



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

S.B. NO. 1091, RELATING TO MOBILE BILLBOARDS.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Friday, February 13, 2009 **TIME:** 8:30 AM

LOCATION: State Capitol, Room 229

TESTIFIER(S): Mark J. Bennett, Attorney General
or Margaret S. Ahn, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General provides these comments regarding constitutional issues in this bill.

This bill provides that vehicles "actively used in the daily function of the business to which the advertising device relates" are exempt from the prohibition on carrying or displaying advertising devices for consideration. This bill also deletes the clarification that "consideration or any other economic benefit" does not include the benefit derived from the effect of the advertising.

Exempting vehicles "actively used in the daily function of the business to which the advertising device relates" potentially subjects this bill to a challenge under the Constitution's First Amendment because it creates an impermissible content-based regulation. By allowing certain paid commercial advertising, this bill effectively discriminates against paid non-commercial speech.

Also, the current statutory language clarifying that consideration or other economic benefit does not include the benefit derived from the effect of the advertising is necessary and should not be deleted. First, without this language any advertising could be deemed to render an "economic benefit" and be prohibited, even if the operator of the vehicle is not compensated for displaying the advertising. Second, the

inclusion of this language avoids Equal Protection and First Amendment issues.

We respectfully recommend that the exemption discussed above and contained on page 2, lines 17 to 20 of the bill be deleted. We further recommend not deleting the clarification of "consideration or any other economic benefit" contained on page 2, lines 14 to 17 of the bill. Finally, to make the bill's purpose section consistent with the recommended amendments, we suggest amending section 1 of the bill as follows:

"SECTION 1. The purpose of this Act is to close a loophole that allows persons to place banners and other advertising devices for others on their vehicles or trailers for compensation as long as the vehicles or trailers are not used primarily to display advertising. This Act will not prohibit vehicles from advertising provided that there is no compensation for carrying or displaying the advertisement. The State has a substantial interest in traffic safety and aesthetics...."