

Tom Bottem, Director

Minnesota Senate Building  
95 University Ave. W. Suite 3300  
ST. PAUL, MN 55155-1800  
(651) 296-4791  
www.senate.mn/scrfa

## **S.F. No. 1688 – Legislature’s right to intervene and to approve settlements in suits challenging the validity of a statute**

**Author:** Senator Mark Johnson

**Prepared by:** Stephanie James, Senate Counsel (651/296-0103)

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### **Background**

Intervention is a mechanism through which a person may become a party in a legal action that is pending between other parties. Under current law, the legislature may intervene in a civil action when the legislature meets requirements in the rules of civil procedure that apply to all would-be intervening parties. Intervention may be as a matter of right in some cases; in other cases, a court has discretion whether to allow a party to intervene, based on whether the party has met specified requirements to intervene.

### **Intervention As a Matter of Right**

Under current law, the standard for intervention as a matter of right is as follows:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Minn. R. Civ. P. 24.01 (which would apply to cases in state courts); Rule 24(a) for the Federal Rules of Civil Procedure (which would apply to cases in federal courts).

Courts typically restate this standard as a list of four elements the proposed intervenor must demonstrate as follows:

- 1) that the motion to intervene was timely;
- 2) that the person requesting to intervene has an interest relating to the property or transaction that is the subject of the action;

- 3) that as a practical matter, disposition of the action may impair or impede the person's ability to protect that interest; and
- 4) that the person's interest is not adequately represented by the existing parties.

A person may only intervene as a matter of right by satisfying all four of these requirements.

### **Permissive Intervention in Minnesota State Courts**

Under current law, the standard for permission intervention is as follows:

Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a common question of law or fact. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Minn. R. Civ. P. 24.02 (which would apply to cases in state courts); Rule 24(b) of the Federal Rules of Civil Procedure (which would apply to cases in federal courts).

### **S.F. 1688**

**Section 1 [Administration of legal claims]** requires the Legislative Coordinating Commission (LCC) to establish a bicameral subcommittee of legislators to advise and assist the LCC to monitor legal claims involving the state in which the legislature may have an interest, and to perform certain LCC functions related to intervening in lawsuits.

**Section 2 [Legislative Right to Intervene]** allows the legislature to intervene, as a matter of right, in an action in state or federal in cases where a party has challenged the validity of a statute. Intervention may be moved by the house alone (by action of its Committee on Rules and Legislative Administration); by the senate alone (by action of its Committee on Rules and Administration); or by the bodies jointly (by action of the Legislative Coordinating Commission). This section authorizes these entities to hire counsel to represent them.

**Section 3 [Appearance]** authorizes the legislature to intervene in cases where the attorney general represents the state and in civil causes in state courts.

**Section 4 [Attorney for State Officers, Boards, or Commissions; Employ Counsel]** authorizes the legislature to intervene in cases in which the attorney general is representing state officers or boards in matters pertaining to their official duties.

**Section 5 [Settlements on Behalf of State]** prohibits the attorney general from settling an action without legislative approval, by the legislative intervenor, if there is one, or by the LCC. Requires the attorney general to submit a proposed plan to the LCC. If the LCC notifies the attorney general within 14 days that the LCC has scheduled a meeting to review the plan, the attorney general cannot settle the action without the LCC's approval. The attorney general is prohibited from submitting a plan to the LCC that concedes the invalidity of a statute on the grounds that it is unconstitutional or

in violation of or preempted by federal law, unless the plan is approved by the subcommittee established in section 1.

**Section 6 [Intervention by Legislature]** authorizes the legislature to intervene as a matter of right in an action in state or federal in cases where a party has challenged the validity of a statute, in the manner provided in section 1.

**Section 7 [Parties]** authorizes the legislature to be heard in a declaratory judgment action in which the validity of a statute is challenged. Specifies who the legislative party would be for the action, based on the body that intervened.

**Section 8 [Effective date]** makes this act effective August 1, 2021 and applies to causes of action arising on or after that date.