

Amendment No. 431

Assembly Amendment to Assembly Bill No. 95

(BDR 52-268)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

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

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

DY/LJM



Date: 4/19/2009

A.B. No. 95—Revises certain provisions concerning the investigation and prosecution of unfair trade practices. (BDR 52-268)



ASSEMBLY BILL NO. 95—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2008

Referred to Committee on Commerce and Labor

SUMMARY—Revises certain provisions concerning the investigation and prosecution of unfair trade practices. (BDR 52-268)

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

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to unfair trade practices; authorizing the Attorney General to bring an action to prevent a proposed merger, acquisition or joint venture involving certain entities under certain circumstances; revising the conduct to which the Nevada Unfair Trade Practice Act applies; revising the relief that the Attorney General may seek for violations of the Nevada Unfair Trade Practice Act; requiring that information received or shared in cooperation with the Federal Government or other states be kept confidential in certain circumstances; permitting the Attorney General to bring a civil action for violation of the Nevada Unfair Trade Practice Act or federal antitrust statutes on behalf of the State, its agencies, political subdivisions, districts or municipal corporations; increasing the amount of money that may be kept in the Attorney General's Special Fund; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Attorney General to investigate suspected violations of the Nevada Unfair Trade Practice Act and to institute proceedings to seek certain remedies for such violations. (Chapter 598A of NRS)

Section 1 of this bill provides that if there has been a review of a proposed merger, acquisition or joint venture involving entities engaged in the business of insurance by the Attorney General and one or more state agencies, the Antitrust Division of the United States Department of Justice or the Federal Trade Commission, the Attorney General may file an action against the proposed merger, acquisition or joint venture within a certain time frame.

Section 1.5 of this bill authorizes the Attorney General to investigate, review and bring an enforcement action against any proposed merger, acquisition or joint venture involving entities engaged in the business of insurance, notwithstanding certain provisions limiting the scope of the Nevada Unfair Trade Practice Act. (NRS 598A.040)

[Sections 1 and] Section 2 of this bill [revise] revises the conduct considered a violation of the Nevada Unfair Trade Practice Act. (NRS [598A.040,] 598A.060)

Sections 3, 5 and 7 of this bill revise the relief that the Attorney General may seek for violations of the Nevada Unfair Trade Practice Act. (NRS 598A.070, 598A.090, 598A.160) Section 7 also permits the Attorney General to bring an action on behalf of the State, its agencies, political subdivisions, districts or municipal corporations for violations of the Nevada Unfair Trade Practice Act or federal antitrust law.

Sections 4 and 6 of this bill require that information received or shared in cooperation with the Federal Government or other states be kept confidential in certain circumstances. (NRS 598A.080, 598A.110) Section 6 also allows the disclosure of confidential information when used to bring an action for a violation of federal or other state antitrust statutes.

Section 8 of this bill increases the amount of money that may be kept in the Attorney General's Special Fund before reverting to the State General Fund. (NRS 598A.260)

~~Section 10 of this bill repeals the provision which requires other state antitrust statutes to be considered when interpreting the Nevada Unfair Trade Practice Act.~~

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

Section 1. Chapter 598A of NRS is hereby amended by adding thereto a new section to read as follows:

1. In the event of a proposed merger, acquisition or joint venture involving entities engaged in the business of insurance in this State, any party proposing the merger, acquisition or joint venture may provide to the Attorney General the information required to be filed with the agency having jurisdiction over the proposal for review. The Attorney General may issue a letter to the parties within 30 days after the parties provide notice of the proposed merger, acquisition or joint venture indicating that the Attorney General will not file an action pursuant to this section.

2. Except as otherwise provided in subsections 3 and 4, if there is a review of a proposed merger, acquisition or joint venture involving entities engaged in the business of insurance in this State by the Attorney General and one or more state agencies, the Antitrust Division of the United States Department of Justice or the Federal Trade Commission, the Attorney General may file legal or regulatory action to seek relief or other remedies from the proposed merger, acquisition or joint venture. Any such legal or regulatory action must be filed before the expiration of the longer of:

(a) Thirty days after entry of a final order subject to petition for judicial review by a state agency regarding the proposed merger, acquisition or joint venture; or

(b) Thirty days after the Attorney General receives formal written notification of a final decision by either the Antitrust Division of the United States Department of Justice or the Federal Trade Commission regarding the proposed merger, acquisition or joint venture.

3. The Attorney General may petition the court to seek an extension of the filing period prescribed in subsection 2 for good cause shown. It is within the court's discretion to grant or deny such relief.

4. Nothing in this section prohibits the parties to the proposed merger, acquisition or joint venture and the Attorney General from agreeing to an extension of the filing period prescribed in subsection 2.

5. Nothing in this section precludes the exercise of any other power granted to the Attorney General.

~~Section 1.~~ **Sec. 1.5.** NRS 598A.040 is hereby amended to read as follows:

598A.040 The provisions of this chapter do not apply to:

1. Any labor, agricultural or horticultural organizations organized for the purpose of self-help and not for profit to itself nor to individual members thereof, while lawfully carrying out its legitimate objects.

2. Bona fide religious and charitable activities of any nonprofit corporation, trust or organization established exclusively for religious or charitable purposes.

3. Conduct which is expressly authorized, regulated or approved by:

(a) A statute of this State or of the United States;

(b) An ordinance of any city or county of this State, except for ordinances relating to video service providers; or

(c) An administrative agency of this State or of the United States or of a city or county of this State, having jurisdiction of the subject matter.

~~H.~~ except that notwithstanding the provisions of this subsection or chapter 686A or 692C of NRS, the Attorney General may investigate, review and bring an enforcement action pursuant to this chapter against any proposed merger, acquisition or joint venture involving entities engaged in the business of insurance in this State.

4. Conduct or agreements relating to rates, fares, classifications, divisions, allowances or charges, including charges between carriers and compensation paid or received for the use of facilities and equipment, that are authorized, regulated or approved by the Nevada Transportation Authority pursuant to chapter 706 of NRS.

5. ~~4.~~ Restrictive covenants:

(a) Which are part of a contract of sale for a business and which bar the seller of the business from competing with the purchaser of the business sold within a reasonable market area for a reasonable period of time; or

(b) Which are part of a commercial shopping center lease and which bar the parties from permitting or engaging in the furnishing of certain services or the sale of certain commodities within the commercial shopping center where such leased premises are located.

Sec. 2. NRS 598A.060 is hereby amended to read as follows:

598A.060 1. Every activity enumerated in this subsection constitutes a contract, combination or conspiracy in restraint of trade, and it is unlawful to conduct any part of any such activity *affecting commerce* in this State:

(a) Price fixing, which consists of raising, depressing, fixing, pegging or stabilizing the price of any commodity or service, and which includes, but is not limited to:

(1) Agreements among competitors to depress prices at which they will buy essential raw material for the end product.

(2) Agreements to establish prices for commodities or services.

(3) Agreements to establish uniform discounts, or to eliminate discounts.

(4) Agreements between manufacturers to price a premium commodity a specified amount above inferior commodities.

(5) Agreements not to sell below cost.

(6) Agreements to establish uniform trade-in allowances.

(7) Establishment of uniform cost surveys.

(8) Establishment of minimum markup percentages.

(9) Establishment of single or multiple basing point systems for determining the delivered price of commodities.

(10) Agreements not to advertise prices.

(11) Agreements among competitors to fix uniform list prices as a place to start bargaining.

(12) Bid rigging, including the misuse of bid depositories, foreclosures of competitive activity for a period of time, rotation of jobs among competitors, submission of identical bids, and submission of complementary bids not intended to secure acceptance by the customer.

(13) Agreements to discontinue a product, or agreements with anyone engaged in the manufacture of competitive lines to limit size, styles or quantities of items comprising the lines.

(14) Agreements to restrict volume of production.

(b) Division of markets, consisting of agreements between competitors to divide territories and to refrain from soliciting or selling in certain areas.

(c) Allocation of customers, consisting of agreements not to sell to specified customers of a competitor.

(d) Tying arrangements, consisting of contracts in which the seller or lessor conditions the sale or lease of commodities or services on the purchase or leasing of another commodity or service.

(e) Monopolization of trade or commerce in this State, including, without limitation, *monopolization involving unilateral conduct*, attempting to monopolize or otherwise combining or conspiring to monopolize trade or commerce in this State.

(f) Except as otherwise provided in subsection 2, consolidation, conversion, merger, acquisition of shares of stock or other equity interest, directly or indirectly, of another person engaged in commerce in this State or the acquisition of any assets of another person engaged in commerce in this State that may:

(1) Result in the monopolization of trade or commerce in this State or would further any attempt to monopolize trade or commerce in this State; or

(2) Substantially lessen competition or be in restraint of trade.

2. The provisions of paragraph (f) of subsection 1 do not:

(a) Apply to a person who, solely for an investment purpose, purchases stock or other equity interest or assets of another person if the purchaser does not use his acquisition to bring about or attempt to bring about the substantial lessening of competition in this State.

(b) Prevent a person who is engaged in commerce in this State from forming a subsidiary corporation or other business organization and owning and holding all or part of the stock or equity interest of that corporation or organization.

Sec. 3. NRS 598A.070 is hereby amended to read as follows:

598A.070 1. The Attorney General shall:

(a) Enforce the provisions of this chapter.

(b) Investigate suspected violations of the provisions of this chapter.

(c) Institute proceedings on behalf of the State, its agencies, political subdivisions, districts or municipal corporations, or as parens patriae of the persons residing in the State for:

(1) Injunctive relief to prevent and restrain a violation of any provision of this chapter.

(2) Civil penalties for violations of the provisions of this chapter.

(3) Criminal penalties for violations of the provisions of this chapter.

(4) *Other equitable relief, including, without limitation, restitution, disgorgement and unjust enrichment, for violations of the provisions of this chapter.*

2. Any district attorney in this State, with the permission or at the direction of the Attorney General, shall institute proceedings in the name of the State of Nevada for any violation of the provisions of this chapter.

1 **Sec. 4.** NRS 598A.080 is hereby amended to read as follows:

2 598A.080 The Attorney General may cooperate with and coordinate the
3 enforcement of the provisions of this chapter with officials of the Federal
4 Government and the several states, including, but not limited to ~~the~~ :

5 1. *The sharing of information and evidence obtained in accordance with NRS*
6 *598A.100 ~~is~~, if the officials agree in writing to comply with the provisions of*
7 *NRS 598A.110; and*

8 2. *The receipt of information and evidence by the Attorney General from*
9 *the officials during an investigation of a violation of this chapter. If the*
10 *information and evidence are provided on a confidential basis, the information*
11 *and evidence are subject to the provisions of NRS 598A.110.*

12 **Sec. 5.** NRS 598A.090 is hereby amended to read as follows:

13 598A.090 The district courts have jurisdiction over actions and proceedings
14 for violations of the provisions of this chapter and may:

15 1. Issue temporary restraining orders and injunctions to prevent and restrain
16 violations of the provisions of this chapter.

17 2. Impose civil and criminal penalties and award damages as provided in this
18 chapter.

19 3. Grant mandatory injunctions reasonably necessary to eliminate practices
20 which are unlawful under the provisions of this chapter.

21 4. *Grant other equitable relief, including, without limitation, restitution,*
22 *disgorgement and unjust enrichment, for violations of the provisions of this*
23 *chapter.*

24 **Sec. 6.** NRS 598A.110 is hereby amended to read as follows:

25 598A.110 Any procedure, testimony taken, document or other tangible
26 evidence produced, or answer made under NRS 598A.100 *is confidential and* shall
27 be kept confidential by the Attorney General, ~~prior to the institution of an action~~
28 ~~brought under this chapter for the alleged violation of the provisions of this chapter~~
29 ~~under investigation;~~ unless:

30 1. Confidentiality is waived by the person upon whom the written
31 investigative demand is made or pursuant to NRS 239.0115;

32 2. Disclosure is authorized by ~~the district~~ a court ~~or~~ of competent
33 jurisdiction;

34 3. *Disclosure is made pursuant to an action brought under this chapter, the*
35 *federal antitrust statutes or other state antitrust statutes; or*

36 4. *Disclosure is made pursuant to NRS 598A.080. Any information or*
37 *evidence disclosed pursuant to this subsection remains confidential. ~~to~~*
38 ~~*all parties except those to whom disclosure is authorized pursuant to*~~
39 ~~*NRS 598A.080.*~~

40 **Sec. 7.** NRS 598A.160 is hereby amended to read as follows:

41 598A.160 1. The Attorney General may bring a civil action for any
42 violation of the provisions of this chapter in the name of the State of Nevada and is
43 entitled to recover damages and secure other relief provided by the provisions of
44 this chapter:

45 (a) As parens patriae of the persons residing in this State, with respect to
46 damages sustained directly or indirectly by such persons, or, alternatively, if the
47 court finds in its discretion that the interests of justice so require, as a representative
48 of a class or classes consisting of persons residing in this State who have been
49 damaged directly or indirectly; or

50 (b) ~~As~~ *On behalf of or as* parens patriae, with respect to direct or indirect
51 damages *to the State, its agencies, political subdivisions, districts or municipal*
52 *corporations, and* to the general economy of the State of Nevada or any political
53 subdivision thereof.

2. In any action under this section, this State:

(a) May recover *treble* the aggregate damage sustained by the persons on whose behalf this State sues, without separately proving the individual claims of each such person. Proof of such damages must be based on:

(1) Statistical or sampling methods;

(2) The pro rata allocation of illegal overcharges of sales occurring within the State of Nevada; or

(3) Such other reasonable system of estimating aggregate damages as the court may permit.

(b) Shall distribute, allocate or otherwise pay the amounts so recovered in accordance with state law, or in the absence of any applicable state law, as the district court may authorize, subject to the requirement that any distribution procedure adopted afford each person on whose behalf this State sues a reasonable opportunity individually to secure the pro rata portion of such recovery attributable to his or its respective claims for damages, less litigation and administrative costs, including attorney fees, before any of the recovery is escheated.

3. The Attorney General may bring a civil action for any violation of the federal antitrust statutes in the name of the State of Nevada and is entitled to recover damages and secure other relief provided by the federal antitrust statutes:

(a) As parens patriae of the persons residing in this State; or

(b) On behalf of or as parens patriae of the State, its agencies, political subdivisions, districts or municipal corporations.

Sec. 8. NRS 598A.260 is hereby amended to read as follows:

598A.260 1. All money obtained as awards, damages or civil penalties for the State of Nevada and its agencies by the Attorney General as a result of enforcement of statutes pertaining to unfair trade practices, whether by final judgment, settlement or otherwise, must be deposited in the State Treasury as follows:

(a) All attorney's fees and costs and 50 percent of all recoveries for credit to the Attorney General's Special Fund.

(b) The balance of the recoveries for credit to the State General Fund.

2. Money deposited in the State Treasury for credit to the Attorney General's Special Fund pursuant to subsection 1 must be used for payment of the expenses of enforcing the statutes pertaining to unfair trade practices and NRS 228.500 to 228.640, inclusive. Those expenses which are in excess of the amount available in the Fund must be paid out of the legislative appropriation for the support of the Office of Attorney General.

3. On June 30 of each fiscal year, any amount in excess of ~~[\$450,000]~~ *\$900,000* in the Attorney General's Special Fund of the money collected pursuant to subsection 1 reverts to the State General Fund.

4. The balance of the money in the Attorney General's Special Fund that is collected pursuant to subsection 1 must not exceed ~~[\$500,000]~~ *\$1,500,000*. If money deposited in the State Treasury for credit to the Attorney General's Special Fund pursuant to subsection 1 would cause that balance to exceed ~~[\$500,000]~~ *\$1,500,000* if credited to the Fund, the amount of the deposit which would cause the balance to exceed ~~[\$500,000]~~ *\$1,500,000* immediately reverts to the State General Fund.

Sec. 9. ~~NRS 704.6884 is hereby amended to read as follows:~~

~~704.6884 The provisions of NRS 704.6881 to 704.6884, inclusive, must not be construed to exempt telecommunication providers from any other applicable statute of this State or the United States relating to consumer and antitrust protections. [The exemption provided in paragraph (c) of subsection 3 of NRS 598A.040 does not apply to conduct of, or actions taken by, a telecommunication~~

~~provider in violation of the standards established pursuant to subsection 1 of NRS 704.6881.]] (Deleted by amendment.)~~

~~Sec. 10. [NRS 598A.050 is hereby repealed.] (Deleted by amendment.)~~

TEXT OF REPEALED SECTION

~~598A.050 Construction of chapter. The provisions of this chapter shall be construed in harmony with prevailing judicial interpretations of the federal antitrust statutes.]~~