

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

**Eighty-First Session  
March 15, 2021**

The Committee on Commerce and Labor was called to order by Chair Sandra Jauregui at 1:33 p.m. on Monday, March 15, 2021, Online. 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/App/NELIS/REL/81st2021](http://www.leg.state.nv.us/App/NELIS/REL/81st2021).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Sandra Jauregui, Chair  
Assemblywoman Maggie Carlton, Vice Chair  
Assemblywoman Venicia Considine  
Assemblywoman Jill Dickman  
Assemblywoman Bea Duran  
Assemblyman Edgar Flores  
Assemblyman Jason Frierson  
Assemblywoman Melissa Hardy  
Assemblywoman Heidi Kasama  
Assemblywoman Susie Martinez  
Assemblywoman Elaine Marzola  
Assemblyman P.K. O'Neill  
Assemblywoman Jill Tolles

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Marjorie Paslov-Thomas, Committee Policy Analyst  
Terri McBride, Committee Manager  
Louis Magriel, Committee Secretary  
Cheryl Williams, Committee Assistant



**OTHERS PRESENT:**

Mark Krueger, Chief Deputy Attorney General and Consumer Counsel, Bureau of Consumer Protection, Office of the Attorney General  
Lucas Tucker, Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General  
Marie Martin, Senior Deputy Attorney General, Office of the Attorney General  
Maya Holmes, Healthcare Research Manager, Culinary Health Fund  
James Kemp, representing Nevada Justice Association  
Jesse Wadhams, representing Nevada Hospital Association  
Tom Clark, representing Nevada Association of Health Plans  
George Ross, representing HCA Healthcare  
Peter Guzman, President, Latin Chamber of Commerce  
Jaron Hildebrand, Executive Director, Nevada State Medical Association  
Paul J. Moradkhan, Senior Vice President, Government Affairs, Vegas Chamber  
Lesley Pittman, representing Reno Diagnostic Centers  
Jessica Ferrato, representing American College of Emergency Physicians  
Nick Vander Poel, representing Reno + Sparks Chamber of Commerce  
Bryan Wachter, Senior Vice President, Government and Public Affairs, Retail Association of Nevada  
Amber Stidham, Vice President, Government Affairs, Henderson Chamber of Commerce  
Chris Bosse, representing Renown Health  
John Carlo, Private Citizen, Las Vegas, Nevada

**Chair Jauregui:**

[Roll was called. Committee protocol and virtual rules were discussed.] On today's agenda we have Assembly Bill 47. I believe we have Mark Krueger, Chief Deputy Attorney General, here to present. I am now opening the hearing on Assembly Bill 47.

**Assembly Bill 47: Revises provisions relating to unfair trade practices. (BDR 52-425)**

**Mark Krueger, Chief Deputy Attorney General and Consumer Counsel, Bureau of Consumer Protection, Office of the Attorney General:**

On behalf of Attorney General Aaron Ford, we are happy to have been provided an opportunity to introduce Assembly Bill 47 [[Exhibit C](#)], which makes amendments to the Nevada Unfair Trade Practice Act, *Nevada Revised Statutes* (NRS) Chapter 598A, otherwise known as Nevada's antitrust laws. Before I get into what A.B. 47 does, I want to provide the Committee with some background on how we got to where we are.

I want to thank each and every one of the stakeholders whom we have worked with to get us here. Many of these stakeholders will testify in opposition to A.B. 47, but make no mistake about it: the stakeholders and the Office of the Attorney General worked long and hard together to get us to where we are. We appreciate their work. We have worked with over 30 stakeholders and have held numerous meetings as a group at large, and then we even had

individual one-on-one meetings with any and all stakeholders who were interested in meeting with us. We met their concerns with open minds and a willingness to make amendments. We started with broad language, and due to the concerns we heard from the stakeholders, we narrowed our focus, refined our words, and sharpened our pencils. We were not afraid to make changes, but we also did not lose focus on what we needed to accomplish. In the end, we believe that the legislation you see here accomplishes our needs without creating an undue burden on the stakeholders.

Assembly Bill 47 has three distinct focuses. First, it allows our Office to take a peek at consolidation transactions in the health care market in Nevada. Second, it provides clarification and cleanup language to remedies and the investigatory authority of the Office of the Attorney General. Third, it limits the applicability of noncompetition covenants, or noncompete agreements, by prohibiting them from being applied to employees who are paid on an hourly basis so that those employees are not limited in their ability to get new jobs when they stop working for their current employer. I am going to go through each of these three focuses, and in so doing, I will address the objections we have heard.

Section 1 adopts sections 2 through 6 of the act [page 2, [Exhibit C](#)]. These sections really rely on the health care transaction. Health care costs are a concern to every Nevadan, and consolidation in the health care industry can increase health care costs to Nevadans and Nevada families. Our first focus gives the antitrust team and our Office the opportunity to take a peek at those transactions that will affect costs in health care and ensure competition in the health care market so costs can be lower. This would include transactions that are not reportable under the federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) as well as requiring that those HSR filings be sent to the Attorney General's Office. We already have the ability to issue a formal civil investigative demand (CID), or a subpoena, for this information. All we are asking for is the industry to help us out by providing us with a confidential, often one- or two-page report to allow us to see if a particular transaction in health care is something we should be taking a closer look at to ensure that the health care market remains robust in Nevada. Such an ask requires minimal effort from the industry and provides potentially great rewards for Nevadans.

Under sections 2 through 6 of A.B. 47 [pages 2-4, [Exhibit C](#)], the transactions that are reportable include all types of transactions where physicians and other health care practitioners experience consolidation through material changes in ownership or control. Examples of the types of transactions that would require this notice include hospital mergers, vertical consolidation of physician practices into larger entities such as hospital systems or private equity, and horizontal consolidation of physician practices.

The notice provisions of A.B. 47 do not create an onerous burden for health care entities. For HSR transactions, the entity would send the Attorney General a copy of the HSR filing. For smaller transactions, the entity would submit a one- or two-page report sending forth information regarding the identity and nature of the parties and practice. The notice

provisions do not do anything that is not already authorized under existing law through the issuance of multiple CIDs, which we may issue monthly if we have to. The bill simply requires the industry to provide us notice of transactions earlier than we would receive them otherwise. The 30-day time frame in section 2, subsection 2 [page 2, [Exhibit C](#)] is consistent with the HSR filings.

All information reported to the Attorney General remains confidential. That was something the industry and the stakeholders wanted. If there is a material change to the transaction during the 30-day transaction period, it would just trigger the filing of a new report, which again, would also be confidential. We noted there were some objections as to the question of breadth in section 2, subsection 2, paragraph (c) [page 2, [Exhibit C](#)], where it says, "business entities that are to provide services." We are willing to edit that to make it a little clearer that it is health care or health carrier business entities that are to provide services. Anywhere there is an objection where we can provide clarity is an example of how we have worked with the stakeholders to refine A.B. 47.

The term "primary service area" in section 2, subsection 2, paragraph (f) is used to give entities flexibility in stating their geographic markets [page 2, [Exhibit C](#)]. Businesses are aware of the geographic markets they serve, and flexibility is important in defining geographic markets because different types of health care entities have different service areas. For example, a hospital in a rural county may serve several surrounding counties, whereas an entity that provides traveling nurses may serve the entire state of Nevada.

Sections 2 through 6 of A.B. 47 [pages 2-4, [Exhibit C](#)] are designed to be interpreted together, not independently. For clarification, section 2 provides for notice to the Attorney General, while section 4 requires that information received pursuant to section 2 remains confidential. Then, section 6 defines the types of transactions which are subject to notice provisions in section 2, subsection 2. Section 6 does not have a reporting requirement that is independent of section 2, or a different confidentiality requirement from that of section 4. I provide that information to clear up any ambiguity about how those sections work together.

It is not the intent of the Attorney General to share the vested authority for antitrust enforcement. The Attorney General is not looking to delete any of the provisions regarding confidentiality for these types of transactions. The civil penalties in section 5, subsection 1 [page 3, [Exhibit C](#)] are up to \$1,000 per day for violations. When civil penalties are awarded, courts have broad flexibility to apply these civil penalties; the phrase "up to" allows for that flexibility.

Contrary to some objections, it is not necessarily accurate that a group practice of seven is very little [page 3, [Exhibit C](#)]. In some marketplaces, particularly in smaller counties, seven may be a greater number. The question we have to ask is, What is the health care market in each locality? If the market is especially serviced, for all but Clark County there may only be one or two physicians practicing within a reasonable travel area such that the consolidation of two practices could have an effect on the market.

Material changes in ownership and control of public entities do not necessarily present a concern in evaluating the market; therefore, a notice requirement for payers is not included in A.B. 47. Self-funded entities include large public employers such as the State of Nevada or counties. Remaining self-funded entities, such as casinos and unions, do not participate in health care delivery as their primary business, and thus the material change in their ownership and control would not increase or decrease consolidation in the markets for health care delivery.

We note an objection to the term "third-party administrator" in section 6, subsection 6 [page 3, [Exhibit C](#)], and we wanted to let you know that is a scrivener's error of sorts. We are deleting that language. The definition of "reportable healthcare or health carrier transaction" in section 6, subsection 8, is deliberately broad. We have limited the reportable transactions to activity in Nevada, but the intent is to receive notice of the transactions which affect health care provider transactions in Nevada. The notice is in the form of a one- or two-page report, as I have said. It is not onerous. Because it is confidential, it should not have a chilling effect on health care transactions in Nevada. Moreover, internal transactions that are nonconsumer facing may still have an effect on price, quality, and consumer choice. The word "affiliation" in section 6, subsection 8, subparagraph (1), means one entity has control or power to control another, or a third party controls both entities [page 4, [Exhibit C](#)]. We are capturing business affiliations, not marketing affiliations; as an example, a grocery store affiliating with a hospital to distribute flu vaccines.

Moving on to sections 7 through 13 [pages 4-11, [Exhibit C](#)], the second focus of A.B. 47 provides our Office with clarification as to the remedies we have in investigations and actions under the Nevada Unfair Trade Practice Act. It also provides clarity to the confidentiality provisions of those investigations. There has been no opposition to this section of the bill. Section 12 confirms that the Attorney General shall keep information that is submitted to it as confidential pursuant to an administrative subpoena, also known as a civil investigative demand, under NRS 598A.110, and that the information is not subject to public records law disclosure under NRS Chapter 239 or to the Patient Protection Commission under NRS Chapter 439.

Finally, moving on to section 14, the language of the third focus of A.B. 47 is an example of our Office and the stakeholders working together. The rule prohibiting noncompete agreements from applying to employees who make an hourly wage came from the stakeholders. The rule is simple in application and understanding and protects employees who need the protection. With that, I will turn the presentation over.

**Chair Jauregui:**

We appreciate your presentation. It was very helpful for me to have you break it down into sections like that. I am going to turn it over to Committee members for questions, but before I do, I want to ask you a quick question regarding the first focus of the bill, sections 1 through 6 [pages 2-4, [Exhibit C](#)]. Could you give us an example of a case where, if there had been reportable transactions in Nevada, the Attorney General's Office might have been able to prevent a horizontal consolidation which caused health care prices to go up?

**Mark Krueger:**

I have with me Lucas Tucker, Senior Deputy Attorney General, and Marie Martin, Senior Deputy Attorney General. Unfortunately, while we have spent a lot of time talking about the confidentiality provisions of the Nevada Unfair Trade Practice Act, we cannot get into details of prior transactions. But to answer your question, yes, there have been incidents of reports where transactions have come to our attention. The only problem is that oftentimes we get notice of those types of consolidation transactions later in time. With an earlier notice provision, we can take a look at them.

If we find out about it, oftentimes through working in conjunction with our federal partners and particularly if the transactions hit the HSR threshold, then we will obviously work hard to make sure there is competition in the marketplace so there is not an increase in health care costs. We have been successful in many of our reviews when we do find out about them. We are concerned that there are some smaller consolidations, especially in markets where there is potentially a particular provider group, that could drive up costs. That is why we want to take a peek at them. I would also ask Ms. Martin or Mr. Tucker to chime in to answer this question.

**Lucas Tucker, Senior Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General:**

There have been transactions, particularly under section 2, subsection 2, which fall below the HSR threshold. The current reporting threshold under the Hart-Scott-Rodino Act is \$92 million. As Mr. Krueger said, we cannot go into too many details about those investigations because they are confidential. I can confirm that in the past we actually had a consolidation here in Las Vegas—so not a rural county—that fell below the threshold. That meant neither our Office nor the Federal Trade Commission (FTC) knew about this transaction until it was about to be consummated. In that case, both the FTC and our Office were a little concerned, so we went to the companies to ask for their information. They ended up having to issue a hold separate letter. Even though they had already consummated the transaction, they agreed to hold the assets separate for a period of time to allow us to get some information about it. It would have been better for our Office and also the parties involved in that situation if we had known about it beforehand. That is an example of a transaction that is captured under section 2, subsection 2, because it falls below the reporting requirement in the Hart-Scott-Rodino Act.

**Marie Martin, Senior Deputy Attorney General, Office of the Attorney General:**

That is a great example by Mr. Tucker. Now, we are kind of looking at a chicken-and-egg problem, if you will. We cannot share with you confidential information that we have, and we do not get information for smaller transactions and so we do not know that they happen until months, or even years, later when it is really difficult to unwind transactions.

Something we do know, which economic studies will show you—we have been reading an awful lot of them—is that time and again, consolidation in markets will cause prices to increase, quality to potentially decrease, and it certainly causes choices for consumers to decrease. It is not just the huge transactions where one or two insurance companies get

together to combine that affects markets. It is very frequently an aggregation of smaller transactions where one physician group joins another and they may be practicing in a key subspecialty, for example. Or it can be when a hospital system or a vertically integrated insurance carrier that has a number of different providers integrated into it, acquires a key specialty. Some might say that particular specialty may not have a huge effect on the market, but if it is a key specialty, it could allow for a vertically integrated system to affect prices in an entire market. It is important to look at these transactions and see the effect of them. This can be done very quickly; as Mr. Krueger said, it is not an onerous burden to give a one- to two-page form to us saying what they are doing so that we can take a look and have an idea of it.

**Chair Jauregui:**

I have another question, but I will turn it over to Committee members first.

**Assemblywoman Considine:**

My question deals more with the noncompete clause and the provision in the bill being solely for the benefit of hourly wage workers. I was wondering if there was any discussion or any issues with antipoaching, which is sort of the flip side of that. When consolidation happens, if there are agreements not to hire people from the smaller pool of competing entities, that seems to have the same effect of stopping employees from being able to move to another workplace with the same skills. Has that flip side of the situation been an issue or been discussed?

**Mark Krueger:**

We looked more at the perspective of hourly wage workers; we did not look at the flip side of it and have not discussed it yet. That is certainly something we can have discussions with the stakeholders about. As I said earlier, the stakeholders really worked well with us to come up with this bright-line rule of the hourly wages. However, we hear your concern and we can definitely have those discussions.

**Assemblyman Flores:**

I want to take it back before we get too far into the weeds. I do not navigate in these conversations enough, so I think I will ask a broader question to help me put everything into perspective.

Going off of the response that was previously given, I understand you do not think it is too onerous to have a one- or two-page report so that we can see what the agreement is, and, of course, to promote transparency, consistency, and all that good stuff. I would appreciate it if you could walk me through how you foresee it playing out. I have been jumping back and forth between the original language and the amended language, so you may have addressed it and I may have missed it, but I am trying to visualize the report interaction. We have entity A, who has the perspective of entering into an agreement with entity B, and they are going to engage and interact. They put something in writing that gets submitted to you, and

you then get that one- or two-page document and look at it. I foresee there being multiple concerns with needing more details or asking for more information to be provided. I want to see how that relationship will start, and then from there I think I can engage with more questions.

**Mark Krueger:**

We appreciate your concern. I will try to take you through it a little bit, and then I will invite Mr. Tucker and Ms. Martin to supplement my answer.

Basically, it is a very simple process. Say it is an HSR filing. They could use the HSR filing, which is the same one they would be turning over to the federal government, and just give us a copy of it. We can also go the other route. If it was not an HSR filing because it fell below the threshold, then it would be a form of one or two pages that would provide us an overview of what this transaction is going to do. The report would come in to us, and we would take it and review it. And, yes, we may tell them that we want to discuss it a little bit and set up meetings to talk about it. We may also say we need additional information.

Again, the important thing to note is we already have the authority under existing law to issue a subpoena or a civil investigative demand. That part of the investigation would not change from what we currently have the authority to do. This just provides us with notice up front. As Mr. Tucker gave you in the example he testified to a few minutes ago, it is a lot easier to know about these things up front than having to then tell the parties that we need them to stay their transaction for 30 or 60 days, or another time frame, in order for us to do our investigation. That delays their ability to go ahead and consummate that transaction. I hope I answered your question, and I will turn it over to Ms. Martin or Mr. Tucker to provide some additional information.

**Marie Martin:**

The idea is that we receive a copy of the HSR filing or the one- to two-page report. We review it quickly. We then determine whether or not we are going to send something out. We have that 30-day period to send out a CID requesting further information, and then we get that information. In most cases, we would be satisfied by seeing the report and would not send out a CID, by the way. Sometimes we will say this is a key subspeciality, and we should send out a CID to find out more about this transaction. We find out, and then we decide how to proceed from there. As Mr. Krueger said, this just gives us a much earlier look at transactions before they occur. That is the envisioned process.

**Assemblyman Flores:**

I apologize for approaching this conversation from such a novice lens. I wanted to touch upon the previous conversation, which was that they are technically already doing this with the federal government, and you already have the authority to engage in this exploratory discussion. Logically, you would not know to do that because you do not know that relationship exists or the agreement is out there. I completely understand that; you want to know what is happening preemptively so you can raise questions on the front end rather than the back end.



So they are reporting to the federal government, then they are reporting to the state. I guess the question I have is, say the state has a host of questions. Is there a scenario where the state, or in this case, the Attorney General's Office, would have a vested interest in engaging in an exploratory process for more information, but the federal government would not? What I am trying to understand is, if we are sending this to both the federal government and the state, is there a scenario where the federal government is going to come back and ask for the same exact information as the state? Or even the opposite of that, where the federal government says they are good, but the state says wait a minute, there is an issue here, and the Attorney General's Office does something beyond what the federal government is doing?

**Mark Krueger:**

I hope I can provide a little more clarity. With your last question, you also triggered in my mind a thought regarding the prior iteration of the bill compared to what it looks like now [[Exhibit C](#)]. That is exactly what we are talking about: how we worked really hard with the stakeholders to get it to a very narrow focus.

The result is this: if there is a federal transaction that is reportable through an HSR filing, then we are going to work together with the federal government on that. Now, if there is a component of that federal transaction that is solely Nevada-related, we may then look at it from a Nevada perspective only while in conjunction with the federal government or by ourselves. The federal government would defer to us if it were Nevada only, whereas in conjunction with them, we would work together to make the decision as a whole.

Now, we are also talking about nonfederally reportable transactions, or those transactions which are solely within Nevada. We limited this bill to cover only Nevada transactions. The federal government is not likely to get involved with those limited transactions which are in Nevada only. If they do get involved in them, it is probably because the transactions interact with other states or have a federal component. If they do not get involved in them, then yes, we may get involved in them solely from a Nevada perspective and under our state laws. I hope that answers your question.

**Assemblyman Flores:**

I appreciate that answer. I just walked into it with such a novice lens, I believe that is the correct framing of it.

**Assemblywoman Kasama:**

I am going to copy Assemblyman Flores' framing of coming from a novice's perspective. I am very much from that novice land. If Mr. Tucker is still available, I just have a couple of questions for him so as to better understand. He talked about one transaction in Las Vegas where it would have been good if they had known ahead of time what the issue was. I do not know if that is still ongoing, but what was the result? Was it that the merger was stopped, or was there just a desire to get the information ahead of time?

**Lucas Tucker:**

Under the statute, the information that we obtain is confidential until or unless a complaint is filed to enforce Nevada's antitrust laws. All I can say is that in that matter, a complaint was not filed and so the outcome of the investigation is still considered confidential. I cannot really provide you with any details other than to say that once we found out about it, which was not until it had closed, we did have concerns, as did the Federal Trade Commission (FTC). Because of the timing in that situation, the parties had to pause the closing and hold their assets separate. I think in that situation, it would have been better for all parties, including our Office and the merging parties, if we had found out about it beforehand.

**Assemblywoman Kasama:**

I am trying to understand the larger landscape here as well. I know one of the goals is to keep costs down and keep more choices of service. However, are not some of these consolidations happening because either party is losing money and they cannot continue to subsidize their practice? Especially with Medicaid cutbacks and other issues in these areas, where at times it sounds as though they are not even getting their costs covered. Would that not necessitate some consolidation because one party or another is losing money? In a case like that, I am curious if the merger is still allowed to happen as a necessity due to cost, even though there would be fewer providers in the market.

**Mark Krueger:**

I would say the reason for us to get a notice in order to take a peek at these transactions is not necessarily to stop consolidations. It is to make sure there is a robust market. If there is a case, such as the example you gave where the market is not being affected because one or the other provider is going to be going out of business, or it is so severely hamstrung that it is unable to work, and the consolidation might actually reduce prices, then that is not an opportunity for our Office to deny the merger, as it would not be helpful for Nevadans. We are looking to help Nevadans by making sure the competition is out there. The facts in every situation are going to require and necessitate an independent review. That is why a notice provision such as we are asking for makes the most sense. Getting it early on makes sense too. That does not necessarily mean we are going to say we do not have an interest, or that we will tell them to go ahead because this merger sounds like it makes sense.

**Chair Jauregui:**

Are there any other questions?

**Assemblyman O'Neill:**

What other states have instituted similar laws, and what effects have they had on trade benefits in the delivery of medicine?

**Mark Krueger:**

Washington and Connecticut have both passed similar laws. I will let Ms. Martin answer the second half of your question, as she is caught up on the information on what effect it has.

**Marie Martin:**

Yes, the laws were passed in Washington and Connecticut. As to the economic effects, these laws have been passed very recently. It is in response to activity to ensure that we are able to capture these types of transactions earlier. In terms of any economic studies that have been done in follow-up, we do not have any economic studies in follow-up from either of these states that would let us say, yes, this resulted in lower prices, or no, it did not result in lower prices or increase quality of service.

However, we can certainly tell you from our state's perspective that learning about transactions earlier rather than later is always good. The ability to be able to review them and understand them is good from our perspective and from the perspective of the businesses engaging in these transactions. We think it is better for them to be able to engage with us earlier and explain themselves. For example, if you do have a situation like Assemblywoman Kasama mentioned where there are procompetitive benefits—what we call efficiencies—stemming from the transactions, then we should know about those earlier.

**Lucas Tucker:**

I wanted to clarify that I believe Massachusetts also has a similar law.

**Assemblyman O'Neill:**

We are short of physicians and medical providers as it is. That is what I am looking for: to see if this bill helps attract more business, or if it is an interference with attracting and bringing in more health care. I appreciate your time. It is a shame we do not have more information from other states before we jump into the pool.

**Chair Jauregui:**

Assembly members, are there any other questions? [There were none.] I am going to move into the support portion of the hearing. Can we check the telephone line to see if there is anyone who wishes to testify in support?

**Maya Holmes, Healthcare Research Manager, Culinary Health Fund:**

[Ms. Holmes read from written testimony submitted to the Committee, [Exhibit D](#).] We are a nonprofit health fund that provides comprehensive health benefits for approximately 60,000 culinary members and their dependents, or about 125,000 lives. Our priority is ensuring access to high-quality, affordable health care in Nevada. For public and private payers and patients, health care dollars are precious and in limited supply. Health care is a critical need and we must all be effective stewards of those monies.

Over the last 30 years, health care prices have increased in the United States at a staggering pace, and health care consolidation is a primary driver. Nationally, there has been tremendous consolidation in the health care industry, and experts expect that only to increase with COVID-19. You must understand and address those issues in Nevada. We support

A.B. 47 and appreciate the Attorney General's work in bringing this important bill forward. This bill takes essential steps towards protecting competition in Nevada's health care markets and ensuring that Nevadans have access to quality, affordable health care established through a robust and competitive market.

However, we do request that the Attorney General share the summary information provided in section 2, subsection 2, with state agencies such as the Department of Health and Human Services and the Patient Protection Commission (PPC) after the transaction is completed. It is a very narrow list of reported information that is publicly available but is currently not collected or aggregated in a systematic way that is easily or efficiently available to state agencies. We understand there is certain information the Attorney General's Office needs to keep confidential for its investigations and in order to work with the FTC, Department of Justice, and other states. Still, we do not see how the specific summary information listed in section 2, subsection 2, falls into this category. Connecticut makes this information available to the public by posting it on a state agency website after the transactions are done.

The last thing I wanted to say is that one of the mandates of the Patient Protection Commission is to examine the cost of health care and the primary factors impacting those costs. We know consolidation is a driving factor, if not the driving factor, in health care costs. This information is vital for the PPC to fulfill its mission and is essential to other state agencies responsible for monitoring our health care system.

**James Kemp, representing Nevada Justice Association:**

We are in support of Assembly Bill 47, and particularly the provisions that restrict employment covenants not to compete, which are in section 14 of the amended bill [page 10, [Exhibit C](#)]. We liked the bill as originally proposed even better; it would have completely eliminated employment covenants not to compete. What we have here in section 14 of the amendment is definitely a huge improvement and a positive step for employees in Nevada.

These agreements are often merely designed to frighten employees and have the effect of suppressing wages. They prevent employees from getting the maximum wage their talents would bring them in a free market. It requires employees and their families to often have financial difficulties and may cause them to relocate to another state out of Nevada. It can be a particular hardship on older employees. For example, I have a client now in my employment with a law practice who is in his late 60s and who is going to be held in a one-year covenant not to compete when he has just two or three years left in his working life. He has only ever worked in this one particular, narrow industry. It is going to be a terrible hardship on him and will eliminate some of his remaining working life. Any way that we can restrict these covenants not to compete is something the Nevada Justice Association is in favor of.

I think the fee-shifting provisions in section 14, subsection 6, paragraph (a), will be very helpful [page 11, [Exhibit C](#)]. Often, employers do try to enforce covenants not to compete that are overly broad and unenforceable. Under this provision, employees would have the ability to recover attorney's fees and costs if they are successful in challenging a covenant not to compete. That can be important because, as I often tell people, you can lose just by having to fight one of these out. You end up having to pay fees and costs, and oftentimes if you lose, you can be forced to pay fees and costs to the employer and potentially also to a new employer. If somebody gets a new job and it turns out to be in violation of their covenant not to compete, new employers can often face litigation, which certainly sours the new employment relationship as well. Any restrictions on covenants not to compete are good and the Nevada Justice Association is in support of them and of A.B. 47 in this regard.

**Chair Jauregui:**

We will now move to those who wish to testify in opposition to Assembly Bill 47.

**Jesse Wadhams, representing Nevada Hospital Association:**

First, I do want to thank the Attorney General's Office for their engagement. Mr. Krueger, Mr. Tucker, and Ms. Martin have been very engaged, and it is a great credit to Attorney General Ford's Office. He opened up the conversation with a working group and has helped do that. Ultimately though, while that engagement has been productive, we are still opposed to this bill. The Nevada Hospital Association has been working with other stakeholders, including the Nevada Association of Health Plans and the Nevada State Medical Association, as representatives of Nevada's health care delivery system. We have put together some joint comments which we will give into the system.

My comments today are mostly based on a slightly earlier version of the bill. I am afraid we got a proposed amendment on March 11 that is slightly different from the one that appeared on the Nevada Electronic Legislative Information System (NELIS) about 40 minutes before this hearing [[Exhibit C](#)]. I may have them a little bit crossed, but we are still reviewing those changes and we are still opposed, at least on the first reading.

Ultimately, like every other stakeholder group here, Nevada's hospitals have had transactions reviewed by the Attorney General's Office. That process is not only in-depth, but it can often result in substantial changes to the transaction as required by the Attorney General's Office. I do want to make a point clear, building off of Assemblyman Flores' question earlier. This is not the same reporting that goes to the Federal Trade Commission under the Hart-Scott-Rodino Act. This is a new, separate burden of reporting on health care entities only. It is new, it is different, and it is not in sync with those standards.

At the end of the day, the need for this bill based upon the fact that the Attorney General has reviewed these transactions remains elusive. We just do not know what the underlying goal is. The bill diverges significantly from federal reporting standards and definitions. The report would include granular data, which can be subject to negotiation, not only 30 days prior to the deal's close but throughout the entire negotiation process, all the way up to the end.

I do appreciate that Mr. Krueger made a note regarding the businesses providing services in section 2, subsection 2, paragraph (c) [page 2, [Exhibit C](#)]. For the lawyers, there are a lot of things that can fall under that definition, so I do think that will require some additional work. I have looked at Washington and Connecticut, and Mr. Tucker also referenced Massachusetts, although I am not familiar with that one. Neither of those states goes so far in requiring this level of reporting or this particular definition of "material change." Section 7, subsection 10, has changed a fair bit, so I do want to take some time to look at that, but that is the material change standard which Washington and Connecticut have a much more defined version of with a better understanding of the reporting parameters.

This also sweeps in a lot of internal contracts and things that are not consumer-facing at all, even those that are within a parent-subsidary in the same company. We can also look at the burden of \$1,000 a day for fines that are placed on a small subset of reporting entities for all manners of transactions. Not only is it a \$1,000-per-day penalty, but let us not forget that NRS Chapter 598A has criminal penalties attached to it; this is a criminal statute.

While it is a subtle point, I also want to make a note of a change in section 10 to add agencies, boards, and commissions to the oversight authority of the Attorney General's Office. Those particular entities will often have market participants and are part of the regulatory oversight of a particular agency, and I think that raises certain constitutional issues that the Supreme Court has looked at as recently as the *North Carolina State Board Of Dental Examiners v. Federal Trade Commission*, 574 U.S. 494 (2015) case.

**Chair Jauregui:**

I know we have a few more people signed up to testify in opposition. I want to see if you could wrap up and perhaps share something in writing for the Committee.

**Jesse Wadhams:**

Let me just say that, in the end, we are still concerned about the chilling effect this new mandate on providers will have on the movement of capital and the ability to recruit physicians in the middle of an ongoing pandemic. We will work with the Attorney General's Office and keep the Committee posted.

**Tom Clark, representing Nevada Association of Health Plans:**

Mr. Wadhams has outlined our concerns. We have enjoyed working with the Nevada Hospital Association and also with the Nevada State Medical Association. These are three groups that do not normally sit at the table together on these particular issues. Mr. Wadhams has outlined our concerns quite well, and I yield my time to others who come forward in opposition.

**Chair Jauregui:**

Can we check the telephone line to see if there is anyone else who is signed up in opposition?

**Assemblyman Flores:**

I apologize for speaking out of turn, but I would like to ask a point of clarification. I want to make sure I am looking at the right document. I heard Mr. Wadhams reference section 7, subsection 10, but I am looking at the amended document that was provided in NELIS [[Exhibit C](#)]. Is that the same document everyone else is referring to when we are talking about the amended version of the bill? Is there a separate document that I may have missed? I want to make sure I am looking at the correct document, as I do not see a section 7, subsection 10.

**Mark Krueger:**

I think Mr. Wadhams misspoke because he was looking at a prior iteration of the amendment. The current amendment you are looking at was the one that was sent in [[Exhibit C](#)]. The specific language that Mr. Wadhams was referring to is in section 6, subsection 8 [page 4].

**Chair Jauregui:**

Thank you for the clarification, Mr. Krueger, we appreciate that. You said that was section 6, subsection 8?

**Mark Krueger:**

Yes, where it reads "'Reportable healthcare or health carrier transaction' means any transaction that results in a material change. . . ."

**Chair Jauregui:**

Thank you, Assemblyman Flores. I appreciate your pointing that out so we are all on the same page. Can we go back and check the telephone line for anyone who wishes to testify in opposition?

**George Ross, representing HCA Healthcare:**

HCA Healthcare opposes A.B. 47. I want to make it clear that we really appreciate the opportunity the Attorney General has given our industry and us to participate in the preliminary version of this bill and make our concerns known. We do know a number of changes have been made. However, we echo the concerns of the Nevada Hospital Association, and in particular we are concerned about the reporting that is required beyond mergers and acquisitions. Quite simply, those requirements will directly and negatively impact the industry's ability to provide quality care in a timely and cost-effective manner.

**Peter Guzman, President, Latin Chamber of Commerce:**

The Latin Chamber of Commerce supports the general concept of punishing bad actors, but at this time we must join some of our colleagues in opposing this bill as currently written. We appreciate the Attorney General's Office for working with the business community. However, this bill will have a negative impact on our very important health care partners and members, particularly as the pandemic continues. We look forward to continuing the conversation with the Attorney General's Office regarding our concerns.



**Jaron Hildebrand, Executive Director, Nevada State Medical Association:**

[Mr. Hildebrand read from written testimony submitted to the Committee, [Exhibit E](#).] Our organization represents Nevada's physicians and doctors across the state, but we are first and foremost a patient advocacy organization. I am testifying today in opposition to [A.B. 47](#). We appreciate the communication with the Bureau of Consumer Protection, and we recognize that this bill has merit, likely due to the result of many conversations we have had on this proposal. However, the draft remains overly broad and places unnecessary burdens on health care providers.

This bill will place additional administrative paperwork on our doctors and their staff at a time when we are responding to a global pandemic and are still facing 6 percent Medicaid cuts. It will also increase health care costs and reduce access by taking the physicians' attention away from their patients. Most of our transactions are not a concern. It cannot be emphasized enough that the Attorney General already has the ability to intervene where there is a reason for concern.

As drafted, this bill not only sweeps in medical contracts, but we believe it captures all transactions, including legal, accounting, human resources, and really everything that a small business does. To provide one example, two primary doctors in south Reno who see dozens of patients a day must merge to save on administrative and building upkeep costs and possibly to expand their patient base. These are all positive things. This type of transaction should not be viewed as anticompetitive behavior, and additional burdens should not be placed on these types of small, family-oriented community health care providers.

This bill presumes that all health care transactions are suspect and it will likely have a chilling effect on our system of health care, which will negatively affect Nevada's families and your constituents. Small practices throughout the state, which are included in this bill, are facing lower-than-normal patient volumes due to the pandemic. However, this bill will make it more difficult for doctor's offices to remain viable and keep their doors open.

Physicians want to care for their patients; they are healers. It is at the heart of what they do every single day and the oath they take. The Nevada State Medical Association understands the importance of a strong consumer protection bureau, but we believe that it is unclear how requiring extensive reporting on small practices will strengthen the mission of the Bureau of Consumer Protection. Most important, we believe [A.B. 47](#) as currently drafted will reduce access to care, which is why we still stand in opposition today.

**Paul J. Moradkhan, Senior Vice President, Government Affairs, Vegas Chamber:**

First, I want to thank the Attorney General's Office for their outreach to the business community regarding [A.B. 47](#). I appreciate their openness to receiving feedback as we work through our concerns about this bill. I would like to thank Mr. Krueger with the Attorney General's Office for facilitating many of the conversations and for the several drafts which we have been working from.



As you have heard, this bill has three main policy components. We have worked through our concerns about the noncompete clauses, which we believe in the current draft is a good balance between employees and employers as a follow-up to the Nevada Supreme Court ruling in *Golden Road Motor Inn, v. Islam, et. al.*, 132 Nev. Adv. Op. No. 49, July 17, 2016, and the passage of Assembly Bill 276 of the 79th Session. In the original draft of the merger and acquisition piece, we were concerned about how the broad scope would impact Nevada's business climate. We believe the latest draft narrowing the language mitigates many of those concerns.

However, our opposition today relates to the third part of the bill, which is the health care provisions. As you have heard, many of our health care members continue to have concerns about these provisions. This includes how this bill will overlay with the federal regulations of the Hart-Scott-Rodino Act, confidentiality documents, and the penalty structure, to mention a few concerns. We know there is still an opportunity to address these concerns and we appreciate that from the Attorney General's Office. With that said, we will make the commitment to continue to work with the Attorney General's Office to find a conclusion that will help us address the nexus of the bill.

**Lesley Pittman, representing Reno Diagnostic Centers:**

[Ms. Pittman read from written testimony submitted to the Committee, [Exhibit F](#).] Reno Diagnostic Centers (RDC) is the only independently owned diagnostic imaging facility in all of northern Nevada with two locations in Washoe County. Reno Diagnostic Centers has been in business for more than 30 years and has three board-certified radiologists on staff. We were the first to bring MRI [magnetic resonance imaging] technology to Nevada and we serve thousands of Nevadans annually throughout northern and rural Nevada.

We appreciate the Attorney General's intent behind A.B. 47 to provide greater oversight of mergers and acquisitions to help ensure that the results of these activities do not negatively impact Nevadans by reducing choice and increasing costs in the health care marketplace through consolidation. We also appreciated the opportunity to share our concerns with the Attorney General's team. However, we remain concerned with how this bill will go about achieving its objectives.

Mainly, we are concerned with the definition of "group practice" in section 6, subsection 2 [page 3, [Exhibit C](#)] as "two or more providers" and subjecting small operations like ours to the reporting requirements outlined in section 2 [page 2, [Exhibit C](#)]. It is important to note that each new regulation requirement that is mandated on small health care operations comes with increased cost, as it often requires the hiring of additional staff, or increased time and paperwork for existing staff, to maintain compliance. Any new mandates must be considered judiciously as they come with the reduced ability of smaller operators to compete with larger provider organizations.

As I mentioned, RDC has been in operation for more than 30 years. During that time, we have been on the receiving end of many acquisition offers. We have consistently declined these offers because we know members of the community both deserve and demand

continued access to low-cost, high-quality diagnostic imaging. Increased regulatory requirements that impact the cost of doing business will make those acquisition offers more attractive, thereby further consolidating the health care marketplace, something which appears to be the opposite of what the bill seeks to achieve.

**Jessica Ferrato, representing American College of Emergency Physicians:**

To provide some background information, emergency physicians are frontline workers working through this pandemic to care for our most vulnerable populations, as you all know. We have to take each and every patient who comes through the door, and the pandemic has illustrated the physician shortage we have statewide. I want to thank the Attorney General's Office for all their work and their inclusion of us in meetings to work on this bill. Obviously, we still have some concerns. I would like to reiterate the comments by my colleagues and also highlight a few sections that have been mentioned previously.

We have concerns over the reportable transaction language and the confirmation that it will include internal contracts as well as employment contracting with the insurance industry. Concerning hiring, we are looking to hire doctors, many from out of state to bring them into Nevada. There are concerns that this will be swept into this legislation. We already have a doctor shortage throughout the state, so we have concerns from a recruiting perspective. We also have concerns in section 5 [page 3, [Exhibit C](#)] regarding the civil penalties, which seems relatively heavy-handed as it will be \$1,000 per day for violations without any language on willful violations or otherwise. Again, we look forward to continuing our work with the Attorney General's Office and we appreciate your time.

**Nick Vander Poel, representing Reno + Sparks Chamber of Commerce:**

We appreciate Attorney General Ford and his Office working with stakeholders. I can say it was a very healthy conversation on [Assembly Bill 47](#), and we found some common ground. However, in the end, we are still opposed to the bill as written. We share the same concerns that some of my colleagues before me outlined, and some of the potential implications the bill would have on health care in Nevada. I will keep it short, as many have reiterated what has already been said.

**Bryan Wachter, Senior Vice President, Government and Public Affairs, Retail Association of Nevada:**

In the interest of time, I would just like to echo the comments of Mr. Moradkhan of the Vegas Chamber. We appreciate the Attorney General's Office for working with stakeholders on [A.B. 47](#), and at the moment we are in opposition to the bill.

**Amber Stidham, Vice President, Government Affairs, Henderson Chamber of Commerce:**

[Ms. Stidham read from written testimony submitted to the Committee, [Exhibit G](#).] I also want to say that we appreciate the Attorney General's Office and Mr. Krueger's willingness to work with stakeholders. We, too, echo a lot of the sentiments that our friends in health care expressed earlier today. Perhaps a newer aspect of why our organization remains in opposition to this bill is in regard to section 14 [pages 10 and 11, [Exhibit C](#)], which really

seeks to amend NRS 613.195 as it would apply to all employers, not limited solely to health care entities. It is our understanding that this proposal regarding the enforcement and remedy process continues to be extremely punitive.

As it stands, Nevada law outlines various criteria which must be demonstrated during a case to determine whether a noncompetition covenant is enforceable. Many of these actions can be subjective in their legal determination. That issue is coupled with the language suggesting that employers may not bring a cause of action to enforce a covenant not to compete, as well as punitive, mandatory awards of attorney's fees, which are enhanced by the addition of the contextual language used such as "shall" versus the "may" that was lifted. We believe this will still have a direct effect on existing agreements among employers and employees. We also believe there are effective rules already in place to protect those workers who are not violating noncompete covenants, and that they should still bear out in court as it stands. We would like to see A.B. 47 continue to be refined. We continue to remain committed to ongoing conversations and we thank you for your time.

**Chris Bosse, representing Renown Health:**

Today I am here testifying in opposition to A.B. 47. While we very much appreciate the open process the Attorney General and his staff have provided on this concept bill, we believe the current version of this bill still does not address our concerns regarding the impacts that the significant reporting requirements and the potential gaps in confidentiality protection could have on the health care industry. We agree with the Attorney General's Office that the Attorney General already has the authority to access any documents or information related to antitrust matters. We are supportive of reasonable transparency, but we would like to see some narrowing of the scope of the transactions that need to be reviewed so as not to put an unreasonable burden on health care providers and facilities. We support the comments made by the Nevada Hospital Association and many of the others who spoke before me today, and we hope to continue working with the industry and with the Attorney General's Office on further refinement.

**Chair Jauregui:**

Are there any more callers in opposition? [There were none.] We will now move into testimony in the neutral position. Can we check the telephone line for testifiers in neutral? [There were none.] Mr. Krueger, would you like to give any closing remarks?

**Mark Krueger:**

I will keep my comments very brief. Members of the Committee, thank you for your consideration of A.B. 47. To be clear: The intent of the first focus of A.B. 47 is to allow the antitrust team an opportunity to take a peek at transactions that may very well affect the cost of health care in Nevada and to ensure competition in the health care market for lower costs. The simple one- to two-page report is not related to the recruitment or retention of physicians in Nevada. It is not onerous. It is in the best interest of the state and all parties to a health care transaction.

In addition, the intent is to limit the scope to health care transactions not captured by general type contracts. The penalties are up to \$1,000 per day, allowing for that discretion of "up to" but strong enough to discourage blatant disregard. The numerous versions and changes we have made to A.B. 47 address the concerns and have resulted in a narrow and focused bill. We hope we have addressed many of these concerns that you have heard today. We look forward to continuing to work with the stakeholders, and we thank you all for your time.

[[Exhibit H](#), [Exhibit I](#), and [Exhibit J](#) are letters in opposition to Assembly Bill 47 that were submitted but not discussed and are included as exhibits for the hearing.]

**Chair Jauregui:**

I will now close the hearing on Assembly Bill 47. The last item on our agenda today is public comment. [Protocol concerning public comment was discussed.] Is there anyone signed up to give public comment?

**John Carlo, Private Citizen, Las Vegas, Nevada:**

I need all of the legislators from Clark County to listen. Basically, I do think that we need to entice doctors to come here, so you all should listen to that. Also, we have some of the highest car insurance rates in America. I would like for the Committee to try and lower that for us.

The state should say something about electric car failures. I have seen pictures of Tesla's cars running into buildings, which may cause death and damage to property and might cause higher insurance rates. Tesla and other electric vehicles have failed to lower luxury car costs, which would help lower our insurance rates. Do not pass state legislation that is going to increase insurance policies, such as girls getting hurt competing against boys in high school. I want to stand up for the young girls that have to compete against boys. I do not think that was the right move by some of you.

Illegal immigration hurts the wages of American workers. The state should be doing something like taking away business licenses if they are hiring illegal immigrants, which you all know is happening. The Committee needs to do something about illegal immigration because you are basically enticing immigrants to come to Nevada, which will raise our Medicare costs, teacher costs, and the costs of many other things. This topic has been long past due.

**Chair Jauregui:**

Is there anyone else on the telephone line wishing to give public comment? [There was no one.] That wraps up our Committee meeting for today. Our next meeting will be on March 17 at 1:30 p.m. Thank you, Committee members. We are adjourned [at 2:54 p.m.].

RESPECTFULLY SUBMITTED:

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Louis Magriel  
Committee Secretary

APPROVED BY:

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Assemblywoman Sandra Jauregui, Chair

DATE: \_\_\_\_\_

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Assembly Bill 47, presented and submitted by Mark Krueger, Chief Deputy Attorney General and Consumer Counsel, Bureau of Consumer Protection, Office of the Attorney General.

[Exhibit D](#) is written testimony dated March 15, 2021, presented and submitted by Maya Holmes, Healthcare Research Manager, Culinary Health Fund, in support of Assembly Bill 47.

[Exhibit E](#) is written testimony presented and submitted by Jaron Hildebrand, Executive Director, Nevada State Medical Association, in opposition to Assembly Bill 47.

[Exhibit F](#) is written testimony dated March 15, 2021, presented and submitted by Lesley Pittman, representing Reno Diagnostic Centers, in opposition to Assembly Bill 47.

[Exhibit G](#) is written testimony dated March 14, 2021, presented by Amber Stidham, Vice President, Government Affairs, Henderson Chamber of Commerce, submitted by Peyton Barsel, Researcher, Henderson Chamber of Commerce, in opposition to Assembly Bill 47.

[Exhibit H](#) is a letter dated March 15, 2021, signed by Lawrence Barnard, Nevada Market President, Dignity Health-St. Rose Dominican, submitted by Katie Ryan, System Director, Grassroots Advocacy and Nevada Government Relations, CommonSpirit Health, in opposition to Assembly Bill 47.

[Exhibit I](#) is a letter dated March 15, 2021, signed by Karla J. Perez, Regional Vice President, The Valley Health System, submitted by Dan Musgrove, Nevada Vice President, Strategies 360, in opposition to Assembly Bill 47.

[Exhibit J](#) is a letter dated March 15, 2021, signed by David M. Reiner, Senior Director, State Government Affairs, Quest Diagnostics, submitted by Chris Ferrari, Chief Executive Officer, Ferrari Public Affairs, in opposition to Assembly Bill 47.