

MINUTES

COMMITTEE: COMMERCE

DATE: Monday, March 19, 1973

MEMBERS PRESENT: Chairman Prince, Dr. Robinson, Messrs Bickerstaff, Capurro, Wittenberg, Demers, Dini, Hafen, and Torvinen;

MEMBERS ABSENT: None

GUESTS:	<u>Name</u>	<u>Representing</u>
	Charles Levinson	Consumers' League
	Tom Leen	" "
	Thomas Lorentzen	---
	Kay Ricks	U of N, School of Home Econ.
	Joyce Jones	" " " "
	Minnie Inzer	" " " "
	George Vargas	American Insurance Assn.
	Eileen Brookman	Assemblyman
	Elliott Sattler	Attorney General's Office
	Mike Melner	Director Commerce Dept.
	Daryl Capurro	Nev. Fran. Auto Dealers
	Pete Holden	Washoe County D.A.'s Office
	George Archer	Amer. Asso Retired People
	Pete Kelly	Retail Merchants Assn.
	John Garvin	Montgomery Ward
	Tom Waterman	Penney's
	Charles McKenney	Sears
	Ken O'Connell	Las Vegas Chamber of Commerce
	Sonner Greenspan	Park Lane Center
	Henry Michel	" " "
	Larry Struve	Washoe County District Atty
	Vickie Kolousek	U of N Home Economics
	Charlotte Lorello	" " " "
	Rebecca Ratliff	" " " "
	Fred Lugar	Penney's
	Rex Lundberg	Commerce Dept., Las Vegas
	Joe Lawler	" " Carson City
	Keith Ashworth	Assembly Speaker
	Suzie Hood	FTC
	Ray Lloyd	"
	Lester H. Berkson	Attorney

Chairman Prince called the meeting to order at 4:00 p.m. Mr. Capurro asked the Committee to allow him to make certain changes in the amendments to AB 227, particularly in the Assigned Claims portion of the bill, to bring them into conformity with Nevada law. Mr. Demers moved, Mr. Wittenberg seconded

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the motion. It was unanimously passed.

Due to over-crowded conditions in Room 222, the Committee adjourned to Room 214.

Mr. Wittenberg, as one of the sponsors of AB 300, stated that this bill includes fair trade practices and AB 301 establishes a Consumers' Affairs Division of the Commerce Department; that a majority of the introducers would prefer taking the strong enforcement language out of AB 300 and include it in AB 301 for a better enforcement provision. He asked witnesses to consider this in their testimony.

Dr. Levinson of the Consumer's League stated that he supports AB 300, but feels that there are many things the bill does not cover in respect to food services. He presented two pieces of meat which were the same cut of meat, in his opinion, but indicated a price difference of 14%. This is the type of practice the consumer needs some protection from. The consumer has no recourse and there are presently no laws to cover this type of violation.

Mr. Demers stated that Senator Lamb is presently considering introduction of laws to cover meat labeling similar to those of New York.

Tom Leen, attorney for the Consumers League, stated that there is a great need for consumer laws to cover deceptive practices and he gave historical reasons for this; that consumers today are forced to buy products that they really don't understand; that there is no equality in bargaining between consumers and retailers; that there are many occasions when consumers are defrauded in ways that are not illegal and are very difficult to prove; that Nevada is one of the very few states that have no consumer protection laws.

Chairman Prince stated that it would cost \$146,846.00 to set up the Consumer's Affairs Division.

Mike Melner of the Commerce Department stated that in 1971 the Governor, by Executive Order, established the Consumer's Affairs Division of the Commerce Department, but it was not funded in any way; that they have handled 3,000 complaints but have not been able to prosecute any of them; that they have worked fairly well with limited funds and limited legislation; that honest businessmen can only benefit from this kind of legislation and the dishonest businessmen will be forced out of business; that AB 301 is very broad and comprehensive; that there are only six states which do not have this act. Regarding AB 300, he felt that it would be more

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effective if it were amended and included in AB 301; that the Commerce Department would support any amendments which would add definitions of unfair trade practices and give more authority to the District Attorney's Office. He suggested removing Section 25 from AB 301.

Mr. Demers asked Mr. Melner if he felt this bill has the teeth necessary in it to properly enforce the act. Mr. Melner stated that with amendments and the language from AB 300 added to it, it would.

Mr. Larry Struve of the Washoe County District Attorney's Office stated that many states are now simply adopting the FTC Consumers' Protection Act; that Section 5 of AB 300 and Section 9 of AB 301 are from this Act. He feels that concurrent jurisdiction between the State and local District Attorney offices is the best way to enforce the provisions of this act. He stated that AB 301 is very weak; that it only allows for injunctive enforcement which would leave the Commerce Department with very little strength to enforce the bill; that the amendments prepared by the Washoe County District Attorney's Office will provide for civil penalties for any wilful acts. (See Exhibit "A" for amendments.)

Mr. Struve felt that the FTC laws incorporated into the bill gives the bill more flexibility, particularly in view of the fact that the Legislature only meets biannually.

Mr. Wittenberg pointed out that if the FTC amends their law while the Nevada Legislature is not in session, their changes would still apply in Nevada. Mr. Struve felt that without the criminal penalties in the law, they would not be in a good enforcement position and he urged the Committee to consider these provisions.

Mr. Torvinen stated that he felt the discovery provisions in Section 19 were very broad and could be very depressing to business. Mr. Melner stated that many agencies of the Commerce Department have these powers; that the reputable merchant will cooperate with their office and show them their records. Mr. Struve stated that most of their complaints were received from businessmen, not consumers, because of price-cutting practices causing the businessmen to lose customers. Mr. Bickerstaff asked what was meant or intended by a "reasonable time" in which to correct an unfair practice. Mr. Struve stated that it was what the consumer was "given to believe".

Mr. Holden, an investigator for the Washoe County District Attorney's Office, stated that because most of the states surrounding Nevada have strong consumer laws, crooks are driven to Nevada where there aren't any. "We have had problems with each

and every provision of Section 9," he stated, and that "the legitimate businessman has nothing to fear from this". He gave examples of used cars being sold for new and that under the present situation, all he can do is advise the consumer to sue civilly

Mr. Rex Lundberg of the Las Vegas Office of the Consumer's Affairs Division of the Commerce Department, stated and felt that AB 301 would be good for both consumers and businessmen. He stated that of the 3,000 complaints they had received, 753 were against firms and/or individuals; that 78% had been resolved in favor of the consumer; 15% were a "draw", and 7% were in favor of the businessman; that there are more problems in some industries than others; that this bill would cover just about every industry the consumer will come in contact with.

Discussion was held regarding Dr. Robinson's query regarding protection for the businessman who might be found innocent of any unfair practice, yet could be put out of business in the meantime. Mr. Lundberg and Mr. Melner both stated that the Commerce Department would have no powers to create a hardship of any businessman nor impound any property without an order from a District Court.

Mr. Garvin, an attorney representing Montgomery Ward and the Nevada Retailers Association stated that he felt AB 230 took care of many of the problems covered by AB 300; that he was in favor of AB 300 as an adjunct to AB 230. He had several suggested changes to be made in AB 301 and the proposed amendments. Chairman Prince asked Mr. Garvin to meet with Mr. Wittenberg to draft his suggested changes.

*Ken O'Connell, Dir LV CFC, endorses AB 301, as amended.*

Mr. Wittenberg asked for Committee approval to introduction of five housekeeping bills\* related to the Savings and Loan division of the Commerce Department. Mr. Wittenberg moved that they be presented to the Committee; Mr. Capurro seconded the motion. All the Committee members approved the motion with the exception of Mr. Torvinen who voted "nay". Mr. Demers moved, and Mr. Wittenberg seconded a motion to introduce an insurance bill<sup>A</sup>. The vote was unanimous.

The meeting was adjourned at 6:00 p.m.

Respectfully submitted,

PHYLLIS BERKSON, Attache.

\* A.B. 728 (BDR 56-145), A.B. 729 (BDR 56-142), A.B. 730 (BDR 56-139), A.B. 731 (BDR 56-140)  
A.B. 732 (BDR 56-144)

Δ A.B. 738 (BDR 57-1320)

AGENDA FOR COMMITTEE ON COMMERCE

Date Mon., March 19 Time 4:00 p.m. Room 222

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
THIS AGENDA SUPERCEDES AND CANCELS PREVIOUS AGENDA DATED MARCH 2		
AB 300	Prohibits unfair methods of competition and unfair or deceptive acts or practices in conduct of any trade or commerce;	
AB 301	Creates consumer affairs division of the Department of Commerce and regulates deceptive trade practices.	

\*Please do not ask for counsel unless necessary.

Ex. A

Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>
Date:	Date:
Initial:	Initial:
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>
Date:	Date:
Initial:	Initial:

Amendments to Assembly / Senate

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Bill / Joint Resolution No. \_\_\_\_\_ (BDR \_\_\_\_\_)

Proposed by \_\_\_\_\_

Amendment N<sup>o</sup> 466



Amend sec. 9, pages 2 and 3, by deleting lines 25 through 50 on page 2, and deleting lines 1 through 37 on page 3 and inserting:

"Sec. 9. "Documentary material" means the original or a copy of any writing, including but not limited to any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording wherever located."

Amendment No. \_\_\_\_\_ to \_\_\_\_\_ Bill No. \_\_\_\_\_ (BDR \_\_\_\_\_) Page \_\_\_\_\_

Amend the bill as a whole by adding a new section designated sec. 9.5 following sec. 9 to read as follows:

"Sec. 9.5. "Examine or examination" of documentary material means the inspection, study or copying of any documentary material, including the taking of testimony under oath or acknowledgment relating to such documentary material."

Amend sec. 14, page 3, by deleting line 49 and inserting:

"property for any consideration in trade or commerce."

Amend the bill as a whole by adding a new section designated sec. 14.5 following sec. 14 to read as follows:

"Sec. 14.5. "Trade" and "commerce" means the advertising, offering for sale, sale or disposition of any services, real or personal property, commodity or article of value wherever situated which directly or indirectly affects the people of this state."

Amend the bill as a whole by adding a new section designated as sec. 16.5 following sec. 16 to read as follows:

"Sec. 16.5. It is unlawful for any person in the course of his business or occupation or in the conduct of any trade or commerce to engage in a "deceptive trade practice," which shall include the following:

1. Passing off goods or services which are known or through the exercise of reasonable care ought to be known as being those of another.
2. Making a false representation or causing confusion or likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services.

Amendment No. 455 to Assembly Bill No. 311 (BDR 52-222) Page 2

3. Making a false representation or causing confusion or likelihood of confusion or misunderstanding as to any affiliation, connection, association with or certification by another in connection with any goods or services.

4. Using deceptive representations or designations of geographic origin in connection with goods or services.

5. Making any false representation that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, alterations or quantities of goods or services which are known or ought to be known they do not have or that a person has a sponsorship, approval, status, affiliation or connection of a person therewith which he does not have.

6. Representing that goods are original or new if he knows or through the exercise of reasonable care ought to have known that they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

7. Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model when he knows or through the exercise of reasonable care ought to know that they are of another.

8. Disparaging the goods, services or business of another by using false or misleading representations of fact.

9. Advertising goods or services with the intent not to sell them in the manner or condition as advertised.

10. Advertising goods or services with the knowledge that the supply of such goods or services is insufficient to handle a reasonably expectable



public demand, unless the advertisement discloses a limitation of quantity.

11. Advertising under the guise of obtaining sales personnel when in fact the primary purpose of such advertising is to sell a product or service to the sales personnel applicant.

12. Making false or misleading statements of fact concerning the price of any goods or services, or the reasons for the existence of or the motivation for or the amounts of price reductions.

13. Failing to deliver to the customer at the time of an installment sale of goods or services, a written order, contract or receipt setting forth the name and address of the seller and the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear and unambiguous language.

14. Employing "bait and switch" advertising, which consists of an attractive but insincere offer to sell a product or service which the seller in truth does not intend or desire to sell, accompanied by one or more of the following practices:

- (a) Refusal to show the product advertised.
- (b) Misrepresentation in any respect of the advertised product or the terms of sale.
- (c) Acquiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised product or service.
- (d) Refusal to take orders for the product advertised for delivery within a reasonable time.

- (a) Showing or demonstrating a defective product which is unusable or impractical for the purposes set forth in the advertisement.
- (b) Accepting a deposit for the product and subsequently switching the purchase order to a higher priced item.
- (c) Failure to make deliveries of the product within a reasonable time or to make a refund therefor.
- 15. Failing to identify flood-damaged or water-damaged goods as to such damage.
- 16. Soliciting by telephone or door to door as a caller, unless the seller identifies himself, when he represents and the purpose of his call within 30 seconds after beginning the conversation.
- 17. Stating that services, replacement parts or repairs are needed when no such services, replacement parts or repairs are actually needed.
- 18. Engaging in any act or practice deemed to be an unfair method of competition or an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1), as from time to time amended."

Amend sec. 17, page 4, line 10, by deleting "9" and inserting "10.3".

Amend sec. 18, page 4, by deleting line 13 and inserting:

"reproduce material in good faith and without knowledge of its deceptive character."

Amend the bill as a whole by adding new sections designated as sec.

22.1, sec. 22.2, sec. 22.3, sec. 22.4, sec. 22.5, sec. 22.6 and sec. 22.7

following sec. 22 to read as follows:

Amendment No. 100 to Assembly Bill No. 301 (BDR 93-003) Page 5

Sec. 22.1. Notwithstanding the enforcement powers granted to the Commissioner herein, whenever the district attorney of any county has reason to believe that any person is using, has used, or is about to use any deceptive trade practice prohibited herein, he may bring an action in the name of the State of Nevada against such person to obtain a temporary or permanent injunction against the use of such method, act or practice.

Sec. 22.2. Except as otherwise provided in section 22.4 of this act, appropriate notice must be given by any district attorney to any person against whom an action is brought pursuant to section 22.1 of this act. Such notice must state generally the relief sought and be served in accordance with section 22.7 of this act at least 3 days prior to the filing of the action.

Sec. 22.3. Any action brought pursuant to sections 22 and 22.1 of this act may be brought:

1. In a district court in the county in which the defendant resides or has his principal place of business;

2. In the district court in Carson City if the parties consent thereto; or

3. In the district court in any county where a deceptive trade practice has occurred. Any court in which an action is brought pursuant to sections 22 and 22.1 of this act may issue any temporary or permanent injunction in accordance with the Nevada Rules of Civil Procedure to

restrain and prevent any violation of any provisions of this act, and such  
injunctions shall be issued without bond.

Sec. 22.4. Whenever the district attorney of any county has reason to  
believe that the delay caused by complying with the notice requirement  
of section 22.2 of this act would cause immediate harm to the public of  
this state or endanger the public welfare, the district attorney may  
immediately institute a suit for injunctive relief, including a request  
for a temporary restraining order, upon proof of specific facts shown by  
affidavit or by verified complaint or otherwise that such immediate harm  
will be or is likely to be caused by such delay. The Nevada Rules of  
Civil Procedure pertaining to the issuance of temporary restraining  
orders shall govern all actions instituted pursuant to this section.

Sec. 22.5. The court in which an action is brought pursuant to sections  
22 to 22.4, inclusive, of this act may make such additional  
orders or judgments as may be necessary to restore to any person an  
interest any money or property, real or personal, which may have been  
acquired by means of any deceptive trade practice which violates any of  
the provisions of sections 4 to 25, inclusive, of this act, including  
the appointment of a receiver or the revocation of a license or certifi-  
cate which authorizes a person to engage in business in this state, or  
both, but such additional orders or judgments may be entered only after  
a formal determination has been made by the court that a deceptive trade  
practice has occurred.

Sec. 22.6. 1. In proceeding pursuant to sections 22.2 to 22.5, inclusive,

of this act, the district attorney may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be in violation of section 16.5 of this act from any person who is engaged or is about to engage in such method, act or practice.

2. Any assurance made pursuant to subsection 1 shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or has his principal place of business, or the district court in any county where any deceptive trade practice has occurred or is about to occur or the district court agreed to by the parties.

3. An assurance of voluntary compliance made pursuant to subsections 1 and 2 above shall not be considered an admission of violation for any purpose but shall be subject to the terms, limitations, and conditions of section 22 of this act.

4. Matters closed by the filing of such an assurance may be reopened at any time by the district attorney who participated in the filing of any assurance of voluntary compliance pursuant to subsections 1 and 2 for further proceedings in the public interest as provided in sections 22.2 to 22.4, inclusive, of this act.

5. If any assurance of voluntary compliance is filed and approved by a district court in accordance with the provisions of subsection 2, no other district attorney in any county in this state or the commissioner or his attorney may file any action under the provisions of sections 4 to 25, inclusive, of this act as to any matters covered in such assurance of

Voluntary compliance.

Sec. 22.7. Service of any notice under sections 22.1 to 22.6, inclusive, of this act shall be made by personal service within the State of Nevada, but if such service cannot be obtained, substituted service therefor may be made in any of the following ways:

1. Personal service thereof outside the State of Nevada;
2. The mailing thereof by registered or certified mail to the last-known place of business, residence or both whether inside or outside the State of Nevada of such person for whom the notice is intended. In which event such service shall be deemed complete upon the third day following the mailing of any notice required under this section;
3. As to any person other than a natural person, service shall be in the manner provided in the Nevada Rules of Civil Procedure for completing service of process on such a person, corporation, association or organization; or
4. Such service as any district court may direct in lieu of personal service within the State of Nevada.

Amend sec. 23, by deleting line 49 on page 5 and lines 1 through 14 on page 6 and inserting:

"Sec. 23. 1. Nothing contained herein shall prohibit the commissioner from disclosing to the attorney general or any district attorney or law enforcement officer the fact that a crime has been committed by any person, which fact has become known as a result of any investigation conducted pursuant to the provisions of sections 4 to 21, inclusive, of this act.

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2. Subject to the provisions of subsection 2 of section 22 of this act, the commissioner shall not make public the name of any person alleged to have committed a deceptive trade practice. This subsection does not prevent the commissioner from issuing public statements describing or warning of any course of conduct which constitutes a deceptive trade practice."

Amend sec. 24, page 6, by deleting lines 17 through 24 and inserting:

"Sec. 24. Any person who violates any court order or injunction issued pursuant to sections 4 to 25, inclusive, of this act, upon a complaint brought by either the commissioner or the district attorney of any county of this state shall forfeit and pay a civil penalty of not more than \$25,000 for each violation. For the purpose of this section, the court issuing any such order or injunction shall retain jurisdiction over any such action or proceeding. Such civil penalties shall be in addition to any other penalty or remedy available for the enforcement of the provisions of sections 4 to 25, inclusive, of this act."

Amend the bill as a whole by adding new sections designated as sec. 24.1, sec. 24.2 and sec. 24.3 following sec. 24 to read as follows:

"Sec. 24.1. In any action brought pursuant to sections 22 to 22.1, inclusive, of this act, if the district court finds that any person is willfully using or has willfully used a method, act or practice declared unlawful by section 16.5 of this act, the commissioner or the district attorney of any county in this state bringing such action may recover a civil penalty not to exceed \$2,500 for each violation."

Sec. 24.2. Any person who engages in a willful, knowing or fraudulent course of conduct declared unlawful by section 16.5 of this act shall be punished:

- 1. For the first offense, for a misdemeanor;
- 2. For the second offense and all subsequent offenses, for a gross misdemeanor.

Sec. 24.3. 1. Prior to instituting any action pursuant to sections 22.1 to 22.7, inclusive, of this act, the district attorney of any county in this state shall ascertain whether or not the action in question is subject to the regulatory authority of any state agency, board, official or other authority established by virtue of the Nevada Revised Statutes, except the regulatory or administrative authority provided to the commissioner of consumer affairs by sections 4 to 25, inclusive, of this act.

2. If such action is subject to such regulatory authority or any regulation duly adopted and promulgated or any statutes administered by any state regulatory agency, board, official or other authority as provided in subsection 1, the district attorney shall not institute any proceeding under sections 22.1 to 22.7, inclusive, of this act until such state agency, board, official or other state regulatory authority has had reasonable time to investigate or take any appropriate action with respect to the alleged facts.

3. For the purposes of this section, a reasonable time has elapsed if no final action or other disposition is made of any matter otherwise falling within the provisions of sections 4 to 25, inclusive, of this



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act within 30 days after such matter is referred to or brought to the attention of any state agency, board, official or other regulatory authority, except the commissioner of consumer affairs, as provided herein.

1. This section does not prohibit the district attorney of any county from filing an action pursuant to the provisions of sections 22.1 to 22.4, inclusive, of this act, if the referral of any matters subject to the provisions of this act to any state agency, board, official or other regulatory authority would cause immediate harm to the public of this state or endanger the public health, safety or welfare, and such facts are shown by affidavit or by verified complaint.

Amend the title of the bill by deleting lines 2 and 3 and inserting: "the department of commerce; prohibiting deceptive trade practices; providing injunctive relief; providing a method of voluntary compliance; providing for notice; providing civil and criminal penalties; and providing other matters properly relating thereto."