Legislative Counsel  
Roxanne Duer, Senior Research Secretary

The Subcommittee held five meetings during the course of the study. Three of the meetings were held in Carson City and two in Las Vegas. The Advisory Committee held two meetings. All meetings were videoconferenced between meeting rooms in Carson City and Las Vegas. (All place-names are within Nevada unless otherwise noted.)

During the course of the study, the Subcommittee heard extensive testimony from Advisory Committee members and the public regarding the impact of limited tort damages on people who have been injured by governmental entities. Additionally, the Subcommittee studied information regarding the cost to governmental bodies of tort claims and the potential fiscal consequences of raising the present statutory limits on damages.

At its final meeting, the Subcommittee adopted a recommendation, including a bill draft request (BDR), for consideration by the 2001 Legislature. The recommendation calls for increasing the statutory limit on tort damages with certain restrictions and the creation of a special fund to provide additional reimbursement to specified categories of seriously injured people.

This report contains background information on the historical development of limitations on governmental tort damages, sometimes referred to as sovereign immunity. A large volume of data was collected in the course of the study and much of it is included in exhibits that became part of the Subcommittee minutes. All supporting documents and minutes of meetings are on file with the Research Library of the LCB.

## II. OVERVIEW OF GOVERNMENTAL IMMUNITY<sup>1</sup>

### A. Historical Background

Sovereign immunity, also commonly referred to as governmental immunity, is a “judicial doctrine that precludes bringing a suit against the government without its consent.” *Black’s Law Dictionary* 1396 (6th ed. 1990). This ancient legal doctrine is derived from English common law. Specifically, sovereign immunity originated from the feudal system and the principle that “it was necessarily a contradiction of the sovereignty of any lord and especially the king to allow him to be sued as of right in his own courts.” *Restatement (Second) of Torts Ch. 45A: Special Note on Governmental Immunity* 394 (1964) (amended

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<sup>1</sup> This section was prepared by R. Rene Yeckley, Senior Deputy Legislative Counsel, and Risa B. Lang, Principal Deputy Legislative Counsel.

1996). Therefore, under the feudal system a lord was not subject to being sued in his own court and was subject to a lawsuit only in the courts of higher lords. Further, there was no higher court for the king who was at the top of the feudal pyramid and thus, theoretically, he was not subject to a lawsuit at all. David E. Engdahl, *Immunity and Accountability for Positive Governmental Wrongs*, 44 U. Colo. L. Rev. 1, 2-5 (1972).

In addition to the structure of the feudal system, the king's immunity also rested upon "a fiction that 'the King could do no wrong.'" Nevada v. Hall, 99 S. Ct. 1182, 1185, (1972) (citing 1 William Blackstone, *Commentaries* 246). Although this fiction implies that the king was completely immune from being sued, effective mechanisms to redress injuries caused by the king were actually developed. Louis L. Jaffe, *Suits Against Governments and Officers: Sovereign Immunity*, 77 Harv. L. Rev. 1, 3-5 (1963). For example, a person who was injured by the wrongs of the king or his agents could bring an action by a petition of right whereby the king could consent to a hearing and determination of the claim of the plaintiff by a proper court. *Restatement (Second) of Torts Ch. 45A: Special Note on Governmental Immunity* (1964) (amended 1996).

The procedure of the petition of right was never followed in the United States, but sovereign immunity was adopted by the courts and soon became a firmly established part of American jurisprudence. *Id.* However, because the absolutist, monarchical notion of sovereign immunity as originally established in England was antithetical to the basic tenets of democratic government, different rationales were adopted to support its application in the United States. The National Association of Attorneys General, *Sovereign Immunity: The Liability of Government and its Officials* 1 (1976). Initially, sovereign immunity in the United States was supported by the reasoning that it was "illogical to enforce a claim against the very authority that created the claim in the first place." W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 131, at 1033 (5th ed. 1984); *see also Kawanakoa v. Polybank*, 205 U.S. 349, 353 (1907). ("A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.") Eventually other justifications for sovereign immunity were developed. For example, the need for sovereign immunity has been explained on the basis that judicial review of executive action through litigation infringes to a certain degree on the independence of the legislative and executive branches of government and therefore threatens the separation of powers of the branches of government. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 131, at 1033 (5th ed. 1984). Further, sovereign immunity is an effective means of addressing every governments' concern with protecting the public treasury from potentially devastating judgments. *County of Clark, ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 759 (1998). Despite such justifications, in recent years there has been a clear trend toward restricting the application of sovereign immunity. Most states have followed this trend to protect persons injured by the government. *Id.* As discussed below, this trend has resulted in a modified application of sovereign immunity at the federal level and among many states, including Nevada.

## **B. Sovereign Immunity of the Federal Government**

In several cases decided during the early 1800s, the U.S. Supreme Court upheld sovereign immunity for the Federal Government, thus establishing that the Federal Government could not be sued without its consent. Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 411, 412 (1821); Osborn v. Bank of United States, 22 U.S. (9 Wheat.) 738 (1824). It was not until 1887 that Congress began to enact major legislation that allowed a substantial class of persons to sue the Federal Government. The first such piece of legislation was the Tucker Act of 1887, which authorized persons to bring contract actions against the Federal Government and established the Court of Claims as the exclusive venue for litigating such lawsuits. 24 St. 505 (1887); current provisions of the act are found at 28 U.S.C.A. §§ 1346, 1402, 1491, 1496, 1497, 1501, 1503, 2071, 2411, 2501 and 2512 (West 1994 & Supp. 1999). However, during this period there was no equivalent provision for a person to bring a tort action against the Federal Government. Rather, a person who wished to bring a tort action was limited to: (1) showing that the government committed a “taking of property” that was compensable under the Constitution; (2) suing under one of the narrow statutes in which the Federal Government consented to be sued; or (3) obtaining a private bill that would authorize the person to bring his tort action against the Federal Government. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 131, at 1033-34 (5th ed. 1984).

In response to the burden of dealing with private legislation, Congress enacted the Federal Tort Claims Act of 1946 (“FTCA”). *Id.* at 1034. The FTCA generally authorizes a person to bring a tort action against the Federal Government and certain federal employees. It also directs the courts to hold the Federal Government liable “in the same manner and to the same extent as a private individual under like circumstances.” 28 U.S.C.A. § 2674 (West 1994 & Supp. 1999). Further, the FTCA provides several important procedural limitations to its application. First, the plaintiff must present the claim in writing to the administrative agency that is allegedly responsible for the damages within two years after a claim arises. If the agency denies the claim, the plaintiff must initiate an action within six months thereafter. 28 U.S.C.A. §§ 2401(b) and 2675 (West 1994 & Supp. 1999). Second, jurisdiction for a claim brought pursuant to the FTCA is vested exclusively in the federal courts. 28 U.S.C.A. §§ 1346 and 2679(d) (West 1994 & Supp. 1999). Therefore, a tort claim against the Federal Government may not be maintained in any state court. Finally, an action under the FTCA must be tried by a judge and not a jury. 28 U.S.C.A. § 2402 (West 1994 & Supp. 1999).

In addition to the procedural requirements set forth above, there are several substantive aspects to the application of the FTCA, some of which limit the liability of the Federal Government. First, the FTCA provides for liability of the Federal Government only for certain intentional torts and torts that require a showing of fault by the defendant. Thus, the Federal Government may not be sued under strict liability where no fault is involved because such activity is not “necessarily blameworthy.” *Restatement (Second) of Torts* § 895A (1964) (amended 1996). Second, in an action under the FTCA the federal courts must apply the tort law of the state in which the incident occurred. 28 U.S.C.A. § 1346(b) (West 1994 & Supp. 1999). Third, the FTCA does not provide for liability of the Federal Government if certain other laws would

apply, such as the Suits in Admiralty Act. 28 U.S.C.A. § 2680(d) (West 1994 & Supp. 1999). Fourth, the Federal Government may be liable for both affirmative actions and omissions. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 131, at 1035 (5th ed. 1984).

In addition to the substantive requirements described above, the FTCA provides that the Federal Government is not liable for actions that involve “discretionary functions or duties.” The U.S. Supreme Court has explained that these are acts that involve policy judgment and decision making. Dalehite v. United States, 73 S. Ct. 956 (1953). The FTCA retains this limitation to avoid the potential disruption of the balanced separation of powers between the three branches of government that might occur were the judiciary able to control executive or legislative activities through its judicial review of such activities. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 131, at 1039 (5th ed. 1984). In determining which acts constitute discretionary functions, courts have attempted to distinguish between acts that occur at the planning level, which are deemed to constitute policy judgments, and acts that occur at the operational level, which are not deemed to constitute policy judgments and must be carried out with reasonable care. However, “[t]he distinction between planning and operational decisions, if workable at all, is at best difficult to apply, and in a good many cases it is not seriously discussed or even mentioned.” Id. at 1041.

In sum, the Federal Tort Claims Act discussed above indicates that the Federal Government has shifted from its original position on sovereign immunity which disallowed any action against the Federal Government. The new position allows a private person to pursue certain legal actions against the Federal Government while retaining immunity for the Federal Government under other certain circumstances. As discussed below, the State of Nevada has adopted a similar type of partial waiver of sovereign immunity.

### **C. Sovereign Immunity of the State of Nevada**

#### **1. The Eleventh Amendment**

The sovereign immunity of the State of Nevada is generally similar to that of the Federal Government and is based on both federal law and state law. In particular, the Eleventh Amendment of the *U.S. Constitution* provides that “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” Pursuant to judicial construction of this provision, the Eleventh Amendment: (1) applies only to actions brought in federal court; (2) shields a state from actions brought by citizens of that state and citizens of other states, Hans v. Louisiana, 10 S. Ct. 504 (1890); (3) shields state officials from certain actions that, although they name the official individually, subject the state treasury to judgment, Edelman v. Jordan, 94 S. Ct. 1347 (1974); (4) does not shield a state from actions brought by the Federal Government or other states, Nevada v. Hall, 99 S. Ct. 1182 (1979); and (5) does not shield state officials from certain civil rights torts under the Fourteenth Amendment of the *U.S. Constitution* that are authorized by Congress, Quern v. Jordan, 99 S. Ct. 1139 (1979). Although a state is free to waive its Eleventh

Amendment immunity, the State of Nevada has explicitly retained its Eleventh Amendment immunity pursuant to subsection 3 of NRS 41.031.

## **2. The Nevada Constitution and Nevada State Law**

While the Eleventh Amendment of the *U.S. Constitution* grants immunity to the State of Nevada for certain legal actions brought in federal courts, the *Nevada Constitution* and Nevada state law provide immunity to the State of Nevada for certain legal actions brought in Nevada state courts. Specifically, Section 22 of Article 4 of the *Constitution* of the State of Nevada states that, “[p]rovision may be made by general law for bringing suit against the State as to all liabilities originating after the adoption of this Constitution.” In accordance with this provision, the Nevada Legislature has enacted NRS 41.0305 to 41.039, inclusive, which generally govern the liability of and actions against the State of Nevada, its agencies, and political subdivisions.

Several sections of this statutory scheme are important for understanding sovereign immunity in this state. First, NRS 41.031 provides a general waiver of sovereign immunity for legal actions brought against the State of Nevada and its political subdivisions. Specifically, subsection 1 of NRS 41.031 provides that except as otherwise provided by certain statutes:

The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations, . . . if the claimant complies with [certain provisions] . . . . The State of Nevada further waives the immunity from liability and action of all political subdivisions of the state, and their liability must be determined in the same manner[.]

Second, NRS 41.032 provides that the State of Nevada, its political subdivisions, and certain contractors, officers, and employees of this state or its political subdivisions are immune from liability for certain actions. Specifically, subsection 1 of NRS 41.032 provides immunity from liability for an act or omission in the execution of a statute or regulation that has not been declared invalid if due care is exercised. Further, subsection 2 of NRS 41.032 provides immunity from liability for the performance of or failure to perform a discretionary duty, even if the discretion is abused. A discretionary act has been described by the Nevada Supreme Court as an act “which require[s] the exercise of personal deliberation, decision and judgment.” Pittman v. Lower Court Counseling, 110 Nev. 359, 364 (1994). In contrast, a ministerial act, which is not protected by immunity, “is an act performed by an individual in a prescribed legal manner in accordance with the law, without regard to, or the exercise of, the judgment of the individual.” Id.

Third, NRS 41.0349 provides that the State of Nevada or its political subdivisions will, under certain circumstances, indemnify a present or former employee, immune

contractor or official who is sued for an act or omission relating to his public duty or employment. Specifically, NRS 41.0349 provides that the person is not entitled indemnification if:

1. The person failed to submit a timely request for defense;
2. The person failed to cooperate in good faith in the defense of the action;
3. The act or omission of the person was not within the scope of his public duty or employment; or
4. The act or omission of the person was wanton or malicious.

Fourth, NRS 41.035 provides that the State of Nevada and its political subdivisions may be liable to a claimant for not more than \$50,000 for each action under certain circumstances, including, without limitation, if the official in question acted within the scope of his public duties or employment. It also provides that such a claimant may not receive punitive damages against the State of Nevada or its political subdivisions. As originally enacted in 1965, NRS 41.035 provided a limit of \$25,000 for each action brought against the State of Nevada or its political subdivisions. Section 4 of Chapter 505, *Statutes of Nevada 1965*, at page 1414. In 1977, this limit was increased to \$35,000. Section 1 of Chapter 678, *Statutes of Nevada 1977*, at page 985. In 1979, the limit was increased again to the current limit of \$50,000 for each action brought against the State of Nevada or its political subdivisions. Section 15.4 of Chapter 678, *Statutes of Nevada 1979*, at page 1736.

Finally, NRS 41.0385, which was enacted in 1993, requires the Office of the Attorney General to file an annual report with the Office of the Secretary of State summarizing all tort claims made in the preceding year against agencies of the state represented by the Attorney General. The report must contain certain specified information about the type of claim made, the amount of damages requested, the amount paid by the state and the status of pending claims. The statute also requires local governments to file similar reports with their governing bodies.

In addition to enacting NRS 41.0305 to 41.039, inclusive, the Nevada Legislature has enacted several statutes that provide immunity from civil liability to the State of Nevada and its political subdivisions under certain specific circumstances. For example, NRS 405.202 provides that “[t]he state and the respective local governments have no duty to maintain an accessory road and are immune from liability for damages suffered by any person as a result of using such a road.” Subsection 4 of NRS 527.126 provides another example. It states that:

The State of Nevada, an agency of this state or any political subdivision or local government of this state, or any officer or employee thereof, is not liable for any damage or injury to property or persons, including death,

which is caused by a controlled fire that is authorized pursuant to this section, unless the fire was conducted in a grossly negligent manner.

### 3. Relevant Case Law

There is a substantial body of case law interpreting the state statutes discussed above. From this case law, four cases in particular are useful in understanding how sovereign immunity applies in the State of Nevada. In State v. Webster, the plaintiff brought an action against the State of Nevada for personal injuries sustained by the plaintiff and the wrongful death of her husband both of which arose out of an automobile accident. State v. Webster, 88 Nev. 690 (1972). The issue before the court was whether the plaintiff was entitled to receive \$25,000 for each tort raised in the case, or was limited to a total of \$25,000 for both the personal injuries claim and the wrongful death claim. At that time, the limit for damages against the State of Nevada set forth in NRS 41.035 was \$25,000. The Nevada Supreme Court held that because each tort in question was separate, distinct and independent and could have been separately maintained, the plaintiff was entitled to \$25,000 for each tort. Id. at 695. Therefore, the plaintiff was awarded a total of \$50,000 for her tort claims. Id. at 696.

In County of Clark, ex rel. Univ. Med. Ctr. v. Upchurch, one of the plaintiffs gave birth to a daughter who was born with cerebral palsy. The plaintiffs alleged that the child's condition was caused by the medical mismanagement of six governmental actors. County of Clark, ex rel. Univ. Med. Ctr. v. Upchurch, 961 P.2d 754 (1998). Pursuant to a settlement agreement with four of the governmental actors, the three plaintiffs each received \$50,000. Subsequently, the plaintiff brought legal action against the remaining two governmental actors. One of these defendants argued that the plaintiffs were not entitled to any additional recovery because the plaintiffs in their earlier settlement agreement had reached their statutory limit on damages. Id. at 756. In addressing this issue of whether a plaintiff may recover from multiple governmental actors for a single cause of action, the Court reviewed the legislative history of NRS 41.035 and the case law interpreting this statute. After completing this review, the Court held that "NRS 41.035 allows one statutory limitation for each cause of action, regardless of the number of actors." Id. at 761. Therefore, the plaintiffs could not recover any additional damages for their cause of action from the defendants.

In Nevada v. Hall, the plaintiff, a California resident, brought an action against the State of Nevada in a California state court for injuries caused in an automobile accident in California that involved a Nevada state vehicle operated by an employee of the State of Nevada while the employee was on official business. Nevada v. Hall, 99 S. Ct. 1182 (1979). The State of Nevada invoked its sovereign immunity claiming that pursuant to the Full Faith and Credit Clause of the *U.S. Constitution*, California was required to recognize Nevada's sovereign immunity and limit its liability for each tort action to the amount set forth in NRS 41.035 at the time of the accident. The U.S. Supreme Court rejected Nevada's claim and found that the California state court could impose full liability upon the State of Nevada. Specifically, the Court held that a state is not entitled

to claim its sovereign immunity beyond its borders unless the jurisdiction adjudicating the action consents to such immunity. Id. at 1188-91.

Finally, in State, Dep't. of Hum. Res. v. Jimenez, 113 Nev. 356 (1997), the Nevada Supreme Court addressed the issue of whether the State of Nevada was liable for nine separate acts of sexual assault committed by a state employee upon a minor who was placed in a state program administered by the state employee. The resolution of this issue depended on whether the acts of the employee were committed within the course and scope of his employment. In addressing the issue, the Court applied a new test which focused on the foreseeability of the act of the employee. Id. at 365. Pursuant to this test, the Court had to determine whether “in the context of the particular enterprise an employee’s conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer’s business.” Id. (quoting Roger v. Kemper Constr. Co., 124 Cal. Rptr. 143, 148-149 [1975]). Relying upon case law from California, the court found that it was not “startling or unexpected” that a person in the position of the state employee who had such considerable control over the children in the state program would misuse his authority in this manner. Jimenez, 113 Nev. at 368. Further, the Court found that each act of sexual assault constituted a separate and distinct tort. Id. at 372. Therefore, the Court held that the State of Nevada was liable for the nine separate acts of sexual assault committed by its employee and awarded the plaintiff \$50,000 for each act. Thus, the plaintiff was awarded a total of \$450,000 in damages. Id. at 374.

Approximately three months after the Court issued its controversial decision in Jimenez, upon a motion of the parties, the Court withdrew the opinion and dismissed the pending proceedings for rehearing. State, Dep't. of Hum. Res. v. Jimenez, 113 Nev. 735, 736 (1997). A case that has been withdrawn does not provide precedent for future decisions, but may provide an unofficial indication of how the Court would rule given a similar factual situation. However, any such use of the Jimenez decision is questionable because, in 1997, the Nevada Legislature responded to the decision by enacting Assembly Bill No. 595 which addresses the liability of an employer if an employee intentionally commits certain harmful acts. Section 1 of Chapter 384, *Statutes of Nevada 1997*, at page 1357. That bill was codified as NRS 41.745. *Nevada Revised Statutes* 41.745 provides in pertinent part:

1. An employer is not liable for harm or injury caused by the intentional conduct of an employee if the conduct of the employee:
  - (a) Was a truly independent venture of the employee;
  - (b) Was not committed in the course of the very task assigned to the employee; and
  - (c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his employment.

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

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

The Nevada Supreme Court has not yet interpreted NRS 41.745. Therefore, it cannot be determined with certainty how the Nevada Supreme Court would rule in a case with similar facts to those presented in Jimenez.

#### **D. Public Officials**

When a tort action is brought against a public official, the doctrines of sovereign immunity and official immunity are often at issue. It is important to note that sovereign immunity is distinct from official immunity with each type of immunity grounded on its own policy interests and standards of application. *Modern Tort Law* § 17.01 (rev. ed. 1994). While sovereign immunity protects the government from liability, official immunity developed at common law as a means to protect public officials as individuals from civil liability for activity that fell within their scope of public authority. Kassen v. Hatley, 887 S.W.2d 4 (1994). This doctrine was founded on several public policy concerns including: “(1) The concern that public officials might be influenced in the performance of their duties by the threat of a lawsuit; (2) The deterrence of otherwise qualified individuals from public service for fear of liability; (3) The loss of public time which results from litigation.” *Modern Tort Law* § 17.01 611 (rev. ed. 1994).

As official immunity was developed at common law, some public officials, including executive branch officials and employees, were provided qualified immunity from civil action for acts performed in the scope of their authority. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 132, at 1059 (5th ed. 1984). Generally, qualified immunity was available if the public official was performing a discretionary act and did not act with malice, bad faith, or improper purpose. Id. at 1059-60. In contrast, certain public officials were afforded absolute immunity from civil action. Typically, absolute immunity applied for those public officials performing certain legislative or judicial acts. For example, judges, legislators, and persons performing quasi-judicial functions such as a prosecuting attorney are afforded absolute immunity from civil actions if they acted within the scope of their authority and even if they acted in bad faith or with malice or corrupt motives. Id.

As the Nevada Supreme Court has noted, “[t]he legislature has codified some aspects of common law immunity in NRS 41.032.” County of Washoe v. Second Jud. Dist. Ct., 98 Nev. 456, 457 (1982). However, the Court has recognized that those aspects that have not been codified may, pursuant to common law, still protect an official from certain legal actions. For example, in Foster v. Washoe County, the Nevada Supreme Court held that the Court Appointed Special Advocate (CASA) program and one of its employees were immune

from civil action based on their quasi-judicial immunity and not the governmental immunity provided pursuant to NRS 41.032. 114 Nev. 936 (1998).

In addition to enacting NRS 41.032, the Legislature has codified some aspects of official immunity in various other statutes. For example, NRS 679B.115 provides that:

1. The commissioner and the employees of the division [of insurance in the department of business and industry] in the absence of fraud or bad faith, are not subject to civil liability for publishing any report or bulletin related to the official activities of the commissioner or the division.
2. This section does not abrogate or modify any privilege or immunity which applies to the commissioner [of insurance] or the employees of the division.

(Emphasis added.) Further, NRS 679B.157 provides that:

An insurer, employee or representative of an insurer, official of an investigative or law enforcement agency, employee of the division [of insurance in the department of business and industry] or the commissioner [of insurance] is not subject to a criminal penalty or subject to civil liability for libel, slander or any similar cause of action in tort if he, without malice, discloses information on a fraudulent claim or suspicious fire.

(Emphasis added.) Both NRS 679B.115 and 679B.157 are examples of qualified immunity that were provided to public officials at common law which now have been codified.

Because some aspects of official immunity have been codified and others have not, in practice, when a tort action is brought against a public official the court will likely examine the statutory scheme of NRS 41.0305 to 41.039, inclusive, and any other applicable statutes to determine whether the person is entitled to immunity as set forth therein. If the examination produces a negative result for the public official, the court will likely determine whether an official immunity exists at common law to protect the public official from liability.

## **E. Conclusion**

Sovereign immunity is an ancient legal doctrine that prevents a person from bringing an action against the government without its consent. This doctrine has become a firmly established part of American jurisprudence. However, in recent years, a strong trend has developed to limit the application of this legal doctrine so that persons injured by the government may be compensated. Both the Federal Government and the State of Nevada have followed this trend in varying degrees.

### III. LEGISLATIVE INTENT IN SETTING STAUTORY DAMAGE LIMITS IN NEVADA

#### A. History of Nevada's Monetary Limitation on Damages

As noted previously, Nevada established the first statutory monetary limit on the amount of tort damages in 1965 at \$25,000 pursuant to Senate Bill 185 (Chapter 505, *Statutes of Nevada 1965*). The limit was increased to \$35,000 in 1977 by Senate Bill 469 (Chapter 476, *Statutes of Nevada 1977*). The present cap of \$50,000 was adopted in 1979 as a result of Assembly Bill 30 (Chapter 678, *Statutes of Nevada 1979*) and is found in NRS 41.035.

#### B. \$25,000 Limit Per S.B. 185 in 1965

There is only one committee minute entry for S.B. 185 from 1965. That entry is from the Assembly Committee on Judiciary. Mr. Bill Barker, City Attorney for North Las Vegas, spokesperson for the group supporting the measure, recommended increasing the \$25,000 limit specified in the bill to \$100,000 but did not give his reason for suggesting that amount. He said he “. . . had heard a rumor the Governor [Grant Sawyer] will veto the bill if the \$25,000 is not upped” and suggested this be verified. Assemblyman Melvin D. Close, Jr., stated he would “check with the Governor and if it is the Governor's intent to veto the bill unless changed, something will be done about it.” Nothing more is mentioned in the minutes and the bill passed with the \$25,000 limit.

#### C. \$35,000 Limit Per S.B. 469 in 1977

During the April 14, 1977, meeting of the Senate Committee on Judiciary on Senate Bill 469, Senator William J. Raggio, testifying in support of the measure, said “. . . that the \$25,000 limit is an arbitrary figure established by the Legislature in 1965.” The minutes continue:

He felt that this fails to adequately compensate a victim in most cases. He suggested that perhaps \$50,000 may be more realistic than the proposed \$100,000 but that some adjustment was necessary.

Senator [Richard H.] Bryan felt that a more defensible figure would be to calculate what the increase in the cost of living has been since this figure was first established.

The minutes for April 16, 1977, indicate, “Senator [Melvin D.] Close stated he felt that \$50,000 would be defensible.” The bill was amended to that effect and passed out of committee with a re-referral to the Senate Committee on Finance.

On April 30, 1977, S.B. 469 was considered in Senate Finance. The minutes record:

S.B. 469: Changes monetary limitation on tort liability of state and its political subdivisions.

This was discussed and consideration was given to whether the \$25,000 was to be raised or not. Senator [Norman Ty] Hilbrecht said he thought it should be raised some, say about to \$35,000 and he would so move; Senator [Eugene V.] Echols seconded and the motion carried 5-2, with Senators [Floyd R.] Lamb and [James I.] Gibson dissenting.

#### D. \$50,000 Limit Per A.B. 30 in 1979

Assembly Bill 30 from 1979 increased the tort limit to \$50,000. While there are extensive minutes on the bill, most of the discussion focused on when and under what conditions public entities should defend and indemnify public employees. The sole reference to changing the tort cap occurred during the May 16, 1979, meeting of the Senate Committee on Judiciary. Senator Close stated: “We are also raising the \$35,000 to \$50,000.”

#### E. Conclusion

There is very little information in the legislative committee minutes indicating the factors involved in setting the different tort limits. It appears from the comments of various legislators, and in particular the observation of Senator Raggio in 1977, that the limits were arbitrarily determined. While Senator Bryan suggested in 1977 that perhaps adjustments to the limits should be based on increases in the cost of living, there is no indication that such a methodology was actually utilized.

### **IV. SURVEY OF GOVERNMENTAL IMMUNITY IN OTHER STATES**

A survey was conducted of all 50 states to determine how other jurisdictions address the issue of governmental immunity. Table 1 in Appendix B shows the status of governmental immunity state-by-state. This table includes the maximum damages allowable against each state and the local governmental entities in those states as well as the availability of punitive damages. Note that in some instances, the limit on damages against the state is different than the amount recoverable from local government.

Table 2 summarizes some of the data in Table 1 applicable to *state* governments. For example, Table 2 indicates nine states have no limit on tort damages against the state, eight have partial limits, and four allow the limit to be raised in certain instances. Additionally, in 11 states, the damage limit is either set by the amount of liability insurance available, or the statutory limit can be exceeded to the extent there is insurance coverage.

Table 2 also shows the dollar limit in states that have limits. The first section of the table contains the limit *per person per occurrence*, i.e., the amount that any one individual can recover in a single incident; page 42 of Table 2 shows the *aggregate per occurrence* limitation, i.e., the total amount of damages allowable from any one incident, regardless of the number of people injured. Eight states, including Nevada, do not impose an aggregate per occurrence limit. Page 43 of Table 2 shows which states have specific limits on property damage and which jurisdictions allow punitive damages against the state.

Table 3 displays the same type of information as Table 2 except as it applies to *local governmental entities*.

## **V. AMOUNTS PAID FOR STATE TORT CLAIMS IN NEVADA**

As noted above, NRS 41.0385, requires the Office of the Attorney General to file an annual report with the Office of the Secretary of State summarizing all tort claims made in the preceding year against agencies of the state represented by the Attorney General. A copy of NRS 41.0385 is included in Appendix C. In Appendix D, Tables 4 through 11 present information based on the annual summaries filed by the State of Nevada for 1994 through 1999. The notes at the bottom of the tables contain important qualifiers regarding the comprehensiveness of the data.

## **VI. GOVERNMENTAL INSURANCE COVERAGE**

The extent to which the State of Nevada and its local governments have liability coverage for tort claims and the cost of such coverage was examined during the study. The following information was obtained:

- The State of Nevada is fully self-insured for tort liability.
- Clark County self-insures for the first \$1 million on tort claims.
- Washoe County has catastrophic insurance coverage for tort losses above \$1 million; below that level, the county is self-insured.
- The City of Las Vegas has a \$5 million self-insurance fund. The city also carries catastrophic coverage for judgments exceeding \$1 million.
- The City of Henderson self-insures against tort claims up to \$1 million and above that amount has liability insurance.
- The Nevada Public Agency Insurance Pool (Pool) is a self-insurance fund that insures nearly 50 rural and local governmental entities. These bodies self-insure for the first

\$150,000 in tort losses. Damages above that amount are covered by excess insurance. The most recent figure for the total cost of coverage for Pool members (including the self-insurance program, administrative budget, excess coverage, insurance premium tax, and payment of claims) was \$5,123,730 per year.

## **VII. MAJOR ISSUES CONSIDERED DURING THE STUDY**

The Subcommittee was charged by A.C.R. 46 with examining whether it is appropriate to change the current statutory limitation on damages while considering, without limitation, the potential fiscal impact of any such change and the potential effect that such a change would have on injured plaintiffs.

### **A. Arguments in Support of Increasing the Statutory Limits on Damages**

The Subcommittee heard extensive testimony regarding the need to increase the limits. Major arguments presented by proponents of increasing the amount of recoverable damages included the following:

- Damages suffered by an injured person can far exceed the cap, resulting in compensation that is not commensurate with the injury;
- There has been no increase in the cap since 1979; in the meantime, however, the cost of medical care and the level of wages have risen. Based on inflation alone, the cap would be approximately \$124,000 currently;
- Private parties are liable to the full extent of any harm they cause. Limiting damages insulates governmental entities from responsibility for their actions and does not provide any incentive to correct harmful activity;
- When people are severely injured and their medical bills exceed the cap, an injured person may have to access public assistance to cope with medical expenses and lost income, thus resulting in governmental expenditures in another form;
- The actual number of catastrophic claims is small and therefore the fiscal impact would not pose a threat to government budgets; and
- Federal civil rights actions generally have no caps and yet governmental entities are able to financially manage damage awards in such cases.

### **B. Arguments in Support of Leaving the Statutory Limits Unchanged**

The Subcommittee was presented with testimony in support of not increasing the limits on damages. Among the arguments presented by opponents of raising the cap were the following:

- The current \$50,000 cap is not an accurate reflection of Nevada’s limit on liability. Unlike other states, Nevada imposes no limit on the number of causes of action for which a claimant can recover. A single plaintiff can recover up to \$50,000 for each and every separate legal claim arising out of a single event.
- Public agencies are often viewed as impersonal “deep pockets” and are primary targets in the area of tort litigation. Although many tort claims against public entities are legally or factually without merit, each must be defended at a substantial cost to Nevada taxpayers. Elimination or modification of Nevada’s tort cap will result in a greater number of questionable claims.
- Public entities are charged with the responsibility of providing public services to their citizens. Unlike private individuals or businesses that can limit or avoid liability by choosing not to engage in certain activities, government does not have the same flexibility. Modifying or eliminating the tort cap could result in cutting or eliminating some public services.
- Some of Nevada’s rural counties are financially vulnerable. There are limited options for public entities to increase taxes to compensate for an adjusted cap. During the past ten years there has been no increase in assessed valuation for Esmeralda or Mineral Counties. Additionally, there are six rural counties that are heavily dependent upon mining and their financial condition fluctuates with the fortunes of that industry.
- The fact that the actual number of catastrophic claims is small is an indicator that the present cap is adequate for most incidents and that some type of special fund could address the few situations where the tort limit results in a hardship to the injured person.

### **VIII. ADVISORY COMMITTEE ACTIVITIES**

On February 23, 2000, the Advisory Committee submitted a report concerning its two meetings that occurred on January 10, 2000, and February 16, 2000. Although the Advisory Committee was not able to reach consensus on any recommendations to present to the Subcommittee, it did present a list of options the Subcommittee could consider:

1. No change in the current statutory limitation or cap.
2. No change in the current cap, but create a new fund for major injury and death cases.
3. Increase the cap by:
  - a. Immediate cost of living adjustment (COLA) from 1979 to present.
  - b. Gradual phase-in of any increase in the cap.

- c. Prospective only COLA adjustment.
- d. Immediate COLA adjustment and thereafter COLA adjustments annually or some other period of time.
- e. Increasing only within counties whose population is above a certain number.
- f. Increasing for medical negligence cases only.
- g. Increasing the amount for each claim, but reducing or limiting the number of claims under which an individual may recover.
- h. A fixed amount, but with a sunset provision to allow a study of the effects of the increase.
- i. Random selection of a new cap amount.

#### **IX. SUBCOMMITTEE RECOMMENDATION**

In the course of the study, all the required elements of A.C.R. 46 were considered. The Subcommittee heard from many witnesses on behalf of both governmental entities and representatives of injured persons. At its final meeting, the Subcommittee adopted a single recommendation, including a BDR, for consideration by the 2001 Legislature. The recommendation calls for increasing the statutory limit on tort damages with certain restrictions and the creation of a special fund to provide additional reimbursement to specified categories of seriously injured people. Because certain aspects of the recommendation, such as a funding source for the state's contribution to the special fund, could not be specified in sufficient detail for drafting purposes at the time, the Subcommittee directed that the recommendation be prepared as a skeleton bill.

Although the recommendation was adopted on a unanimous vote, several Subcommittee members indicated they believed the proposal did not go far enough to ensure adequate compensation for injured people. Some of these members said they voted for the recommendation because they wanted the full Legislature to have another opportunity to examine the underlying issues but reserved the right to oppose the bill draft itself.

Therefore, the Subcommittee recommends that that 2001 Legislature:

**Enact legislation to amend NRS 41.035, "Limitation on award for damages in tort actions," to increase the cap on damages and to create a Special Fund for persons injured by public agencies as follows:**

**A. Increase Tort Cap and Create Special Fund for Certain Cases.**

- I. Increase the cap set forth in NRS 41.035 and limit the amount of damages in tort actions:** For any accident or occurrence on or after October 1, 2001, except as provided in A.II, an award for tort damages against a present or former officer or an employee of the state or any political subdivision, immune contractor or state legislator arising out of an act or omission within the scope of his public duties or employment may not exceed \$75,000, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant, subject to a total limit of \$150,000 in the aggregate for all separate, distinct, and independent causes of action or number of state actors involved for any one person arising out of said accident or occurrence. An award may not include any amount for prejudgment interest or as exemplary or punitive damages.
- II. Certain persons may apply for money from special fund:** For any accident or occurrence on or after October 1, 2001, a person injured in any occurrence involving a public agency, including the state or any political subdivision of the state, which results in paraplegia, quadriplegia, a persistive vegetative state, permanent total physical incapacitation from any gainful employment or death, may apply to the Special Fund for Persons Injured by Public Agencies for payment up to \$250,000 for medical expenses and loss of earnings damages combined that exceed the amount resulting from the application of the limitation on damages pursuant to NRS 41.035 concluded by settlement or judgment.

**B. Eligibility for Payment from Special Fund.**

- I. Determination of damages:** Eligibility to make application to the Special Fund for medical expenses and loss of earnings damages must be certified in writing to the Board of Trustees by the public agency in the settlement agreement or be adjudicated by the court. In the event the parties to a settlement cannot agree as to the amount of such damages, the parties may agree to petition the court for a determination of the amount of damages incurred, which determination shall be binding upon the parties. In the alternative, either party may request a jury trial to determine both liability and damages, if any. "Medical expenses and loss of earnings damages" means damages that are specifically claimed and proven and shown to have been sustained in the circumstances of the particular wrong and may include future loss of earnings and medical expenses.
- II. Application process:** The Board of Trustees of the Special Fund shall review the application and approve or disapprove reimbursement of all or part of the unpaid medical expenses or loss of earnings damages. Applications must

be filed with the Board within 30 days after a final determination of damages has been made. If reimbursement or partial reimbursement is approved, payment of such damages to the person injured must be made from the fund, to the extent money is available in the fund for this purpose. Within 30 days after the close of a fiscal year, the Board shall determine the amount of money on hand as of the close of the fiscal year. If claims against the fund in any given year exceed the amount of money available at the close of the fiscal year, the available money shall be distributed on a pro rata basis among all recipients eligible in that year. The method of determining the prorated division of money in the Special Fund shall be fixed by regulations adopted by the Board. An applicant is eligible to receive payment from the Special Fund for an accident or occurrence only once. The determination by the Board of Trustees as to the amount of money available for reimbursement or partial reimbursement of medical expenses and loss of earnings damages is made in the sole discretion of the board and is final and binding on the applicant.

III. The application to the Board must be in such form and contain such information as the Board requires by regulation. No application will be processed without a certification of medical expenses and loss of earnings damages by the public agency.

C. **Creation and Powers of Board of Trustees.**

The Board of Trustees shall consist of five members of which one member shall be from each county with a population of 100,000 or greater, two shall be from counties with a population of less than 100,000, and one shall be a representative from the State Board of Examiners. The Board shall have the same powers as the Board of Trustees for the Fund for Hospital Care to Indigent Persons as set forth in NRS 428.205.

D. **Reimbursement of Medical Expenses or Loss of Earnings; Board Subrogated to Right of Applicant.**

Upon payment of medical expenses or loss of earnings to the applicant, the Board of Trustees is subrogated to the right of the applicant to recover the unpaid charges from any responsible party other than the certifying public agency or the applicant to the extent of the reimbursement or partial reimbursement paid, and may maintain an independent action therefore in a manner similar to that employed by the Board of Trustees for the Fund for Hospital Care to Indigent Persons pursuant to NRS 428.245.

**E. Funding for Special Fund**

**From the taxes levied pursuant to NRS 428.185 and any tax levied pursuant to NRS 450.425, the board of county commissioners of each county shall set aside money from the ad valorem tax at a rate of 0.25 cents (one-quarter of a cent).**

**If a permanent source of money is identified in the legislation to match the money contributed to the Special Fund by the earmarking of the 0.25 cents from the ad valorem tax, then the bill will be drafted so that a person injured by an employee of the state may apply for money under the Special Fund. This permanent source of money could include dedicating a portion of an existing state tax or creating a new tax for this purpose. (BDR 3-192) (Recommendation No. 3).**

The Subcommittee's suggested legislation is included in this report as Appendix E.

**X. APPENDICES**

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APPENDIX A

Assembly Concurrent Resolution No. 46 of the 1999 Legislative Session  
(File No. 140, *Statutes of Nevada 1999*)



Assembly Concurrent Resolution No. 46—Committee on

FILE NUMBER 140

ASSEMBLY CONCURRENT RESOLUTION—Directing the Legislative Commission to conduct an interim study concerning the statutory limitation on damages that may be awarded to a person in a tort action against the State of Nevada, its political subdivisions or certain other persons.

WHEREAS, The State of Nevada, by waiving its sovereign immunity, allows monetary damages to be awarded to a person in a tort action against the State of Nevada or any of its political subdivisions, or a present or former officer or employee of the State of Nevada or any political subdivision, or an immune contractor or state legislator arising out of an act or omission within the scope of his public duties or employment; and

WHEREAS, The current statutory limit on the amount of damages that may be awarded to a plaintiff in such a tort action has not been increased since 1979; and

WHEREAS, Persons injured in this state may not be adequately compensated for injuries caused to them by the State of Nevada or its political subdivisions because of the current limitation on damages; and

WHEREAS, Before changing the statutory limit on the amount of damages that may be awarded in such cases, it is also necessary to consider the fiscal impact on the State of Nevada and its political subdivisions; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the Legislative Commission is hereby directed to conduct an interim study concerning the statutory limitation on damages that may be awarded to a person in a tort action against the State of Nevada or any of its political subdivisions, or a present or former officer or employee of this state or any political subdivision, or an immune contractor or state legislator arising out of an act or omission within the scope of his public duties or employment; and be it further

RESOLVED, That the Legislative Commission shall appoint a subcommittee, consisting of:

1. Four members of the Assembly, two of whom must have served on the Assembly Standing Committee on Judiciary during the immediately preceding session of the legislature; and

2. Four members of the Senate, two of whom must have served on the Senate Standing Committee on Judiciary during the immediately preceding session of the legislature, to conduct the study; and be it further

RESOLVED, That, in addition to legislators, the Legislative Commission shall appoint an advisory committee to assist the subcommittee, including, without limitation:

1. One representative from the Office of the Attorney General;
2. Two representatives from the Nevada League of Cities;
3. Two representatives from the Nevada Association of Counties;
4. Two representatives from the Nevada Trial Lawyers' Association; and
5. One representative from the Nevada Association of School Boards; and be it further

RESOLVED, That the study must include, without limitation, an analysis of whether it is appropriate to change the current statutory limitation on damages set forth in NRS 41.035 with consideration to the potential effects of changing the limitation, including, without limitation, the potential fiscal impact of any such change and the potential effect that such a change would have on injured plaintiffs; and be it further

RESOLVED, That any recommended legislation proposed by the subcommittee must be approved by a majority of the members of the Senate and a majority of the members of the Assembly appointed to the subcommittee; and be it further

RESOLVED, That the Legislative Commission shall submit a report of the results of the study and any recommendations for legislation to the 71<sup>st</sup> session of the Nevada Legislature.

APPENDIX B

Governmental Immunity by State



## STATE LISTING

ALABAMA (AL)	MONTANA (MT)
ALASKA (AK)	NEBRASKA (NE)
ARIZONA (AZ)	NEVADA (NV)
ARKANSAS (AR)	NEW HAMPSHIRE (NH)
CALIFORNIA (CA)	NEW JERSEY
COLORADO (CO)	NEW MEXICO (NM)
CONNECTICUT (CT)	NEW YORK
DELAWARE (DE)	NORTH CAROLINA (NC)
FLORIDA (FL)	NORTH DAKOTA (ND)
GEORGIA (GA)	OHIO (OH)
HAWAII (HI)	OKLAHOMA (OK)
IDAHO (ID)	OREGON (OR)
ILLINOIS (IL)	PENNSYLVANIA (PA)
INDIANA (IN)	RHODE ISLAND (RI)
IOWA (IA)	SOUTH CAROLINA (SC)
KANSAS (KS)	SOUTH DAKOTA (SD)
KENTUCKY (KY)	TENNESSEE (TN)
LOUISIANA (LA)	TEXAS (TX)
MAINE (ME)	UTAH (UT)
MARYLAND (MD)	VERMONT (VT)
MASSACHUSETTS (MA)	VIRGINIA (VA )
MICHIGAN (MI)	WASHINGTON (WA)
MINNESOTA (MN)	WEST VIRGINIA (WV)
MISSISSIPPI (MS)	WISCONSIN (WI)
MISSOURI (MO)	WYOMING (WY)



**Table 1**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Statutory Limitations on Tort Damages Against Governmental Entities**

<i>State</i>	<i>Status of Sovereign Immunity Respecting Torts</i>	<i>Maximum Damages Against the State</i>	<i>Maximum Damages Against Local Government</i>	<i>Availability of Punitive Damages</i>
AL	Retains sovereign immunity. Constitution Article 1, § 14. § 41-9-60.	Board of Adjustment created to pay claims against the state “. . . where in law, justice or good morals, the same should be paid.” § 41-9-60. Same benefits as those available under workers’ compensation program. § 41-9-70.	\$100,000 property damage. \$100,000 bodily injury or death per person. \$300,000 for injury per occurrence. § 11-93-2.	No (except for an entity covered by the Medical Liability Act). § 6-11-26 .
AK	Retains immunity for discretionary functions and certain enumerated acts. §§ 09.50.250, 09.65.070.	Same as for non-governmental suits. § 09.50.250. For non-economic damages: greater of \$400,000, or \$8,000 x life expectancy in years, unless impairment is severe, in which case greater of \$1 million or \$25,000 x life expectancy. § 09.17.010.	Same	Not against state. § 09.50.280. Punitives are available against units of local government. § 09.17.020.
AZ	Retains absolute and qualified immunity for certain actions. §§ 12-820.01, 12-820.02, 12-820.05.	No limit. Judgment shall be for “amount actually due from the public entity . . . .” § 12-823.	Same	None against state or employee acting within scope of employment. § 12.820.04.
AR	Retains immunity. § 20, Article 5, Arkansas Constitution. Local government immune per § 21-9-301.	No limit. Judgment shall be for actual damages. § 21-9-203. Officers and employees are immune except to extent covered by insurance. § 19-10-305. Claims against the state (but not local governments) are heard exclusively by the State Claims Commission and can only be appealed to the Legislature. §§ 19-10-204, 19-10-211, 21-9-202. Award must be reduced by benefits received under any insurance policy unless the policy was paid for by or on behalf of the claimant. § 19-10-303.	Local government immune except to extent covered by insurance. § 21-9.301. Political subdivisions must carry minimum motor vehicle insurance of \$15,000 for property, \$25,000 for injury to one person in any one accident and \$50,000 for two or more persons in any one accident. §§ 21-9-303, 27-19-605.	None against state or employee acting in scope of employment without malice or bad faith. § 21-9-203.

Note: The table is based on state statutes as of 1998 (in some instances through 1999), but does not reflect case law nor local ordinances. Also, the table does not include information regarding special provisions for certain entities such as emergency medical service providers. Empty cells indicate areas where the law was not readily ascertainable.

**Table 1**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Statutory Limitations on Tort Damages Against Governmental Entities**

<i>State</i>	<i>Status of Sovereign Immunity Respecting Torts</i>	<i>Maximum Damages Against the State</i>	<i>Maximum Damages Against Local Government</i>	<i>Availability of Punitive Damages</i>
CA	Retains immunity except where liability otherwise provided by statute. Government Code § 815.	No limit. If public entity is not insured and award exceeds \$833,750, award can be paid in periodic payments not to exceed lesser of 10 years or claimant's life expectancy. Gov. Code § 984. In some circumstances, award may be reduced by collateral source payments. Gov. Code § 985.	Same	None against public entity. Gov. Code § 818.
CO	Retains immunity except where liability otherwise provided by statute. §§ 24-10-106, 24-10-108.	\$150,000 for one person in any single occurrence. \$600,000 for more than one person in single occurrence. Public entity may adopt resolution raising limit. Legislature may approve claim above limit. § 24-10-114.	Same	None unless public entity determines it is in public interest to pay such a claim. Public employee is liable if conduct willful and wanton. § 24-10-118. If claimant seeks punitive damages against public employee and does not substantially prevail, court shall order claimant and/or attorney to pay public employee's attorney's fees. § 24-10-110.
CT	Retains immunity except where liability otherwise provided by statute. § 4-160.	If the Claims Commissioner "deems it just and equitable, he may authorize suit against the state . . ." on any claim where a private person could be liable. Case must be heard without a jury. § 4-160(f). Commissioner must automatically authorize certain claims for medical malpractice. § 4-160. Commissioner may pay claim up to \$7,500. Larger claims must be submitted to Legislature which may grant or deny claim and grant or deny permission to sue state. § 4-158. Any payment by Commissioner must be reduced by any collateral source. § 4-160b.	Local government liable for acts of public employees. § 7-465. Damages must be reduced by amount of certain collateral sources. § 52-225a.	
DE	Retains immunity except where liability otherwise provided by statute. §§ 4001, 4011.	No limit.	\$300,000 unless political subdivision has insurance with higher limit.	None against political subdivisions or employees. §§ 4011, 4012.

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**Table 1**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Statutory Limitations on Tort Damages Against Governmental Entities**

<i>State</i>	<i>Status of Sovereign Immunity Respecting Torts</i>	<i>Maximum Damages Against the State</i>	<i>Maximum Damages Against Local Government</i>	<i>Availability of Punitive Damages</i>
FL	Waives immunity except as otherwise retained in statute. § 768.28.	\$100,000 for single individual. \$200,000 for single occurrence. Legislature may approve higher claim. § 768.28 Attorney may not charge or receive more than 25 percent of any judgment or settlement. § 768.28(8).	Same	No. § 768.28
GA	Waives immunity except as otherwise retained in statute. § 50-21-23.	\$1 million per person per occurrence. \$3 million per occurrence. § 50-21-29.	Municipal corporations immune unless they have liability insurance and then liable only to the policy limit. §§ 33-24-51, 36-33-1.	No. § 50-21-30.
HI	Waives immunity except as otherwise retained in statute. § 662-2.	Limit is liability insurance policy limit. § 661-11.	No limit. § 46-72.	No. § 662-2.
ID	Waives immunity except as otherwise retained in statute. § 6-903.	\$500,000 for any one occurrence regardless of the number of persons injured. If valid, collectable liability insurance policy has higher limit, maximum limit is policy limit. § 6-926.	Same	No. § 6-918.
IL	Retains immunity except where liability otherwise provided by statute. § 745 ILCS 5/1.	\$100,000 per person, except certain motor vehicle accidents. § 705/505/8(d). Claims heard exclusively by Court of Claims. Attorney fees limited to 20 percent of undisputed amount unless Court approves more. § 705/505/26.1.	No limit. § 745/10/9-102. If local entity determines full payment would create unreasonable financial hardship, payments may be made in installments not to exceed 10 years. § 745/10/9-104.	No. §§ 745/10/2-102, 745/10/2-213.
IN	Waives immunity except as otherwise retained in statute. § 34-13-3-3.	\$300,000 for one person. \$5 million for single occurrence. § 34-13-3-4.	Same	No. § 34-13-3-4.

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**Statutory Limitations on Tort Damages Against Governmental Entities**

<i>State</i>	<i>Status of Sovereign Immunity Respecting Torts</i>	<i>Maximum Damages Against the State</i>	<i>Maximum Damages Against Local Government</i>	<i>Availability of Punitive Damages</i>
IA	Waives immunity except as otherwise retained in statute. §§ 669.4, 670.4.	No limits. State liable in same manner and to same extent as a private individual. § 669.4.	No limit. Local entities are subject to tort liability except as otherwise provided by statute. §§ 670.2, 670.4.	No. §§670.4, 669.4. Local government employees not liable unless actual malice, wanton, and reckless conduct. § 670.4.
KS	Waives immunity except as otherwise retained in statute. § 75-6103.	\$500,000 for any number of claims from a single occurrence. § 75-6105. If insurance policy has higher limit, policy limit sets maximum recovery. § 75-6111.	Same. Under certain conditions, judgment against municipality may be paid in installments not to exceed 10 years. §75-6112.	No punitives against governmental entity. Punitives against employee only in case of actual fraud or actual malice. §§ 75-6105, 75-6109.
KY	Waives immunity except as otherwise retained in statute. § 44.072.	\$100,000 for single person. \$250,000 for multiple claims from single act. No award may be made for pain and suffering or dependent claims for someone other than the injured person. Collateral payments of any kind must be deducted from award. § 44.070.	Same	
LA	Waives immunity except as otherwise retained in statute. § 10, Constitution of 1974.	\$500,000 in addition to property damage, medical care, lost earnings. Medical award must be put in reversionary trust, paid directly to providers and any amount remaining after claimant's death reverts to state. § 5106.	Same	
ME	Retains immunity except where liability otherwise provided by statute. Title 14 § 8103.	\$300,000 for any and all claims arising out of a single occurrence. Title 14 § 8105. If insurance policy has higher limit, policy limit sets maximum recovery. § 8116.  \$10,000 liability for public employee in course and scope of employment. § 8104-D.	Same	No. § 8105.
MD	Waives immunity except as otherwise retained in statute. State Government Code § 12-104.	\$100,000 for single person. Board of Public Works may pay more, after consultation with Attorney General. State Government Code § 12.104. Attorney's fees are limited to 20 percent of any settlement or 25 percent of a judgment. § 12-109.	\$200,000 per person. \$500,000 per occurrence. Courts and Judicial Proceedings Code § 5-303.	No. Courts and Judicial Proceedings Code §§ 5-303, 5-522.

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MA	Waives immunity except as otherwise retained in statute. Chapter 258 § 2.	\$100,000. Chapter 258 § 2.	Same	No. Chapter 258 § 2.
MI	Retains immunity except where liability otherwise provided by statute. § 691.1407	No limit.	Same	
MN	Waives immunity except as otherwise retained in statute. §§ 3.736, 466.02.	\$300,000 for single person. \$750,000 for all claims arising out of one occurrence prior to 1/1/2000. \$1 million for all claims arising out of one occurrence after 1/1/2000. § 3.736(4). If insurance policy has higher limit, policy limit sets maximum recovery. § 3.736(8).	\$300,000 for wrongful death. \$300,000 per person in any other case. \$750,000 per occurrence before 1/1/2000. \$1 million per occurrence after 1/1/2000. Twice the above limits if release of hazardous substance involved. § 466.04.	No. §§ 3.736, 466.04(b).
MS	Waives immunity except as otherwise retained in statute. §§ 11-46-3, 11-46-5.	\$250,000 for occurrences before 1/1/2001. \$500,000 for occurrences after 1/1/2001. § 11-46-15. If insurance policy has higher limit, policy limit sets maximum recovery. § 11-46-16.	Same	No. § 11-46-15.
MO	Retains immunity except where liability otherwise provided by statute. § 537.600.	\$100,000 for single person. \$1 million for single occurrence. § 537.610	Same	No. § 537.610
MT	Waives immunity except as otherwise retained in statute. § 2-9-102.	\$750,000 for each claim. \$1.5 million for each occurrence. If insurance policy specifically agrees by written endorsement to provide coverage above these amounts, then policy limit becomes maximum. § 2-9-108.	Same	No. § 2-9-105.
NE	Waives immunity except as otherwise retained in statute. §§ 13-902, 81-8,215.	State liable in same manner and to same extent as private person. § 81-8,215. However, no portion of an award exceeding \$50,000 may be paid until reviewed by the Legislature and specific appropriation made therefor. § 81-8,224.	No suit allowed except as provided in Political Subdivision Tort Claims Act. § 13-902. \$1 million per person. \$5 million per occurrence. § 13-926.	Any portion of an award against state for punitive damages may only be paid with approval of Legislature. § 81-8,239.05.

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**Statutory Limitations on Tort Damages Against Governmental Entities**

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NV	Waives immunity except as otherwise retained in statute. § 41.031.	State or its political subdivisions liable under same rules of law as applied to natural persons and corporations. § 41.031. \$50,000 for the benefit of any claimant. § 41.035.	Same	No. § 41.035.
NH	Retains immunity except where liability otherwise provided by statute. §§ 507-B:4, 541-B:19.	\$250,000 per claimant. \$2 million per any single incident. If insurance policy has higher limit, policy limit sets maximum recovery. § 541-B:14. Attorney's fees are set by the Board of Claims or the court. § 541-B:18.	\$150,000 for any one person. \$500,000 for a single occurrence. § 507-B:4	No. §§ 507-B:4, 541-B:14.
NJ	Retains immunity except where liability otherwise provided by statute. § 59:2-1.	No limit. Collateral sources, except life insurance or payments from a joint tortfeasor, must be deducted. § 59:9-2.	Same	No. § 59:9-2.
NM	Retains immunity except where liability otherwise provided by statute. § 41-4-4.	\$100,00 for property damage arising out of a single occurrence. \$300,000 for past and future medicals arising out of a single occurrence. \$400,000 for a single person for all damages other than property or medical arising from a single occurrence. \$750,000 for all claims other than medical arising out of a single occurrence. § 41-4-19.	Same	No. § 41-4-19.
NY	Waives immunity except as otherwise retained in statute. Court of Claims Article II, § 8.	State liable under same rules that apply to individuals or corporations. Court of Claims Article II, § 8. Executive Law § 203 appears to limit motor vehicle liability to \$25,000 for a single person and \$50,000 for a single occurrence.	County liable under same rules as state. County Law Code § 53.	

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**Statutory Limitations on Tort Damages Against Governmental Entities**

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NC	Waives immunity except as otherwise retained in statute. § 143-291.	\$150,000 for any one person. Liability and damages are determined by the Industrial Commission using same rules applicable to suits against private persons. § 143-291.	Cities and counties immune unless they insure against liability. If insured, policy limit is maximum liability. Plaintiff must waive jury trial on some aspects of claim. §§ 153A-435, 160A-485.	Punitives under general law are limited to the greater of three times compensatory damages or \$250,000. § 1D-25. Court shall award attorney's fees against claimant who makes frivolous claim for punitives or against defendant who raises frivolous defense to punitives. § 1D-45.
ND	Retains immunity except where liability otherwise provided by statute. § 32-12.2-02.	\$250,000 per person per occurrence. \$1 million per occurrence. Legislature may adopt appropriation for greater amount in a given case. § 32-12.2-02.	\$250,000 per person per occurrence. \$500,000 for three or more persons per occurrence. § 32-12.1-03. Political subdivision may provide such additional coverage as it deems appropriate. § 32-12.1-05.	No. §§ 32-12.1-05, 32-12.2-02.
OH	Waives immunity except as otherwise retained in statute. § 2743.02.	No limit. Court of Claims determines liability and damages in accordance with rules applicable to private suits. Collateral sources must be used to reduce award against state. § 2743.02. Case is heard without a jury. § 2743.11.	No limit on compensatory damages. Non-economic damages limited to \$250,000 per person. § 2744.05.	No. §§ 2315.21(E), 2744.05(A).
OK	Retains immunity except where liability otherwise provided by statute. Title 51 § 152.1.	\$25,000 for property damage per person per occurrence. \$100,000 per person per occurrence for other losses. \$200,000 per person for certain medical malpractice. \$1 million for all claims per single occurrence. Title 51 § 154.	Same	None against state or political subdivision. Title 51 § 154. However, § 162(4)(f) contemplates an award against an employee of a political subdivision.

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OR	Waives immunity except as otherwise retained in statute. § 30.265.	\$50,000 for property damage per person per occurrence. \$100,000 per person per occurrence for general and special damages. However, if this limit is exceeded, claimant may recover up to an additional \$100,000 in special damages. \$500,000 for all claims per single occurrence. § 30.270.	Same	No. § 30.270.
PA	Retains immunity except where liability otherwise provided by statute. 42 P.C.S.A. § 8501.	\$250,000 for any one claimant. \$1 million in the aggregate. 42 P.C.S.A. § 8528.	Same	No. 42 P.C.S.A. § 8528.
RI	Waives immunity except as otherwise retained in statute. § 9-31-1.	State liable under same rules that apply to individuals or corporations. Damages limited to \$100,000 unless the activity was proprietary, in which case there is no limit. §§ 9-31-1, 9-31-2.	\$100,000 unless the activity was proprietary, in which case there is no limit. § 9-31-3. Legislature may by special act authorize higher damages against cities, towns, and fire districts in particular cases. § 9-31-4.	Punitives available for false arrest. § 12-7-14. Apparently also available against state if the action could result in award against private individual or corporation. § 9-31-1.
SC	Retains immunity except where liability otherwise provided by statute. § 15-78-20.	\$300,000 for one person. \$600,000 per occurrence. \$1.2 million for tort by government physician or dentist. § 15-78-120.	Same	No. § 15-78-120(5)(b).
SD	Retains immunity except where liability otherwise provided by statute. §§ 3-21-7, 3-22-17.	No limit. However, all claims are paid by structured settlement and no payout may exceed 2 percent of the Public Entity Pool for Liability in any one year. Claims covered by insurance may not be paid at more than \$200,000 per year. Attorney's fees must be prorated. § 3-22-10.	Same	Yes. §§ 3-22-7, 3-22-8.
TN	Retains immunity except where liability otherwise provided by statute. § 9-8-307.	\$300,000 per claimant. \$1 million per occurrence. If insurance policy has higher limit, policy limit sets maximum recovery. § 9-8-307(d).	\$50,000 for motor vehicle cases. \$130,000 per person. \$350,000 per occurrence. § 29-20-403.	No. § 9-8-307(d).

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TX	Waives immunity except as otherwise retained in statute. §§ 101.021, 101.025.	\$100,000 for property. \$250,000 per person. \$500,000 per occurrence. § 101.023(a).	Local Government: \$100,000 for property. \$100,000 per person. \$300,000 per occurrence. Municipality: \$100,000 for property. \$250,000 per person. \$500,000 per occurrence. § 101.023 (b) and (c).	No. § 101.024.
UT	Retains immunity except where liability otherwise provided by statute. § 63-30-3.	\$100,000 for property. \$250,000 per person. \$500,000 per occurrence. § 63-30-34.	Same	No. § 63-30-22.
VT	Waives immunity except as otherwise retained in statute. Title 29 § 1403, Title 12, Chapter 189 § 5601.	\$250,000 one person. \$1 million for each occurrence. Title 12, Chapter 189 § 5601.	Amount of liability insurance policy sets maximum. Title 29 § 1404.	
VA	Waives immunity except as otherwise retained in statute. § 8.01-195.3.	State liable under same rules that apply to private person. \$100,000 per claimant. If insurance policy has higher limit, policy limit sets maximum recovery. § 8.01-195.3.	Same	No. § 8.01-195.3.
WA	Waives immunity. §§ 4.56.250, 4.92.090.	State is liable to same extent as private person or corporation. § 4.92.090. Claimant must first exhaust all valid and collectable liability insurance. § 4.92.130(3). If award for future economic damages is at least \$100,000, any party can request periodic payments. § 4.56.260. Non-economic damages are limited according to a formula based on average annual wage and life expectancy. § 4.56.250(2).	Same § 4.96.010.	Yes. §§ 4.56.250, 4.92.090.
WV	Retains immunity except where liability otherwise provided by statute. §§ 14-2-12 29-12A-1.	No limit. Claims determined by Court of Claims and payment must be appropriated by Legislature. §§ 14-2-12, 14-2-28.	No limit on economic losses. Non-economic losses limited to \$500,000 per person. § 29-12A-7.	No punitives against political subdivisions. § 29-12A-7.

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WI	Retains immunity except where liability otherwise provided by statute. Wisconsin Constitution Article 4, § 24; Chapter 775.01	\$250,000 per person. § 893.82(6).	\$50,000 limit. § 893.80(3).	No. §§ 893.80(3), 893.82(6).
WY	Retains immunity except where liability otherwise provided by statute. § 1-39-101.	\$250,000 per claimant. \$500,000 per occurrence. If insurance policy has higher limit, policy limit sets maximum recovery. § 1-39-118.	Same	No. § 1-39-118(d).

Prepared by the Research Division of the Nevada Legislative Counsel Bureau, August 1999.

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**Table 2**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Comparison of State Governmental Tort Liability Provisions**

<i>States With No Monetary Limit</i>	9	AZ, AR, CA, DE, IA, MI, NJ, OH, WV
<i>States With Partial Monetary Limit</i>	8	AK, CT, LA, NE, NY, RI, SD, WA
<i>States Where Monetary Limit May Be Raised</i>	4	CO, FL, MD, ND
<i>States Where Insurance Policy Sets Monetary Limit</i>	11	HI, ID, KS, ME, MN, MS, MT, NH, TN, VA, WY

State Monetary Limit Per Person Per Occurrence		
\$50,000	1	NV
\$100,000	8	FL, IL, KY, MD, MA, MO, OK (other than property and medical), VA*
\$150,000	2	CO, NC
\$200,000	2	OR, OK (for certain medical malpractice claims)
\$250,000	9	MS*, NH*, ND, PA, TX, UT, VT, WI, WY*
\$300,000	6	IN, ME*, MN*, NM (past and future medicals), SC, TN*
\$400,000	1	NM (other than property or medical damages)
\$500,000	3	ID*, KS*, LA (in addition to property, medical, and lost earnings)
\$750,000	1	MT*
\$1,000,000	1	GA
\$1,200,000	1	SC (medical malpractice claims only)

\* Unless there is an insurance policy with a higher limit.

Note: The table is based on state statutes as of 1998 (in some instances through 1999), but does not reflect case law nor local ordinances. Also, the table does not include information regarding special provisions for certain entities such as emergency medical service providers.

**Table 2**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
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State Monetary Aggregate Limit Per Occurrence		
\$100,000	1	MA
\$200,000	1	FL
\$250,000	1	KY
\$300,000	1	ME*
\$500,000	8	ID*, KS*, LA (in addition to property, medical, and lost earnings), MS*, OR, TX, UT, WY*
\$600,000	2	CO, SC (other than medical malpractice claims)
\$750,000	1	NM (other than medical damages)
\$1,000,000	7	MN*, MO, ND, OK, PA, TN*, VT
\$1,200,000	1	SC (medical malpractice claims only)
\$1,500,000	1	MT*
\$2,000,000	1	NH*
\$3,000,000	1	GA
\$5,000,000	1	IN
<i>States Not Limiting Aggregate Amount Per Occurrence</i>	8	AK, IL, LA, MD, NC, NV, VA, WI

\* Unless there is an insurance policy with a higher limit.

Note: The table is based on state statutes as of 1998 (in some instances through 1999), but does not reflect case law nor local ordinances. Also, the table does not include information regarding special provisions for certain entities such as emergency medical service providers.

**Table 2**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Comparison of State Governmental Tort Liability Provisions**

State Monetary Limit on Property Damage		
\$25,000	1	OK (per person per occurrence)
\$50,000	1	OR (per person per occurrence)
\$100,000	3	NM (single occurrence), TX, UT

Availability of Punitive Damages Against State Entities		
<i>Not Allowed</i>	32	AK, CA, FL, GA, HI, ID, IL, IN, IA, ME, MD, MA, MN, MS, MO, MT, NV, NH, NJ, NM, ND, OH, OK, OR, PA, SC, TN, TX, UT, VA, WI, WY
<i>Limited Availability</i>	6	AL, AZ, AR, CO, KS, NE,
<i>Allowed</i>	4	NC, RI, SD, WV

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\* Unless there is an insurance policy with a higher limit.

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**Table 3**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Comparison of Local Governmental Tort Liability Provisions**

<i>States With No Monetary Limit on Local Liability</i>	9	AZ, CA, CT, HI, IL, IA, MI, NJ, SD
<i>States With Partial Monetary Limit on Local Liability</i>	6	AK, NY, OH, RI, WA, WV
<i>States Where Local Monetary Limit May Be Raised</i>	4	CO, MD, ND, RI
<i>States Where Insurance Policy Sets Local Monetary Limit</i>	12	AR, DE, GA, ID, KS, ME, MS, MT, NC, VT, VA, WY

<b>Local Monetary Limit Per Person Per Occurrence</b>		
<i>\$25,000</i>	2	AR*, NY (minimum insurance limit for motor vehicle cases in both states)
<i>\$50,000</i>	3	NV, TN (motor vehicle cases only), WI
<i>\$100,000</i>	11	AL, FL, KY, MD, MA, MO, OK, OR, RI (unless action was proprietary), TX (local entities only), VA*
<i>\$130,000</i>	1	TN (non-motor vehicle cases only)
<i>\$150,000</i>	2	CO, NH
<i>\$200,000</i>	2	MD, OK (medical damages only)
<i>\$250,000</i>	6	ND, OH (non-economic damages only), PA, UT, TX (municipal entities only), WY*
<i>\$300,000</i>	6	DE*, IN, ME*, MN, NM (medical malpractice cases only), SC
<i>\$400,000</i>	1	NM (other than property and medical damages)
<i>\$500,000</i>	5	ID*, KS*, LA (in addition to property and medical damages and lost earnings), MS*, WV (non-economic damages only)
<i>\$750,000</i>	1	MT*
<i>\$1,000,000</i>	1	NE
<i>\$1,200,000</i>	1	SC (medical malpractice only)

\* Unless there is an insurance policy with a higher limit.

Note: The table is based on state statutes as of 1998 (in some instances through 1999), but does not reflect case law nor local ordinances. Also, the table does not include information regarding special provisions for certain entities such as emergency medical service providers.

**Table 3**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Comparison of Local Governmental Tort Liability Provisions**

Local Monetary Aggregate Limit Per Occurrence		
\$50,000	4	AR, NY (motor vehicle cases only), WI
\$100,000	1	MA
\$250,000	2	KY, OH (non-economic damages only)
\$300,000	4	AL, DE*, ME*, TX (local entities only)
\$350,000	1	TN
\$500,000	6	ID*, KS*, LA (in addition to property and medical damages and lost earnings), MD, MS*, WV (non-economic damages only)
\$600,000	2	CO, SC
\$750,000	1	NM (other than medical damages)
\$1,000,000	4	MN (two times damages if involves hazardous material release), MO, OK, PA
\$1,200,000	1	SC (medical malpractice claims only)
\$1,500,000	1	MT*
\$5,000,000	2	IN, NE
States Not Limiting Local Aggregate Amount Per Occurrence	11	AZ, CA, ME, HI, IL, IA, MD, MI, NJ, NV, SD, VA*

Local Monetary Limit on Property Damage		
\$10,000	1	AR (minimum motor vehicle insurance policy limit)
\$25,000	1	OK
\$50,000	1	OR
\$100,000	4	AL, NM, TX, UT

\* Unless there is an insurance policy with a higher limit.

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**Table 3**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Comparison of Local Governmental Tort Liability Provisions**

Availability of Punitive Damages Against Local Government		
<i>Not Allowed</i>	31	CA, DE, FL, GA, HI, ID, IL, IN, ME, MD, MA, MN, MS, MO, MT, NV, NH, NJ, NM, ND, OH, OR, PA, SC, TN, TX, UT, VA, WV, WI, WY
<i>Limited Availability</i>	8	AL, CO, IA, KS, NE, NC, OK, RI
<i>Allowed</i>	3	AK, SD, WA

I:Tort.Misc.

\* Unless there is an insurance policy with a higher limit.

Note: The table is based on state statutes as of 1998 (in some instances through 1999), but does not reflect case law nor local ordinances. Also, the table does not include information regarding special provisions for certain entities such as emergency medical service providers.



APPENDIX C

*Nevada Revised Statutes* 41.0385



**NRS 41.0385 Claims made against state agencies and local governments for tortious conduct: Annual filing of summary of claims with secretary of state or clerk of local government; summaries of claims are public records.**

1. On or before January 10 of each year, for the preceding calendar year, each agency represented by the attorney general shall submit to the attorney general a summary of all claims made against the agency for tortious conduct. On or before February 1 of each year, the attorney general shall compile the summaries submitted pursuant to this subsection and file the compilation with the secretary of state. The compilation is a public record open to inspection.

2. On or before February 1 of each year, for the preceding calendar year, the district attorney, city attorney or other attorney on behalf of each local government shall compile and file with the clerk of its governing body a summary of all claims made against that government for tortious conduct. The summary is a public record open to inspection.

3. The claims summarized pursuant to this section must be arranged by category of wrong alleged, such as battery, false arrest, negligent injury, wrongful death, and the like, and divided by status into:

- (a) Claims paid;
- (b) Judgments entered but unpaid; and
- (c) Claims pending.

A total must be shown for each status in each category, and a total overall for each status and each category.

4. For each claim must be shown:

- (a) The name of the claimant;
- (b) The amount paid, reduced to judgment, or claimed, as the case may be, including fees and costs determined; and
- (c) The type of wrong alleged.

5. A court order sealing the record of a proceeding does not prevent the disclosure of the information required by this section, or excuse the attorney for the state or local government from providing that information.

(Added to NRS by 1993, 1163)



APPENDIX D

Annual Summaries of Tort Claims Based on Data Filed by  
the State of Nevada 1994 Through 1999



**Table 4**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Summary of Claims Filed in 1994**

State of Nevada							
Category of Wrong Alleged	No. of Claims Made	No. of Claims Pending	No. of Claims Paid	Judgments Entered but not Paid	No. of Claims Closed Without Payment	Amount Claimed	Amount Paid
Automobile	186	42	86	0	58	\$ 445,551.84	\$ 197,839.78
Assault/Battery	0	0	0	0	0	\$ 0.00	\$ 0.00
False Arrest	4	1	0	1	2	\$ 3,177,000.00	\$ 0.00
Personal Injury (Includes Bodily Injury)	97	48	18	0	31	\$ 62,133,396.72	\$ 179,192.03
Property Damage	141	39	43	0	59	\$ 566,278.46	\$ 232,142.05
Wrongful Death	1	0	0	0	1	\$ 2,000,000.00	\$ 0.00
<b>TOTALS</b>	429	130	147	1	151	\$ 68,322,227.02	\$ 609,173.86

Source: Adapted from documents prepared by the Office of the Attorney General in compliance with NRS 41.0385.

Note: Table does not include data on civil rights claims. Such claims were not reported until 1998. Also, table does not reflect claims filed in this year, but paid in a subsequent year. Further, NRS 41.0385 only applies to agencies represented by the Office of the Attorney General. Since some state agencies as well as some boards and commissions utilize their own legal counsel, not all claims filed against state entities may be included in the table.

I:Tort/Misc.



**Table 5**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Summary of Claims Filed in 1995**

State of Nevada							
Category of Wrong Alleged	No. of Claims Made	No. of Claims Pending	No. of Claims Paid	Judgments Entered but not Paid	No. of Claims Closed Without Payment	Amount Claimed	Amount Paid
Automobile	159	24	109	0	26	\$ 373,470.21	\$ 234,624.00
Assault/Battery	0	0	0	0	0	\$ 0.00	\$ 0.00
False Arrest	1	0	0	0	1	\$ 1,000.00	\$ 0.00
Personal Injury (Includes Bodily Injury)	93	19	31	0	43	\$ 6,731,367.63	\$ 602,017.08
Property Damage	179	39	54	0	86	\$ 16,017,480.83	\$ 143,439.58
Wrongful Death	4	4	0	0	0	\$ 460,000.00	\$ 0.00
<b>TOTALS</b>	436	86	194	0	156	\$ 23,583,318.67	\$ 980,080.66

Source: Adapted from documents prepared by the Office of the Attorney General in compliance with NRS 41.0385.

Note: Table does not include data on civil rights claims. Such claims were not reported until 1998. Also, table does not reflect claims filed in this year, but paid in a subsequent year. Further, NRS 41.0385 only applies to agencies represented by the Office of the Attorney General. Since some state agencies as well as some boards and commissions utilize their own legal counsel, not all claims filed against state entities may be included in the table.

I:Tort/Misc.



**Table 6**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Summary of Claims Filed in 1996**

State of Nevada							
Category of Wrong Alleged	No. of Claims Made	No. of Claims Pending	No. of Claims Paid	Judgments Entered but not Paid	No. of Claims Closed Without Payment	Amount Claimed	Amount Paid
Automobile	194	46	111	0	37	\$ 389,582.97	\$ 243,796.54
Assault/Battery	3	2	1	0	0	\$ 12,000.00	\$ 11,999.00
False Arrest	2	0	1	0	1	\$ 13,738.09	\$ 13,238.09
Personal Injury (Includes Bodily Injury)	62	20	6	0	36	\$ 2,342,170.45	\$ 7,325.57
Property Damage	189	49	43	0	97	\$ 16,017,480.83	\$ 143,439.58
Wrongful Death	2	2	0	0	0	\$ 460,000.00	\$ 0.00
<b>TOTALS</b>	<b>452</b>	<b>119</b>	<b>162</b>	<b>0</b>	<b>171</b>	<b>\$ 19,234,972.34</b>	<b>\$ 419,798.78</b>

Source: Adapted from documents prepared by the Office of the Attorney General in compliance with NRS 41.0385.

Note: Table does not include data on civil rights claims. Such claims were not reported until 1998. Also, table does not reflect claims filed in this year, but paid in a subsequent year. Further, NRS 41.0385 only applies to agencies represented by the Office of the Attorney General. Since some state agencies as well as some boards and commissions utilize their own legal counsel, not all claims filed against state entities may be included in the table.

I:Tort/Misc.



**Table 7**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Summary of Claims Filed in 1997**

State of Nevada							
Category of Wrong Alleged	No. of Claims Made	No. of Claims Pending	No. of Claims Paid	Judgments Entered but not Paid	No. of Claims Closed Without Payment	Amount Claimed	Amount Paid
Automobile	209	45	127	0	37	\$ 594,856.45	\$ 277,036.61
Assault/Battery	0	0	0	0	0	\$ 0.00	\$ 0.00
False Arrest	0	0	0	0	0	\$ 0.00	\$ 0.00
Personal Injury (Includes Bodily Injury)	56	24	6	0	26	\$ 3,179,816.55	\$ 6,962.84
Property Damage	179	20	47	0	112	\$ 346,973.09	\$ 64,941.44
Wrongful Death	3	2	0	0	1	\$ 350,000.00	\$ 0.00
<b>TOTALS</b>	<b>447</b>	<b>91</b>	<b>180</b>	<b>0</b>	<b>176</b>	<b>\$ 4,471,646.09</b>	<b>\$ 348,940.89</b>

Source: Adapted from documents prepared by the Office of the Attorney General in compliance with NRS 41.0385.

Note: Table does not include data on civil rights claims. Such claims were not reported until 1998. Also, table does not reflect claims filed in this year, but paid in a subsequent year. Further, NRS 41.0385 only applies to agencies represented by the Office of the Attorney General. Since some state agencies as well as some boards and commissions utilize their own legal counsel, not all claims filed against state entities may be included in the table.

I:Tort/Misc.



**Table 8**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Summary of Claims Filed in 1998**

State of Nevada							
Category of Wrong Alleged	No. of Claims Made	No. of Claims Pending	No. of Claims Paid	No. of Claims Closed Without Payment	Total Claims Handled in 1998*	Amount Claimed	Amount Paid
Automobile	192	47	140	51	238	\$ 815,036.18	\$ 428,307.98
Assault/Battery	0	0	0	0	0	\$ 0.00	\$ 0.00
Civil Rights	25	2	21	3	26	\$ 2,724,664.19	\$ 1,115,060.40
False Arrest	0	0	0	0	0	\$ 0.00	\$ 0.00
Personal Injury (Includes Bodily Injury)	60	13	31	32	76	\$ 1,186,756.11	\$ 243,602.29
Property Damage	170	45	60	104	209	\$ 653,918.71	\$ 230,341.84
Wrongful Death	10	3	4	3	10	\$ 3,378,657.93	\$ 308,126.76
<b>TOTALS</b>	<b>457</b>	<b>110</b>	<b>256</b>	<b>193</b>	<b>559</b>	<b>\$ 8,759,033.12</b>	<b>\$ 2,325,439.27</b>

Source: Adapted from documents prepared by the Office of the Attorney General in compliance with NRS 41.0385.

\* Includes claims from prior years closed in 1998.

Note: NRS 41.0385 only applies to agencies represented by the Office of the Attorney General. Since some state agencies as well as some boards and commissions utilize their own legal counsel, not all claims filed against state entities may be included in the table.

I:Tort/Misc.



**Table 9**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Summary of Claims Filed in 1999**

State of Nevada							
Category of Wrong Alleged	No. of Claims Made	No. of Claims Pending	No. of Claims Paid	No. of Claims Closed Without Payment	Total Claims Handled in 1999*	Amount Claimed	Amount Paid
Automobile	211	35	173	55	263	\$ 1,210,388.79	\$ 671,785.16
Civil Rights	29	5	21	5	31	\$ 1,089,626.38	\$ 734,876.38
False Arrest	2	1	1	1	3	\$ 60,000.00	\$ 5,000.00
Personal Injury (Includes Bodily Injury)	58	18	23	33	74	\$ 3,873,906.73	\$ 1,475,544.14
Property Damage	174	37	70	122	229	\$ 1,224,993.75	\$ 344,516.43
Wrongful Death	1	0	1	3	4	\$ 2,127,596.37	\$ 77,596.37
<b>TOTALS</b>	<b>475</b>	<b>96</b>	<b>289</b>	<b>219</b>	<b>604</b>	<b>\$ 9,586,512.02</b>	<b>\$ 3,309,318.48</b>

Source: Adapted from documents prepared by the Office of the Attorney General in compliance with NRS 41.0385.

\* Includes claims from prior years closed in 1999.

Note: NRS 41.0385 only applies to agencies represented by the Office of the Attorney General. Since some state agencies as well as some boards and commissions utilize their own legal counsel, not all claims filed against state entities may be included in the table.

I:Tort/Misc.



**Table 10**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Total Amounts Claimed and Total Amounts Paid for Torts by State 1994-1999**

State of Nevada				
Year	Amount Claimed	Amount Paid	Total Claims Made	\$50,000 Claims
1994	\$68,322,227.02	\$609,173.86	429	3
1995	\$23,583,318.67	\$980,080.66	436	5
1996	\$19,234,972.34	\$419,798.78	452	0
1997	\$4,156,646.09	\$348,940.89	447	1
1998	\$8,759,033.12	\$2,325,439.27	457	11
1999	\$9,586,512.02	\$3,309,318.48	475	6
<b>TOTALS</b>	<b>\$133,642,709.26</b>	<b>\$7,992,751.94</b>	<b>2,696</b>	<b>26</b>

Source: Adapted from documents prepared by the Office of the Attorney General in compliance with NRS 41.0385.

Note: "Amount Paid" from years 1994-1997 does not include civil rights claims or claims filed in those years, but paid in subsequent years. NRS 41.0385 only applies to agencies represented by the Office of the Attorney General. Since some state agencies as well as some boards and commissions utilize their own legal counsel, not all claims filed against state entities may be included in the table.

I:Tort/Misc.



**Table 11**  
**Assembly Concurrent Resolution 46 Interim Study Committee**  
**Total Amounts Claimed and Paid for Torts by State for Fiscal Year Base 1994-2000**

State of Nevada					
Year	Total Number of Claims	Number of Claims Paid	Number of Claims Closed Without Payment	Total Amount Claimed	Amount Paid
1994	470	218	252	\$19,649,793.74	\$1,451,523.87
1995	516	274	242	\$519,326,668.49	\$1,479,775.13
1996	461	256	205	\$2,644,597.39	\$1,253,457.68
1997	627	320	307	\$10,931,030.45	\$1,949,272.43
1998	493	284	209	\$8,090,186.73	\$3,524,547.99
1999	510	281	229	\$8,412,401.28	\$2,227,129.11
2000					
<b>TOTALS</b>	<b>3,077</b>	<b>1,633</b>	<b>1,444</b>	<b>\$569,054,678.08</b>	<b>\$11,885,706.21</b>

Source: Adapted from documents prepared by the Office of the Attorney General. Since some state agencies as well as some boards and commissions utilize their own legal counsel, not all claims filed against state entities may be included in the table.

I:Tort/Misc.



## APPENDIX E

### Suggested Legislation

(The bill draft request will be available after commencement of the session.)