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## Civil Procedure; Presentation of Claims

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## Civil Procedure; presentation of claims

N.R.S. §§11.190, 41.036, 244.245, 268.020 (amended).  
SB 658 (Committee on Judiciary); STATS 1981, Ch 747

Existing law provides for separate procedures for the payment of contract claims against,<sup>1</sup> and claims for refund from,<sup>2</sup> the state.<sup>3</sup> Prior to the enactment of Chapter 747, all other claims, including claims arising from torts against the state, its agencies, or any political subdivisions,<sup>4</sup> had to be presented to either the ex officio clerk of the State Board of Examiners<sup>5</sup> or to the governing body of the political subdivision within six months from the time the cause of action accrued.<sup>6</sup> Chapter 747 extends the six month time limit for the presentation of tort claims to two years from the time the cause of action accrues.<sup>7</sup>

Prior law provided that no action could be brought against the state, its agency, or its political subdivision unless the governing body refused to approve the claim or failed within ninety days to act upon the claim,<sup>8</sup> and that the action could not be brought after one year from the time the cause of action accrued.<sup>9</sup> Chapter 747 eliminates these requirements and provides that the filing of a claim in tort is not a condition precedent to bringing a judicial action against the state, its agency, or its political subdivision.<sup>10</sup> Moreover, prior to the enactment of Chapter 747, no person was allowed to sue a county unless a notice of his or her claim or demand was first presented to the Board of County Commissioners and the County Auditor for allowance and approval.<sup>11</sup> Recent case law has held this requirement to violate the right to equal protection guaranteed by the Fourteenth Amendment of the United States Constitution.<sup>12</sup> Chapter 747 apparently attempts to correct this

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1. See N.R.S. §§353.085, 353.090.

2. See N.R.S. §§353.110-353.120 (refunds of overpayment of taxes, license fees, and other charges).

3. See STATUTES OF NEVADA 1979, c. 365, §11, at 629 (amending N.R.S. §41.036) (it is unclear whether Chapter 747 intended to remove the distinction between contract claims, claims for refund and any other claim).

4. See N.R.S. §41.030 5 (definition of political subdivision).

5. See N.R.S. §41.036 2. *But see* *Rogers v. State*, 85 Nev. 361, 363, 455 P.2d 172, 173 (1969).

6. See N.R.S. §41.036 3.

7. Compare *id.* §41.036 2, 3 with STATUTES OF NEVADA 1979, c. 365, §11, at 629.

8. See STATUTES OF NEVADA 1979, c. 365, §11, at 629.

9. See *id.* 1967, c. 68, §1, at 113 (amending N.R.S. §11.190).

10. See N.R.S. §41.036 4. See also N.R.S. §41.031.

11. See NEVADA COMPILED LAWS §1956 (1929) (enacting N.R.S. §244.245).

12. See *Turner v. Staggs*, 89 Nev. 230, 240, 510 P.2d 879, 885-886 (1973) (the notice provision of N.R.S. §244.245 has the effect of arbitrarily dividing all tort-feasors into either the category of private tort-feasors, to whom no notice of claim is owed, or the category of governmental tort-feasors, to whom notice is owed).

constitutional violation by removing the notice of claim requirement.<sup>13</sup>

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13. Compare N.R.S. §244.245 1 with *Turner v. Staggs*, 89 Nev. 230, 240, 510 P.2d 879, 885-886 (1973).

## Civil Procedure; hearings on notice of pendency of an action

N.R.S. §14.015 (amended).

SB 670 (Committee on Judiciary); STATS 1981, Ch 749

(Effective June 15, 1981)

In actions to foreclose a mortgage or to affect the title or possession of real property, a plaintiff upon filing the complaint, or a defendant seeking affirmative relief in the answer, may file notice of the pendency of the action (hereinafter referred to as *lis pendens*) with the county recorder.<sup>1</sup> The non-recording party may petition the court for a hearing to determine the necessity of retaining the notice of *lis pendens*.<sup>2</sup> This hearing must be scheduled as soon as is practicable.<sup>3</sup> Prior to the enactment of Chapter 749, the party who caused notice of *lis pendens* to be recorded had to appear at the hearing upon five days notice. Chapter 749, however, extends the notice period to fifteen days.<sup>4</sup>

At the hearing, the party who recorded notice of the *lis pendens* must establish that (1) the underlying action is for the foreclosure of a mortgage or affects the title of the property described in the notice,<sup>5</sup> (2) the action was not brought for an improper motive,<sup>6</sup> (3) all conditions precedent to obtaining the relief sought can be performed by the party who caused notice to be recorded,<sup>7</sup> and (4) the recording party would be injured by a transfer of an interest in the property, prior to the termination of the action.<sup>8</sup> Under prior law, these matters had to be proven by a *preponderance of the evidence*.<sup>9</sup> Chapter 749 requires that they be established to the *satisfaction of the court*.<sup>10</sup> As a general matter this degree of proof is considered to be greater than proof by a pre-

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1. See N.R.S. §14.010 1.

2. See BLACK'S LAW DICTIONARY 840 (5th ed. 1976).

3. See N.R.S. §14.015 1.

4. Compare *id.* §14.015 2 with STATUTES OF NEVADA 1979, c. 507, §1, at 982 (enacting N.R.S. §14.015 2).

5. See N.R.S. §14.015 2(a).

6. See *id.* §14.015 2(b).

7. See *id.* §14.015 2(c).

8. See *id.* §14.015 2(d).

9. See STATUTES OF NEVADA 1979, c. 507, §1, at 982.

10. See N.R.S. §14.015 2.