

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

**Seventy-Fifth Session
February 4, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:34 p.m. on Wednesday, February 4, 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 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:

Senator Randolph Townsend, Washoe County Senatorial District No. 4

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Patricia Blackburn, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Catherine Cortez Masto, Attorney General
Ernest Figueroa, Senior Deputy Attorney General
Robert Ostrovsky, representing Nevada Resort Association,
Las Vegas, Nevada
Tray Abney, Director, Government Relations, Reno-Sparks Chamber
of Commerce, Reno, Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association,
Las Vegas, Nevada
Lawrence Matheis, Executive Director, Nevada State Medical
Association, Reno, Nevada
Bob Gastonguay, Executive Director, Nevada State Cable
Telecommunications Association, Reno, Nevada
Steve Schorr, Vice President, Cox Communications, Las Vegas,
Nevada
Brian McAnallen, Director, Government Affairs, EMBARQ,
Las Vegas, Nevada

Chairman Conklin:

[The roll was called and a quorum was present.] Welcome, everyone, to the first official meeting of the Commerce and Labor Committee. We will take a moment to introduce some of our members, although I think we have mostly familiar faces here. We are joined by: the Speaker and former chair of this Committee, Barbara Buckley, for her eighth session and the eighth on this Committee; the Majority Leader and former chair of this Committee, John Ocegueda, for his fifth session and fifth term on this Committee; Assemblyman Morse Arberry, Chair of the Ways and Means Committee, for his thirteenth session and tenth on this Committee; Assemblyman Bernie Anderson, Chair of the Judiciary Committee, for his tenth session and third on this Committee; and Assemblyman Mark Manendo, for his eighth session and second on this Committee. Welcome back to: Assemblywoman Kathy McClain, for her sixth session and second on this Committee as she gets a second tour of duty; Assemblyman William Horne, serving his fourth session and second on this Committee; Assemblyman Chad

Christensen, for his fourth session and second on this Committee; Assembly Minority Leader, Heidi Gansert, for her third session and third on this Committee; Assemblywoman Marilyn Kirkpatrick, for her third session and second on this Committee; Assemblyman James Settlemeyer, for his second session and second on this Committee; my Vice Chair, Assemblyman Kelvin Atkinson, for his fourth session and first on this Committee; and Assemblyman Ed Goedhart, for his second session and first on this Committee.

I would like to make some staff introductions as well. Most of you are very familiar with Mr. Dave Ziegler. This is his second session as research staff for our Committee, and he has been with the Research Division for six sessions. We are joined this year by Committee Counsel Dan Yu, with the Legal Division since 2005, and this is his second session and first with this Committee.

New to our Committee is our Committee Manager, Mr. Andrew Diss. He is new to the Legislature this year, although many of you may remember him from the 2005 Session when he interned with the Majority Leader, Mr. Ocegüera.

Then, of course, the people who make all of this possible are: our committee secretaries, Pat Blackburn (third session with the Committee); Earlene Miller (second session with the Committee); and new to our Committee this year, Karen Fox. Also joining us is our committee assistant, Sally Stoner. This is her second session with us.

Mr. Ziegler, could you please review the rules for us.

Dave Ziegler, Committee Policy Analyst:

Each of you should have a copy of the Standing Rules for this Committee at your place ([Exhibit C](#)). They are exactly the same as last session, with three exceptions. I call your attention to Rule No. 12 on quorum and voting. That rule has been modified to accommodate Rule No. 23 of the Assembly Standing Rules and the rule on legislative ethics and to add an item (e). I remind you that paragraph 13 of Rule No. 23 of the Assembly Standing Rules provides that if a member abstains from voting due to the requirements of the rule on legislative ethics, the necessary quorum and the necessary number of votes in the committee are reduced accordingly. Item (e) under quorum and voting is a restatement of Assembly Standing Rule No. 42, paragraph 5.

Also, there is a change from last session on exhibits, Rule No. 19. As in the past, exhibits must be provided by 1:30 p.m. on the prior business day. This session, that will apply to slide presentations also, and requests for slide presentations need the Chair's approval in advance. In order to make the most efficient use of the Committee's limited time, the Chair reserves the right to reschedule a matter for which exhibits, if any, are not provided in advance.

Finally, on the matter of privacy, you may remember a rule about that last session. It is the same idea as last session, but different wording. The Chairman would appreciate it if members of the Committee and members of the audience would conduct any conversations before and after the meeting somewhere other than at the dais, for example, at the end of the room. That will also help the staff comply with the confidentiality rules under which we operate.

Chairman Conklin:

I would be willing to entertain a motion to approve the rules.

ASSEMBLYMAN ATKINSON MOVED TO ADOPT THE STANDING
RULES OF THE ASSEMBLY COMMITTEE ON COMMERCE AND
LABOR.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywoman Buckley and
Assemblyman Ocegueda were absent for the vote.)

Chairman Conklin:

I have a few housekeeping comments. This Committee is scheduled to start at 1:30 p.m. on Monday, Wednesday, and Friday, although I will caution all of those that have issues that come before this Committee on Fridays, to accommodate those that live in southern Nevada, we will attempt to start the meetings approximately 15 minutes following the floor sessions. As quickly as we can get the members here and assembled, we will begin our Friday sessions.

If we have the same number of bills in our jurisdiction as last session, it will probably be over 220 bills. We will have to average three bills a day if we are going to hear every bill from now until First House Passage, and we will probably have to do the same if the Senate sends over the same number of bills. We will be very busy, and I will try to front-load those as much as possible on Mondays and Wednesdays, but, unfortunately, we are going to be here a lot of Fridays.

Mr. Ziegler, would you please go over the Committee Brief.

Dave Ziegler:

Each of you should have at your place a copy of the Committee Brief ([Exhibit D](#)) for this Committee for this session. There are more public copies being delivered and they will be here shortly. I will just briefly mention what is contained in the Committee Brief. It is not my intention to go over it with you in any detail, but it does cover the measures that this Committee considered during the 2007 Session. It covers the historical, typical, or ordinary jurisdiction of this Committee. It covers selected legislation that was enacted in 2007. It covers issues that may arise in this session. It reminds everyone again of the schedule for the 120-day session. For the

members and the people in the audience, it does include a selected list of agency contacts, and it does include some concluding remarks from the Research Division.

Please let me know if you have any questions or comments on the Committee Brief.

Chairman Conklin:

Are there any questions on the Committee Brief? I see none. I have been notified by the Committee staff that there are now additional copies of the Committee Brief.

Madam Attorney General, we have two good bills. Is there a preference in terms of order? If there is no objection, we will take these bills out of order. We will open the hearing on Assembly Bill 95.

Assembly Bill 95: Revises certain provisions concerning the investigation and prosecution of unfair trade practices. (BDR 52-268)

Catherine Cortez Masto, Attorney General:

I am here to make some initial comments with respect to A.B. 95 and to set the tone as to why this bill was important to me. Ernest Figueroa, in my office with the Bureau of Consumer Protection, will go through this bill as well as the next bill.

In the summer of 2007, my office engaged in the review of a merger between two private insurance carriers, due to concerns that a merger of the two companies would have a negative impact on the people of this state. Specifically, I was concerned that a merger would effectuate a monopoly of the Las Vegas market for certain types of health insurance products such as small groups, commercial, Health Maintenance Organizations (HMO), Preferred Provider Organizations (PPO), AdvantageCare, Medicaid, Nevada CheckUp, and including certain market segments that are especially vulnerable to fluctuations in the price of health insurance. I know that many of you have the same concerns. I heard from you during that time, and I heard similar concerns from various constituencies in the state who sought the assistance of my office.

During the course of my review, I received a letter from the merging parties' local legal counsel arguing that my office did not have the authority, under *Nevada Revised Statutes* (NRS) Chapter 598A, to review the merger. Additionally, I was informed by the Division of Insurance, State of Nevada, that my office lacked jurisdiction under Nevada law to protect its citizens. The Division of Insurance issued an order reserving the Insurance Commissioner's right to argue that the Attorney General's Bureau of Consumer Protection lacked jurisdiction over any aspect of the acquisition. I was prepared to litigate this issue in court so that I could protect the health, safety, and welfare of Nevadans; however, we were able to negotiate a settlement on the doorstep of the court. Yet, there was a plausible argument to be made that my office's authority under NRS Chapter 598A has limitations.

Assembly Bill 95 puts this legal issue to rest, so that in any similar action where the protection of our state's citizens is warranted, my office will not be wasting initial resources to overcome a similar legal challenge. With your approval of this bill, we can continue to act in the best interests of our constituents. There is no other motive for me in this bill other than to prevent similar challenges to the jurisdiction of my office when state involvement is required to protect the safety, health, and welfare of Nevadans.

We have put this bill before you today; we will be happy to go through it and answer any questions. I am asking for this Committee's support to allow both of us to conduct the job of protecting our citizens. The Attorney General's Office should have oversight over antitrust matters when the citizens of the state and their issues come into play. I am not asking for anything more than what other regulatory bodies have. It would be concurrent jurisdiction. It is the authority to review antitrust actions and mergers, similar to the other attorneys general in other states. There is no other law enforcement authority in this state that has that authority. I am asking for us to just solidify this in the statute so that my office does not have to litigate in the future and can move on to the issues that would pertain to the protection of the citizens of the state when this type of activity occurs.

Chairman Conklin:

Do you have a moment for a few questions? I just have one question for you which is a broad, general question on mergers and acquisitions that involve large portions of the State of Nevada: do you have other rights under the *United States Constitution* or federal law that permit you to take this action?

Catherine Cortez Masto:

There is dual jurisdiction. There is state and federal. There is a federal law, the *Clayton Antitrust Act*, that allows all attorneys general to use that law to gain some leverage to bring the parties to the table to discuss the action with me. But, I was unable to bring it into our own state courts to protect the citizens of Nevada. That would have been an issue and a challenge that we would have had to deal with and overcome prior to even getting to the real merits of the case.

Chairman Conklin:

Are there any further questions?

Assemblyman Settlemeyer:

I was concerned about section 1, paragraph 3 of the bill. I am trying to figure out why the wording needs to be stricken. I do not like the federal government any more than anyone else, but I still question the striking out of that language. Why do we need to remove that language?

Chairman Conklin:

Before we go any further, Mr. Settelmeyer, there is also in your packet an amendment that is being brought forward by the Attorney General's Office, which might answer your question. I will allow Mr. Figueroa to answer your question.

Ernest Figueroa, Senior Deputy Attorney General:

We are going to be asking for an amendment to A.B. 95 ([Exhibit E](#)) which fixes those issues contained in section 1, paragraph 3. Our intent was not to strike out those provisions of the statute. Our intent is merely to attempt to clarify the Attorney General's authority over merger review. Our amendment, I think, satisfies those concerns.

Assemblyman Settelmeyer:

I look forward to those amendments.

Chairman Conklin:

Are there any other questions from the members?

Assemblywoman Gansert:

I am wondering how this works given the authority that certain divisions have right now. For instance, the Gaming Commission approves a merger or acquisition, or the Insurance Division was looking through this merger, so would your authority take precedence over everyone else's? How does it work with the federal government?

Catherine Cortez Masto:

That is a great question. The intent is to have concurrent jurisdiction with our local regulatory bodies. There are some tools that, for instance, the Insurance Division can utilize that I cannot, and there are tools that I can utilize that they cannot when we are reviewing mergers. The Insurance Commissioner can hold a hearing, but they do not have subpoena power. I have subpoena power under certain provisions to look at mergers. The intent was to have not only my office but also those regulatory bodies working concurrently because we are both on the same side. The intent is to look out for the best interests of the individuals who work in this state and live in this state. The intent is not to preempt the regulation in the statute. It is just the concurrent jurisdiction to take an action to court, unlike what a regulatory body would be able to do, to take action to protect the citizens of this state. I hope that answers that question.

With respect to the federal government, the Department of Justice has the ability under federal law to come into any state and mandate a divestiture if they feel there is some sort of monopoly occurring. That does not necessarily address some of the other issues that are pertinent to our state specifically. This is why I jumped in to address those issues, to put it into a consent decree to mandate they follow those requirements as a result of this merger, and also to be able to monitor it. I have the ability to monitor this merger through the consent decree for the next two to three years to make sure they are not violating any of those provisions. I can bring them back into court if they violate those provisions and hold them accountable, separate

and apart from the order that was issued by the Insurance Commissioner. The intent is not to preempt them but to have that concurrent jurisdiction and step in where it is necessary.

Assemblywoman Gansert:

How broad would your power be? Could you require the divestiture of organizations as the federal government can? Would your power be more limited in scope as far as when they are actually trying to merge versus later?

Catherine Cortez Masto:

I am going to defer to Mr. Figueroa to answer that, but I will say this: to the extent we would come in and work on a divestiture, my understanding is that the Department of Justice would literally come in and take the initial look at that. Under the state review, it is something that we would be considering and looking at.

Ernest Figueroa:

We do have that authority under state law. It is complementary to what we have under the *Clayton Antitrust Act*.

Assemblywoman Kirkpatrick:

I would like to talk about section 4. Please explain to me who the officials are who agree in writing under subsections 1 and 2. Also, I would like to know about the dollar amounts listed in section 8, subsections 3 and 4.

Chairman Conklin:

Mr. Figueroa, before you go forward, did you have some prepared remarks on this bill that would take us through this bill, which might answer that question and others?

Ernest Figueroa:

I do have some prepared remarks, but I probably should address Ms. Kirkpatrick's question first.

Section 4 is a section that deals with confidentiality provisions throughout the antitrust statute. As we engage in our investigative procedure, oftentimes we work with other governmental entities such as the federal government and other states; and to avoid duplication of effort, we share information among ourselves. Oftentimes when we are investigating antitrust mergers, we obtain business trade secrets or other confidential matters, and in order to protect the confidentiality of these documents, we have to enter into protective agreements with other jurisdictions. The provision in section 4 basically allows us, if we are the initial obtainer of the confidential information, to be able to share that information with other states and the federal government, so long as they agree to maintain the confidentiality of those statutes.

The next question that you had was regarding section 8. We are seeking changes to the amount of money that the Attorney General's Office can utilize in its enforcement of unfair trade practices. One of the things we experienced in our last merger review case was that the funds allocated to us were quickly utilized when we were preparing for a merger review. These types of cases are very complex and require a multitude of experts to be retained. So, we are seeking updates to these amounts so that, in the next merger review, we will have significant resources to do the job properly.

Chairman Conklin:

Are there any other questions for the Attorney General before we let her leave? I see none.

Ernest Figueroa:

[Read from prepared testimony ([Exhibit F](#)).]

Chairman Conklin:

Are there any questions from the members?

Assemblywoman Kirkpatrick:

Please explain "treble damages." What does that mean?

Ernest Figueroa:

Treble damages is a legal term that means three times the damages.

Assemblywoman Kirkpatrick:

Why do we have that fancy word instead of saying three times?

Ernest Figueroa:

It is just more formal. It is something that lawyers are more comfortable with.

Assemblywoman McClain:

How much do you normally revert to the General Fund, where you are changing the cost from \$450,000 to \$900,000? What is your average reversion amount?

Ernest Figueroa:

I do not have the specific amount available to me, but I do recall seeing some figures in the millions of dollars that we reverted back to the General Fund last fiscal year.

Assemblywoman McClain:

What else comes out of those funds that you keep for other costs?

Ernest Figueroa:

Those funds are specifically targeted and to be used only for the enforcement of deceptive and unfair trade practices.

Chairman Conklin:

Are there any further questions for Mr. Figueroa? There are none. I have a list of people opposed to this bill. Is there someone who would like to speak for the long list of people?

I would like to recognize that our colleague from the Senate, Senator Townsend, is here.

Robert Ostrovsky, representing Nevada Resort Association, Las Vegas, Nevada:

We rise in opposition to this bill. I would like to talk about that opposition and what we can do to resolve our issues with this piece of legislation. We have been looking at this bill since the time it appeared on the prefiled bills list. However, we did not receive the amendment until yesterday. The amendment is significant and substantial. We have circulated it among our members and have not had sufficient

time to analyze that amendment. We need to be on the record saying that: (1) under existing law, the statutes give considerable authority in regulated industries (including gaming and those that may be regulated by the Public Utilities Commission (PUC), for example) as to how mergers are to be handled and strict guidelines on submissions of data and information; and (2) the Attorney General's Office does, in fact, have representation at both of those agencies and has an opportunity for input at that time relative to advising those agencies on steps that should be taken. We recognize that the Attorney General also has authority beyond that in the *Clayton Antitrust Act*.

I did meet with the Attorney General's Office yesterday. Clearly, we would not take the position to upset the Attorney General's authority in those areas; in fact, I was told that this bill would clarify those authorities. We think that is a reasonable request. We think this bill goes beyond clarifying those authorities. The Office has agreed to sit and meet with us. We have a mergers and acquisition attorney in Las Vegas who we would bring up and several others who would be happy to meet with the Attorney General's Office. We would try to find some language that would give her the authority she believes she needs to protect the public interest in Nevada, at the same time allowing businesses to have some certainty, when entering into acquisitions and mergers, about the timing of those approvals and who would have authority to approve. In theory, if the Attorney General wants to have the final say on all of these, then perhaps we should consider just moving those authorities away from the State Gaming Control Board or the PUC and giving them to the Attorney General.

We do not want to have to go through a number of processes, and the Attorney General just testified it was not her intent to do so; she would like concurrent review. We think some language relative to that in the statute might be helpful in resolving some of those issues. We would be happy to work with her to be able to do that and reach an effective resolution. We think, as it stands, this bill gives the Attorney General far-reaching authority for mergers and acquisitions that may happen outside the jurisdiction of the state, involving someone who operates a business in this state. For example, a merger between two companies in another state that have an operating unit in this state would now fall under the authority of the Attorney General. We also think that this bill gives broad authority for the Attorney General to override any other state statute or regulation. It could take us some time to decide what impact these sweeping language changes will have on businesses that operate in the state.

We will quickly meet with the Attorney General's Office and try to resolve our issues in a way that we could support this legislation instead of opposing it.

Chairman Conklin:

Are there any questions from the members for Mr. Ostrovsky? I see none. I have a list of several people who had signed in to oppose this bill. For the record, they are

Mr. Gastonguay, Mr. Schorr, Ms. Stokey, Mr. Bennett, Mr. Parmer, Mr. McAnallen, Mr. Brown, Mr. Abney, and Ms. Foley. Has Mr. Ostrovsky summed it up for everybody? I see a lot of nods. That is good.

Are there any more questions for Mr. Ostrovsky? I see none.

Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce, Reno, Nevada:

I want to echo Mr. Ostrovsky's comments. I represent almost 1,500 businesses, some of which are very large, but most of which are very small. This language seems to be very broad and broad enough to encompass any size of business. I would like to have more information on how this bill and amendment would affect my members.

Chairman Conklin:

Are there any questions for Mr. Abney? I see none.

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:

When I originally signed up for opposing this bill, it was with respect to the stricken language on page 2, lines 11 through 18, that Assemblyman Settlemeyer commented on. The fact that they have restored the language is a good thing. I think the new proposed subsection 6 takes away what they put back. As you know, banks are regulated by the Federal Deposit Insurance Corporation (FDIC). As witnessed over the summer when Silver State Bank collapsed and when First National Bank collapsed, the FDIC is the body that takes care of the assets of those banks being acquired. One could argue that the Attorney General might find on Monday morning that it was not the best acquisition and that somebody else should make the acquisition. It is that potential scope (for things that are currently done by the FDIC, the Federal Reserve, and the State Department of Financial Institutions) that could harm banking if this bill was taken in its broadest sense.

Chairman Conklin:

Are there any questions for Mr. Uffelman? I see none. Is there anyone else wishing to testify?

**Lawrence Matheis, Executive Director, Nevada State Medical Association,
Reno, Nevada:**

We support the bill.

Chairman Conklin:

Mr. Matheis, please hold on a minute. I want to be sure we get everyone in opposition. I did not realize there was anyone signed in who was in support. Before you go on, is there anyone else wishing to testify against this bill?

Senator Randolph Townsend, Washoe County Senatorial District No. 4:

This is a first for me, I have never before testified in the other house in opposition to a bill before, and I do so very seriously. Perhaps some history would be beneficial to this discussion. I was chairman of the Coalition for Affordable Energy, and we had a statewide initiative petition that was rejected in 1981 by the Legislature. That measure was put on the ballot along with a competing measure. That initiative was ably drafted by your former colleague and Speaker, Joe Dini. We supported it, and the position of Consumer Advocate was created. Fifteen years later, Mr. Fred Schmidt, then the Consumer Advocate (and the longest standing Consumer Advocate we have had so far), came to me with an idea about how we could be more efficient in the Attorney General's Office with regard to addressing consumer issues. He and I talked about a consolidation and moving people around inside the Office, which would combine what we had learned in the Consumer Advocate's Office (to protect small businesses and individual ratepayers) and some of the other responsibilities such as antitrust and fraud. As a result, we went to the money committees and asked them to restructure the Attorney General's Office, creating the Bureau of Consumer Protection. That is the history.

I want to thank the many previous Attorneys General and the current Attorney General for using the Bureau of Consumer Protection effectively for the benefit of the public. As a result of my 27 years in the Legislature and 20 years as chair of the Senate Commerce and Labor Committee, I spent a great deal of my time rewriting this particular statute, hopefully for its betterment. We should all be proud of NRS 598A. I respect what has been put in front of you today, including the amendment. I happen to be a businessman. I spent a great deal of time in the last few years analyzing a world economy in which my company is involved, as well as the stock market, private equity, venture capital, and a number of other things. I respect the efforts, here, and I understand the concern based on the previous discussion regarding a merger that occurred in this state. I understand what they are attempting to do.

There were two statements made that give me great concern. If the Attorney General's Office believed they have the jurisdiction to intervene, then I am unsure why we need the bill. Second, if they do have jurisdiction, in spite of federal law, does that mean they also have jurisdiction over bankruptcies?

If that is the case, you have a number of problems facing us over the next 2 to 12 months. If you look at the industries in the State of Nevada that are being impacted by the national and international economies, you are going to see bankruptcies, restructuring, and mergers. That would be fine if they simply did business inside the State of Nevada, over which we do have jurisdiction. These are no longer simply Nevada companies; these are national and international companies. They are in gaming, and we have already seen with the news announcement today the potential restructuring of one of our very prominent gaming companies. They are in automobiles, and it is fairly easy to predict that we are likely to see some significant restructuring of those companies within the next few months. We have banking, as well as health care, telecommunications, and energy. If we broaden the Attorney General's authority, we might be taking on something we cannot afford to do.

I see a number of faces on this Committee that also sat through the presentation today regarding the stimulus package and its affect on a number of important areas for the State of Nevada, particularly for those people in need. If this language were to stay in place, the amount of energy and resources that it would take to deal with the impending business challenges throughout this state may literally take every ounce of fiscal and human resources we have in the State of Nevada. If anyone tells you that tomorrow is a brighter day relative to the economy, they just do not study this. We are in for as bad or worse in 2009 as we saw in 2008. Those are the realities I face in the business world.

When you look at mergers of car companies, bankruptcies, gaming companies being restructured, mergers, utilities, telecommunications companies, and banks, we do not have enough resources to afford Medicaid and all of the other programs that are needed at the deepest, lowest levels that we have in our local communities.

I do not think this jurisdiction should be as broad as they are requesting in the amendment, nor do I think we have the money available to us to do the good job that you would promise the public if you passed this bill. Those are two serious concerns.

Given the history of this, there is not a person in this particular Committee or any committee in the Senate that wants to over-promise the public in these tough times. Were this bill to become law, I think we would be over-promising and under-delivering. I appreciate the Committee's time. I'll answer any questions.

Chairman Conklin:

Are there any questions from the Committee members? I see none. Is there anyone else wishing to testify in opposition to this bill? I see none. Now, Mr. Matheis, I will call upon you first to testify in favor of this bill.

Lawrence Matheis:

During the interim, the Nevada State Medical Association opposed the merger of United Health with Sierra Health Services due to its impact on competition and impact on access to care in the state. We were joined by a number of others. That process raised exactly the point which the Attorney General reported to you as her reason for revisiting the statutes regarding how state agencies will respond when there is a proposed merger or acquisition that rises to the level requiring consideration of the anticompetitive and the antitrust impact.

During that process, there were frustrations in how unclear or how unprotective of the public, some of our law seems to be. I think that with this bill you have the opportunity to revisit and clarify that.

I draw a very different conclusion from the national and international experience of the last six or eight months. It was during the period when large corporations were being created by combining other large corporations, that no one looked at how that might impact competition, the consumer, and the public. They failed to take into consideration that all of us as taxpayers might have to pay for companies that "grew too big to fail." We were never asked whether we thought it was a good idea for those companies to get that big. The impact on everybody who touches the health care system, for example, whether as patients or providers, can be affected by the size of a merger. You need an advocate who will look carefully at that.

The Attorney General did an excellent job with the resources she had on hand, but she could not really do it with the state law. She actually had to go into federal court. The Antitrust Division of the Department of Justice had a certain deterioration of its focus over the last few years, so there were two lawsuits being filed in two federal courts. But, once the Department of Justice settled one lawsuit and said "give us the money and we will go away," it made it hard for the other lawsuit to continue. I think the Attorney General got an incredibly important settlement that includes a lot of policy issues that are worth looking at.

But, the issue was that we have a state antitrust law also. There are things that can adversely affect Nevadans when, as in this case, two large health insurance companies merged that need to have active consideration. The intent of the Attorney General in A.B. 95 is to get that clear authority and to be able to pursue that.

This Committee might want to look carefully at what is in the insurance statutes in the mergers and acquisitions section. It significantly hemmed-in the options available to the Commissioner of Insurance. Virtually no one outside of the two

companies involved in the merger could be granted status to intervene and to participate. The public was limited. The law envisions one hearing. This was an experience from which it would be wise for the State of Nevada to learn because it is not likely that we have seen an end to these sorts of activities. When they occur, you need to have some balance during the process at the beginning, so that you do not wind up at the end having to undo or face something you never talked about. These processes should be much more public and open, and there needs to be the opportunity for the Attorney General's chief law enforcement officer, the Insurance Commissioner, and others to be able to exercise their authority on behalf of the public.

Chairman Conklin:

There is a bill forthcoming that will take a look at the requirements of the Insurance Commissioner during a merger and acquisition in that particular industry.

Are there any questions from the Committee? There are none. Is there anyone wishing to testify in support of A.B. 95 before I close the hearing?

We will close the hearing on A.B. 95. It is my intention to ask all interested parties, both in support and opposed, to work with Mr. Figueroa. I have asked Assemblyman Atkinson to oversee that; he will be there to provide help and gentle negotiating skills, if necessary, to make sure that we have something that we can move forward with. I think it is an important topic, and it needs to be dealt with. It needs to be right, as well, and a balance needs to be struck here.

I will open the hearing on Assembly Bill 90.

Assembly Bill 90: Revises certain provisions concerning the investigation and prosecution of deceptive trade practices. (BDR 52-269)

Ernest Figueroa, Senior Deputy Attorney General:

[Read from prepared testimony ([Exhibit G](#)).]

Chairman Conklin:

I have some questions for you. Assembly Bill No. 518 of the 74th Session and Assembly Bill No. 526 of the 74th Session, which Ms. Kirkpatrick, Ms. Allen, and I worked on in the 2007 Session, were really about the transformation of the telecommunication industry into something which is much bigger. These bills were also about the transformation of the cable industry and the cross integration of those industries and the services provided. I question whether all these new protections that you are requesting for telecommunication systems are necessary. It revolves around telephone protections. Are we reaching, with this bill, into areas that perhaps these protections were never designed for? Perhaps they enter into broader questions of free speech, Internet use, and the like.

Ernest Figueroa:

I do not believe so. I think consumer protections are very important and should be applied across the board for all telecommunication services. Some of the complaints that we have received deal with bill issues and misrepresentation issues. One important fact that I would like to make note of is that we are specifically seeking a change only to the definition as it exists in the deceptive trade practices statute. We are not trying to alter the definition of telecommunication service as it exists in the other utility chapters. We want those to remain intact. Our only intent is to deal with deceptive trade practice enforcement.

Outside of the provisions contained in NRS 598.969, the other provisions of the deceptive trade practices statute already apply to those providers.

Assemblywoman Kirkpatrick:

I will not be as nice as the Chairman. I personally worked on the 2007 bill for approximately 15 hours over the course of two days. We were here until 11:30 at night working on that bill. We did work with the Consumer Advocate, I did the research myself, and it compares well with other states and countries. I am offended. I think you are overreaching. Please show me somewhere else throughout the nation where they have this within their statutes; I would like to see it. I would like to see what you have that shows we are not in compliance with technology changes.

Chairman Conklin:

That does not require an answer, Mr. Figueroa.

I can attest to the amount of hours that were spent on both A.B. 518 of the 74th Session and A.B. 526 of the 74th Session. I think what my colleague is referring to specifically is that there are measures in both of those bills that allow for remedies on behalf of the consumer: should they be spiked, should a bill be paid but never logged, and practically all of the things that you have listed as critical protections. I am not saying this is not necessary. What I am saying is that we attempted to fully address these issues in the bills, and we do not recall seeing the Attorney General at those meetings asking us to reconsider or highlighting areas that needed to be covered. It does not require an answer; just note that we need you here when we discuss these issues the first time so that we get it right and so that we do not have to revisit issues like this.

Assemblyman Anderson:

I also am angry with this. I asked the Attorney General for some help with my constituents who looked for public access; I could not get any help. The constituents in my district lost their public access. Things were handled differently in southern Nevada than here in the north. I continue to receive calls about the lack of public access. Your office should have been here in 2007 to help us with this.

Chairman Conklin:

I am not sure there was a question, so you do not need to respond. Are there any additional questions for Mr. Figueroa? I see none. Is there anyone wishing to testify in support of A.B. 90? I see none. Is there anyone wishing to testify in opposition to A.B. 90?

Bob Gastonguay, Executive Director, Nevada State Cable Telecommunications Association, Reno, Nevada:

We have a long list of concerns with A.B. 90, and I met with Mr. Figueroa and asked if we could have our legal people meet with him concerning this bill. They have agreed to meet with us and try to iron out some of the issues that we have with this particular piece of legislation. With the permission of this body, I would ask that you allow us to work together.

Chairman Conklin:

I am happy to have you do that. Are there certain issues, in particular, that you would like to get on the record?

Bob Gastonguay:

Basically, the concerns of my member companies are the same as discussed by you and Assemblywoman Kirkpatrick with regard to sections 10 and 11. We do not want to see definitions changed that we worked so hard on within the industry.

Chairman Conklin:

Are there questions from the Committee for Mr. Gastonguay?

Assemblyman Anderson:

How should consumers get resolution of their concerns?

Bob Gastonguay:

It is my understanding that the issue with regard to public access to government channels was resolved with the company and the local municipalities so that your constituents would have access to those channels through the use of a converter box, which the company is providing free for the first year and at a reduced rate thereafter.

Assemblyman Anderson:

I disagree.

Assemblyman Ocegueda:

Mr. Gastonguay, I wonder if you know the status of the federal legislation regarding the analog switch? There was a possibility that there would be a delay.

Bob Gastonguay:

The federal legislation moving all analog channels to digital is supposed to take place on February 17th. I do not know the results of any delay legislation.

Steve Schorr, Vice President, Cox Communications, Las Vegas, Nevada:

The House today passed the DTV delay bill. It has now been officially delayed until June 12, 2009. It is just a movement of the last deadline. They left the date open so that many broadcast stations will be moving from analog to digital on February 17th. Unfortunately, for consumers this will create a lot of confusion. Some channels will be digital only; some will be analog and digital. The industry, itself, is going digital, and within a period of time, there will be no analog signals. For every channel that is broadcast in analog, the company can broadcast up to ten channels in digital. Today's consumers want bigger, better, broader information. Consumers also want high definition television, and there is a difference between the two. My own company is facing putting on more high definition channels. The companies that are moving forward are making it available to all consumers. The analog world will go away. The delay bill is on the President's desk for signature, I expect it will be signed, and it will be the law of the land.

Chairman Conklin:

Are there any other questions for Mr. Gastonguay?

Assemblyman Anderson:

When did Charter take away the local government channel in northern Nevada?

Bob Gastonguay:

It is my understanding that it was moved to a digital tier. It has not been lost. Customers are able to get a converter box for free for one year and then at a reduced rate.

Assemblyman Anderson:

When did this occur?

Bob Gastonguay:

In December.

Chairman Conklin:

There are no more questions for Mr. Gastonguay. Is there anyone else wishing to testify against A.B. 90?

Brian McAnallen, Director, Government Affairs, EMBARQ, Las Vegas, Nevada:

I was not sure I was going to testify today, but based on the comments made about this bill, I want to go on record thanking this Committee for all of its work in the 2007 Session on Assembly Bill No. 518 of the 74th Session. We are concerned about section 11 of A.B. 90 in that it creates a definition of telecommunications services. We are very concerned about that definition and its impact on the previous bill. I know that Mr. Figueroa testified that this definition would be specific to this bill only. We appreciate the intention of the Attorney General's Office to be able to have a place for going after providers who are bad players and violate their customers' trust, but we are concerned that this may have some implications for the previous bill. We will continue to work with the Attorney General's Office to make sure that does not happen.

Chairman Conklin:

Are there any questions for Mr. McAnallen? I see none. Is there anyone else wishing to testify against A.B. 90? I see none. We will close the hearing on A.B. 90.

Since Assemblywoman Kirkpatrick and I worked on Assembly Bill No. 518 of the 74th Session, I would ask that the interested parties get together with Mr. Figueroa and Assemblywoman Kirkpatrick so that she can bring any resolutions back to the Committee.

Assemblywoman Kirkpatrick:

I would like to get a copy of the CD of the minutes from last session's subcommittee meeting.

Chairman Conklin:

A copy will be provided to you.

Is there any public comment? I see none.

[The meeting is adjourned at 3:07 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Blackburn
Committee Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 4, 2009

Time of Meeting: 1:34 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Dave Ziegler, Committee Policy Analyst	Standing Rules of the Assembly Committee on Commerce and Labor
	D	Dave Ziegler, Committee Policy Analyst	Committee Brief
AB 95	E	Ernest Figueroa, Senior Deputy Attorney General	Proposed Amendment
AB 95	F	Ernest Figueroa, Senior Deputy Attorney General	Prepared testimony
AB 90	G	Ernest Figueroa, Senior Deputy Attorney General	Prepared testimony