

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Fifth Session
March 16, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:37 p.m. on Monday, March 16, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chairman
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Mark A. Manendo
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Clark County Assembly District No. 9
Assemblyman Paul Aizley, Clark County Assembly District No. 41

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Patricia Blackburn, Committee Secretary
Andrew Diss, Committee Manager
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Amy Parks, Insurance Counsel, Division of Insurance, Department of
Business and Industry
Lawrence P. Matheis, Executive Director, Nevada State Medical
Association, Reno, Nevada
George A. Ross, Las Vegas, Nevada, representing Hospital Corporation of
America, Inc. and Sunrise Health Care
Dan L. Wulz, Deputy Executive Director, Legal Aid Center of Southern
Nevada, Inc., Las Vegas, Nevada
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services,
Reno, Nevada

Chairman Conklin:

[The roll was taken and a quorum was present.]

We will open the hearing on Assembly Bill 248.

Assembly Bill 248: Revises provisions governing holding companies.
(BDR 57-997)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:

[Presented a PowerPoint presentation ([Exhibit C](#)).] This is a bill that revises the law with regard to insurance company mergers and gives the Insurance Commissioner additional authority when reviewing proposed mergers. The origin of this bill was the merger between United Health and Health Plan of Nevada, Inc. in 2007. As you may recall there were issues with respect to United Health which we tried to bring to the Insurance Commissioner's attention and, under the statute as it currently exists, she could not consider those issues. She felt she was mandated to approve the merger. This bill seeks to address that issue by changing the word "shall" to "may" in *Nevada Revised*

Statutes (NRS) 692C.210 and adds an additional criterion which deals with the applicant's ability to manage claims. The claims history around the country, for example with United Health, would have been brought into the hearing and the Insurance Commissioner would have been able to consider it. Right now, there are seven criteria that the Commissioner has to use and those are listed in the PowerPoint presentation. We seek to add an additional one which deals with managing claims and deals with the general public. The other thing this bill does is flip the burden. Right now the burden is on the Commissioner to prove that the matter should not go forward; this bill would make the applicant prove that the merger should go forward.

Although these changes are minor, they are significant. They do not adversely impact the regulatory scheme that we are dealing with, but they would allow the Commissioner to make a determination and consider other things in regard to the merger. We will have other mergers in the future. I have with me Amy Parks, who is the Insurance Counsel for the Division of Insurance, Department of Business and Industry.

Amy Parks, Insurance Counsel, Division of Insurance, Department of Business and Industry:

[Spoke from written testimony ([Exhibit D](#)). A letter from the Insurance Commissioner, Scott Kipper was distributed ([Exhibit E](#)).]

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman Kirkpatrick:

Does NRS Chapter 692 apply to everyone or only to the Insurance Division?

Chairman Conklin:

The chapter applies only to the Insurance Division.

Lawrence P. Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada:

We support A.B. 248. It comes out of the experience that we were part of during the interim, during the proposal by United Health to acquire Sierra Health Services. In earlier testimony I indicated that we found some surprising limitations on the Attorney General's authority in dealing with such cases. We also found some surprising lapses in the authority granted to the Insurance Commissioner. There is a public interest that follows from certain kinds of mergers. We should be able to consider the impact on the public interest. In the past, it was about whether or not the corporations involved could afford to merge and whether that was a good business decision. That is important and

needs to be weighed. It should be looked at by the Attorney General to see if there is an anti-trust violation. It also needs to be looked at by the Insurance Commissioner to make sure that what comes out of the merger actually improves the ability of that kind of insurance to be available. Another thing that was learned was that the inability of the Insurance Commissioner to consider the claims processing history of an insurance company when considering what the possible impact would be on the health care system was far too narrow a compass.

This bill goes a long way toward assuring that in the future, when there are mergers and acquisitions in the insurance area under consideration, the Insurance Commissioner has all the tools necessary to be able to do a full and balanced decision-making process.

Chairman Conklin:

Are there any questions from the Committee? I see none.

George A. Ross, Las Vegas, Nevada, representing Hospital Corporation of America, and Sunrise Health Care:

The Hospital Corporation of America (HCA) would like to testify in favor of A. B. 248. We feel that a competitive insurance market best serves the consumer, both as a consumer of insurance and as a consumer of health care. Therefore, we look favorably upon this bill which would enable the Insurance Commissioner, when approving or disapproving a merger, to take into account the competitive situation as well as the public interest.

Chairman Conklin:

Are there any questions from the Committee?

Assemblywoman McClain:

I need to disclose under Rule 23 that my daughter works for a health insurance carrier. I do not see how it would affect her or me.

Chairman Conklin:

Is there anyone else wishing to testify in support of this bill? I see none. Is there anyone wishing to testify in opposition? I see none.

ASSEMBLYMAN ANDERSON MOVED TO DO PASS ASSEMBLY BILL 248.

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BUCKLEY AND ASSEMBLYMAN ATKINSON WERE ABSENT FOR THE VOTE.)

We will close the hearing on A.B. 248.

We will open the hearing on Assembly Bill 274.

[Assembly Bill 274](#): Makes various changes regarding retail installment sales.
(BDR 8-819)

Assemblyman Paul Aizley, Clark County Assembly District No. 41:
[Spoke from written testimony ([Exhibit F](#)).]

[Referred to a letter to Judge Markell from John Eggum ([Exhibit G](#)).]

[Referred to a letter from Judge Markell ([Exhibit H](#)).]

[Continued with written testimony.]

Dan L. Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada, Inc., Las Vegas, Nevada:
[Spoke from written testimony ([Exhibit I](#)) with an attached exhibit ([Exhibit J](#)).]

I will not read my entire testimony, I will try to go to the bottom line. As Assemblyman Aizley indicated, the proposed legislation closes a loophole in *Nevada Revised Statutes* (NRS) Chapter 97. Generally, when any car is sold on credit in the State of Nevada, NRS Chapter 97 will apply. The Legislature has delegated to the Division of Financial Institutions the responsibility to prepare a contract. That contract is used in virtually every car sale when a car is sold on credit. However, a few subprime Las Vegas car dealers evade NRS Chapter 97 altogether by simply writing a contract which purports not to charge interest or to have a finance charge. In the case that is presented in my exhibit, the car dealer charged \$5,500 for the car, there was a downpayment of \$2,000, it called for bi-weekly payments of \$500, but since there was no interest or finance charge made, they did not use the NRS Chapter 97 contract which has serious ramifications for consumers. For example, the NRS Chapter 97 contract used by car dealers who use the correct contract has a provision which states the buyer is not in default until a payment is 30-days past due. In my example, the car dealer could, and did write a contract which states you would be in default if your payment is one day late. That will be fixed with this bill because it is based on the federal Truth In Lending Act which states that if you pay in more than four installments, the Act applies regardless of whether there is a finance charge made.

The second area to which the bill speaks is what is called "nonmonetary defaults." The current NRS Chapter 97 contract defines default in various ways; one of which is the mere act of filing bankruptcy. Even if a consumer in bankruptcy is current on his car payments and current on his insurance, there is still a threat of repossession because the creditor can point to the contract and state that he is in default because he filed bankruptcy. This proposed legislation speaks to that issue and attempts to remedy it.

Chairman Conklin:

Is that the portion in section 6?

Dan L. Wulz:

Correct.

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Reno, Nevada:

We are in support of A.B. 274. Like the legal services in the south, we do, occasionally, see dealers who will attempt to sell a car and not use the standard contract required by the Division of Financial Institutions. They are allegedly not charging any interest although the price probably includes the interest, and installments are used.

In addition, I would like to talk about the impact of the nonmonetary defaults in bankruptcy cases. I hope the Chair has, or will soon have, a letter from Judge Markell, the bankruptcy judge in Las Vegas, which explains the impact that this change would have on his practice. What happens currently is that if a person goes into bankruptcy, the contract can be defaulted and the car repossessed. The creditor has a gun to the consumer's head. The creditor can say you must sign a reaffirmation agreement which reaffirms the contract and its current terms, or we will repossess your car. Judge Markell indicates in this letter that he is powerless, and has been since 2005, with the changes in the bankruptcy laws that Congress made, to do anything about this. Someone could have his debt discharged in bankruptcy but still lose his car. This bill would follow the Uniform Consumer Credit Code (UCCC) that was recommended by Judge Markell's clerk to give the court a tool to deal with that situation so that the court could look to Nevada law, and if there had not been a default in payment or some other major reason to think the collateral was impaired (such as not keeping up the insurance), then the person could keep his car so long as he is making regular payments.

The bankruptcy court, as I understand it, does extinguish the underlying debt, but does not extinguish the lien on the car. The dealer still has the ability to execute on that lien and can do so if payments are not made. This portion of

the bill will allow people to keep their cars. The Judge believes this would give him an excellent tool to deal with that situation.

The Judge also called to our attention a couple of things that are not in the bill, if the Committee had an appetite to expand the bill. One, the way the bill is worded, it applies only to automobile sales. He notes that in his bankruptcy court sometimes people who had bought items, for example, stereos, and wanted to do a reaffirmation agreement, are told they must waive their warranty on the stereo in order to keep it, or else it will be taken from them. So, we could go to another part of NRS Chapter 97 to expand for that.

This bill applies only to contracts going forward. What about all the people who are going into bankruptcy in the next couple of years? I am not sure whether you might be interested in a legal opinion from your staff as to whether we could go down that road, or whether we are limited to only contracts signed from the date of passage of this bill.

Chairman Conklin:

It is odd that you brought up the stereo issue. Is it my understanding that the courts can use that tool as well for the automobile? I was reading somewhere that judges encounter the situation in which a person who is current in his car payment files for bankruptcy. He can make the car payment; he just cannot make the payments on everything he has. The judge wants him to keep his car because it is his only transportation to work. The judge is left with a current "ipso facto" position whereby the lender can let him keep his car, but because he is in bankruptcy, deny him all warranty from here on out. We will amend all the provisions of the sale, so he would retain everything and still have to make the payment. Is that, in fact, a possibility?

Jon Sasser:

It is a possibility. The Judge refers only to the stereo situation; he does not refer to that happening in the car situation. I do not know if Mr. Wulz has seen that in his practice. It seems that it would be possible.

Chairman Conklin:

Would this fix that provision, at least for automobiles?

Jon Sasser:

That is correct.

Chairman Conklin:

Mr. Wulz, do you have anything to add to that?

Dan L. Wulz:

I have nothing to add.

Assemblyman Horne:

In reference to a letter from Judge Markell, I see something to Judge Markell, but I do not see a letter from Judge Markell.

Jon Sasser:

It was my understanding that one was sent to the Chairman.

Chairman Conklin:

We have received a document from John Eggum to Judge Markell.

Jon Sasser:

There are two separate documents. One is the memorandum to Judge Markell from John Eggum, who is his clerk. There should be an additional document that should be received soon from the Judge directly to the Chair.

Chairman Conklin:

It would appear that we have not received it. As soon as we do I will distribute it to the members of this Committee. I received a personal email from the Judge that is similar to the letter from Mr. Eggum, but I am not sure if that is what you are talking about.

[The letter from Judge Markell was received and is included with these minutes ([Exhibit H](#)).]

Assemblyman Settlemeyer:

Does this apply to credit cards and things of that nature? You hear a lot about home foreclosures resulting in automatic cancellation of credit cards. This does not apply to that, correct?

Dan L. Wulz:

I am not sure. It amends the definition of a retail installment sales transaction. I need to read all of NRS Chapter 97, but I think a retail installment transaction as defined in NRS 97.115 does not refer to credit cards. I think those are separately defined in that chapter.

Chairman Conklin:

Mr. Settlemeyer, we can have Legal get an answer for the Committee.

Assemblyman Horne:

Typically, in contracts between buyers and sellers, if someone gets a notice that the other party will not be able to perform, they can demand some type of assurance. It seems as if that is what is happening here, but it seems to have been abused to some extent. Is that what we are trying to remedy? Typically, if seller A is selling a certain number of widgets to buyer B who will be making payments every month, if seller A finds out that buyer B is going to declare bankruptcy, seller A can demand some assurances that buyer B is going to continue to be able to pay off the widgets that have already been sold to buyer B. When we are talking about consumers, we want to put them into a different type of box and say that you cannot demand assurances anymore at all, is that correct?

Jon Sasser:

I think that used to be called an anticipatory breach where you felt somebody might breach the contract in the future, and therefore you could ask for assurances. That is usually for contracts for goods and services between buyers and sellers. That is my memory. In the consumer situation, we are defining default in two ways. In retail installment sales, if you are buying goods or services and paying for them over time, the consumer is defaulting only if he actually misses payments or the prospect of payment, performance, or realization of the collateral is significantly impaired. The burden of establishing the prospect of significant impairment is on the seller. The seller can say I have some other reason to believe that this person will default on the contract. This is copied from the UCCC, which has been adopted in many states. We did not adopt the whole Act, but did bring forward that definition that seemed to fit our situation.

Assemblyman Horne:

In reference to Mr. Settelmeyer's question, the credit card company would have already paid for the goods. For example, if you buy a washer and dryer, the company you bought it from is paid by the credit card company. I think it is different with credit cards.

Chairman Conklin:

Mr. Aizley, do you have additional information?

Assemblyman Aizley:

The way I read the bill as it came out from drafting, I do not see the limitations to just automobiles. The language is taken from NRS Chapter 97 and from the *United States Code* and uses some of their definitions, but the way this was drafted, it talks about any kind of a deal where someone is loaning or putting a finance charge on a purchase.

Chairman Conklin:

Nevada Revised Statutes Chapter 97A is debt evidenced by credit cards; NRS Chapter 97 is retail installment sales of goods and services. For Mr. Settelmeyer's question, we will continue to look at this. One set of statutes, NRS Chapter 97A, is set aside for what we typically call revolving credit, or credit card debt, and NRS Chapter 97 itself is simply retail installment sales. Each provision in there may actually go to a different type of retail installment sale. I think it was originally the intention of this bill, and I think it is Mr. Sasser's reading, that this applies exclusively to automobile loans.

Jon Sasser:

I was referring to section 6, the part about the nonmonetary defaults which amends NRS 97.299 which is directly related to the sale of vehicles. In the first sentence it states, "The Commissioner of Financial Institutions shall prescribe, by regulation, forms for the application for credit and contracts to be used in the sale of vehicles." Chapter 97 of NRS, outside of that cluster of sections that deal with vehicles, does deal with the sale of other goods and services. My suggestion would be that we could repeat this language in another piece on NRS Chapter 97 to encompass other goods beyond automobiles, if you wish to.

Chairman Conklin:

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in support of A.B. 274? I see none. Is there anyone wishing to testify in opposition? Is there anyone wishing to testify in the neutral? I see none. We will pull this bill back to Committee so that staff can get some questions answered for us regarding the provisions and what they apply to. We will close the hearing on A.B. 274.

Is there any other business to come before the Committee today? I see none. We have two bills scheduled to be heard on Wednesday. We may add some bills to the agenda on Friday, since we received some from today's floor session. Right now it looks as if we will not be overly burdened, although we still have ten or twelve committee bills to be introduced, and I have no idea what else might be introduced. We seem to be doing well.

[The meeting was adjourned at 2:19 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Blackburn
Committee Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 16, 2009

Time of Meeting: 1:37 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B.248	C	Assemblyman Segerblom	PowerPoint presentation
A.B.248	D	Amy Parks	Prepared testimony
A.B.248	E	Scott Kipper	Letter in Support
A.B.274	F	Assemblyman Aizley	Prepared testimony
A.B.274	G	John Eggum	Letter to Judge Markell
A.B.274	H	Judge Markell	Letter in support
A.B.274	I	Dan L. Wulz	Prepared testimony
A.B.274	J	Dan L. Wulz	Copy of contract