

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION**

**Seventy-Third Session
April 5, 2005**

The Committee on Transportation was called to order at 1:37 p.m., on Tuesday, April 5, 2005. Chairman John Ocegüera presided in Room 3143 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. John Ocegüera, Chairman
Ms. Genie Ohrenscha11, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. John Carpenter
Mr. Chad Christensen
Mr. Jerry Claborn
Ms. Susan Gerhardt
Mr. Pete Goicoechea
Mr. Joseph Hogan
Mr. Mark Manendo
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman William Horne, Assembly District No. 34, Clark County
(part)
Assemblyman Joe Hardy, Assembly District No. 20, Clark County (part)
Assemblyman Peggy Pierce, Assembly District No. 3, Clark County (part)
Assemblyman Lynn Hettrick, Assembly District No. 39, Douglas and parts
of Carson City, and Washoe Counties

STAFF MEMBERS PRESENT:

Marjorie Paslov-Thomas, Committee Policy Analyst
J. Randall Stephenson, Committee Counsel
Linda Ronnow, Committee Attaché

OTHERS PRESENT:

Roger Vind, Lieutenant, Human Resources, Nevada Highway Patrol,
Nevada Department of Public Service
Robert Roshak, Sergeant, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department, Las Vegas, Nevada
Michelle Youngs, Sergeant, Washoe County Sheriff's Office; and Nevada
Sheriffs and Chiefs Association
Bryan Gresh, Legislative Advocate, representing Regional Transportation
Commission of Southern Nevada
Robert L. Crowell, Private Citizen, Carson City, Nevada
Wendy Simons, Private Citizen, Reno, Nevada
Joe Guild, Legislative Advocate, representing State Farm Insurance, Reno,
Nevada
Leo Drozdoff, Administrator, Nevada Division of Environmental
Protection, Department of Conservation and Natural Resources
Colleen Crips, Chief, Bureau of Air Quality Planning, Division of
Environmental Protection, Nevada Department of Conservation and
Natural Resources
Clay Thomas, Deputy Director, Nevada Department of Motor Vehicles
John P. Sande, Legislative Advocate, representing Nevada Franchise
Automobile Dealers Association
Kate Diehl, Legislative Advocate, Property Casualty Insurers Association
of America, Sacramento, California
Michael Geeser, Government Relations, Automobile Association of
America (AAA), Las Vegas, Nevada
Troy Dillard, Administrator, Compliance Enforcement Division, Nevada
Department of Motor Vehicles
Fred Drees, Chief Traffic, Safety, and ITS Engineer, Nevada Department
of Transportation
Dennis Colling, Administrative Services Division Chief, Nevada
Department of Motor Vehicles
Ginny Lewis, Director, Nevada Department of Motor Vehicles
Jeanette Belz, Legislative Advocate, representing the Nevada Chapter of
Associated General Contractors, Reno, Nevada
Pat Zamore, Legislative Advocate, representing the Clark County School
District, Las, Vegas, Nevada
Andrew List, Executive Director, Nevada Association of Counties

Nancy Howard, Assistant Director, Nevada League of Cities and Municipalities
Mary Henderson, Legislative Advocate, representing City of North Las Vegas, Nevada
Stephanie Garcia-Vause, Legislative Advocate, City of Henderson, Nevada
Neena Laxalt, Legislative Advocate, representing City of Sparks, Nevada
Chuck Abbott, Highway Safety Coordinator, Office of Traffic Safety, Nevada Department of Public Safety; and Chairman, Committee for Testing on Intoxication

Chairman Ocegüera:

[Meeting called to order. Roll called].

Assembly Bill 348: Prohibits unauthorized use of device that interferes with traffic-control signal. (BDR 43-38)

I would like to open the hearing on Assembly Bill 348.

Assemblyman William Horne, Assembly District No. 34, Clark County (part):

Assembly Bill 348 prohibits private persons from owning and operating a traffic signal preemption device. These are devices that emergency vehicles use to change traffic signals so that they can rapidly reach the scene of a crime or accident. You can buy these readily off the Internet. We have all been there where we want to get through traffic and we wish we could change the light to green. Some people have jumped ahead and bought a device for themselves to change these lights. They don't have the training that our emergency personnel necessarily have when going through lights. This is a serious accident waiting to happen. These accidents happen to emergency responders as well.

If we allow everyone to be able to purchase and have these on the roads, they would be changing these traffic signals to suit their own private schedules. There is also a reason why we have traffic signals that are timed; it's for the proper flow of traffic, particularly during the busy times of the day.

This bill attempts to prohibit its use. If a police officer were to pull over an individual who had this in their car, they can confiscate this device without a warrant, and if it's not easily detached from the car, this car can be impounded until it can be removed. This is because of public safety concerns.

Chairman Oceguera:

I know that this chapter was modeled after the lights and the siren chapter as well. You can't have a red light and siren on your vehicle. In the red light and siren chapter, it talks about any out-of-state, foreign or privately owned motor vehicle. I think this covers it, but maybe we can have Randy Stephenson look at it because this says, "can operate on the highways of the state." We will have Legal look at this to see why there was a difference in the drafting of the two.

Assemblyman Horne:

The intent deals with the roads and highways of the state. This also addresses private persons. Brian Gresh is here with the RTC [Regional Transportation Commission] and he brought concerns. They have buses that have these as well. I spoke with Scott Wasserman about that, and he believed they would also be exempt, but they would put forth an amendment making it clear that this is private persons, even governmental persons who in their work environment may operate a vehicle that has it, but that doesn't mean that they can have one in their own car.

Assemblywoman Gerhardt:

On page 2 when you are talking about the "officer shall without a warrant" see any device, it's got to be in plain view, I am assuming, right?

Assemblyman Horne:

Yes, this bill has not been written to allow officers to pull cars over in search of these devices. If they pulled you over for running a stop sign and as they approach and ask for your driver's license, they see it on the dash, that is enough for them to confiscate it.

Assemblyman Christensen:

I remember meeting with one of the traffic engineering staff out of Las Vegas last year. The numbers were somewhere between 1,100 to 1,500 times that the lights were preempted by these omitters, and Metro [Las Vegas Metropolitan Police Department] or fire could only account for a third of those. He was referring to how much, especially in rush hour, what that equates to. How many minutes extra—all the rest of us that obey the rules—sit there wishing the light would change. I appreciate you bringing the bill forward because that was a big shock to me. I just wanted to make sure that the police, fire, and buses have preemption devices. I don't even know if buses are able to be preempted right now within the state, but I do know that some states, like Kansas, have made it where public transportation can't even preempt the lights. I believe that they should be able to.

Assemblyman Horne:

This bill doesn't prohibit the ownership of these devices.

Assemblyman Carpenter:

Do you have any idea how many of these are installed where they would have to actually tow the vehicle?

Assemblyman Horne:

I don't have any idea. I got the idea for this legislation through one of the specialty news stories that I saw early last year. I wouldn't know the number or if anyone has ever done a poll, short of what Assemblyman Christensen has said of someone that he has spoken to. The number of times they have seen that the lights have been preempted, I wouldn't know that number.

Assemblyman Claborn:

Having tin foil in your hubcaps, that's not what we are talking about. We are talking about signal preemption devices for automobiles?

Assemblyman Horne:

We are talking about devices that are capable of changing the traffic signal from red to green.

Assemblyman Claborn:

Would that normally take an electronic device to do that, or tin foil in your hub caps?

Assemblyman Horne:

I don't know if tin foil in your hub caps will accomplish that.

Chairman Ocegüera:

I am going to have our legal counsel answer my initial question on emergency lights.

J. Randall Stephenson, Committee Counsel:

As I understand the question, why is it in NRS 484.609 [*Nevada Revised Statutes*] that we discuss only out-of-state or foreign, privately owned motor vehicles as not being able to have sirens. If you flip up to the previous section, it does address the in-state vehicles, "A vehicle must not be equipped with, and a person shall not use upon a vehicle, a siren, whistle, or bell except as otherwise provided in chapter." There is essentially the prohibition right now on sirens and the use of red lights on your car in this state.

Chairman Ocegüera:

I just had Marjorie Paslov-Thomas look on her computer and she found a light changer on the Internet that you could purchase.

Assemblyman Christensen:

Highway Patrol and police have technology to know whether or not somebody has a radar detector on their car. Does the technology exist for law enforcement to know who has these?

Assemblyman Horne:

I would leave that question to perhaps Sergeant Roshak.

Roger Vind, Lieutenant, Human Resources, Nevada Highway Patrol, Carson City, Nevada:

The Nevada Highway Patrol also supports this bill and definitely opposes anyone who uses these types of devices to change traffic lights. Assemblyman Horne also identified the obvious issues of the carnage that would be associated with the possibility of traffic accidents.

It could technically be used as a terrorist tool to amplify or slow the reaction of emergency responders creating gridlock in a metropolitan area. Not to mention the effect that would have on the commerce.

To readdress the issue of detection devices to detect the cheaters, I am currently unaware that those exist. Often what happens, such as the case with radar detectors, along came the police tool of radar detector detectors, then came the jamming radar detector detectors, and the technology keeps building from there.

Bob Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

We are strongly in support of this bill. It would cause chaos in urban areas, especially in the Las Vegas area.

I was a traffic officer and fatal accident investigator for a number of years. Even under the best laid plans, the use of this type of equipment can cause problems. Specifically, there was an accident involving a fire truck where it was coming down a main road, unfortunately due to the brush and trees, the siren could not be heard. The preemption device switched the light to red. The opposing vehicle—that person we figured must have thought there was a light malfunction—continued through and was struck by the fire truck. I can just see these same kinds of events occurring when someone has this in their car.

Assemblyman Sherer:

If you have a police car coming from one side of the light and a fire truck coming from the other and they both hit the preemption device, does one override the other?

Bob Roshak:

I am not really certain. What I recall was that the first unit that would be engaging the preemption device would control the intersection.

Michelle Youngs, Sergeant Washoe County Sheriff's Office; and Nevada Sheriffs' and Chiefs' Association:

We are in support of this legislation as well. I can certainly see that devices like these could become popular. With few good news stories and the public becoming aware of them, we will start seeing a lot of them out there; they could create problems for us. As far as technology to detect them, I am not aware of any. Usually what happens is we develop it to address a problem and that's unfortunate, but that is what we've seen in the past.

Assemblyman Carpenter:

How many of these devices do you think are out there that you would have the vehicle towed and impounded?

Bob Roshak:

I don't believe we have any knowledge as to how many would be out there. I have not seen the website where they are advertised, and I don't know if they are hard-wired into the vehicle or if they are simply plugged into the lighter.

Assemblyman Carpenter:

What other situations are you allowed to tow and impound the vehicle?

Sergeant Roshak:

We can impound a vehicle if it's discovered to be unsafe, not equipped as required, if we are arresting the driver, or we find it abandoned.

Assemblyman Carpenter:

I have a problem with impounding the vehicle. It seems to me, if you see one of these in a vehicle, you can take it, but to impound the vehicle might cause a lot of problems.

Chairman Ocegüera:

Mr. Carpenter, the other chapter that I was talking about was NRS 484.490 or something like that. We have had that statute on the books for a while, on the lights and sirens, and this is kind of the same thing. If you have sirens mounted

in your vehicle, they can't just take them out right there. They have the ability in that chapter as well to impound the vehicle until they can remove them or destroy them, that is what it says in that chapter.

Assemblyman Christensen:

The person who violates the provision of subsection 1 is guilty of a gross misdemeanor. As far as getting the people to stop using these, public awareness is one and teeth in the law are the other; pain is a powerful motivator. What other kind of penalties follow a gross misdemeanor? Is hit and run a gross misdemeanor?

J. Randall Stephenson:

Most violations are simply misdemeanors, some of them are gross misdemeanors. A number of them like DUI [Driving Under the Influence] are a felony.

Assemblyman Horne:

If an accident had occurred because you operated one of these devices, it would be a gross misdemeanor; otherwise it would be a misdemeanor. To keep this bill clean and simple, I took that type of provision out, but I think gross misdemeanor may have stayed in. If you pull someone over and you see that they have one of these devices, in my opinion, a gross misdemeanor may be a bit high. It should be a misdemeanor, and I meant to mention that in the testimony.

Chairman Ocegüera:

Mr. Christensen, I think you are probably right. You are already going to take the device, destroy it, tow their vehicle if you have to, and you are going to give them a misdemeanor; I don't know if that is enough.

Assemblyman Christensen:

As far as getting people to stop, they are so readily available, and I am overwhelmed at how many times the lights were preempted just in Las Vegas, not including Clark County. In the city of Las Vegas, cab drivers and others have these, but not the paramedics and ambulance companies. We have others out there using them, whenever. I just wanted to make sure that the bill had the teeth to really address that.

Assemblyman Horne:

In my opinion, the gross misdemeanor for that would probably be an excessive penalty. Usually, gross misdemeanors are six months in jail. I was thinking if you had caused an accident that would be different, but if you were just pulled over and the officer saw the device, confiscated it, then a gross misdemeanor

would be excessive. If it's attached to the vehicle and it can't be removed right then, it is going to be towed, and you are going to pay for the towing and the storage as well. It will be a misdemeanor and you will also pay for a ticket as well.

Chairman Ocegüera:

Mr. Christensen, a misdemeanor is one to six months with a \$1,000 fine, gross misdemeanor is up to a year with a \$2,000 fine. I believe there were 1,400 misdemeanor offenses listed.

Bryan Gresh, Legislative Advocate, representing the Regional Transportation Commission of Southern Nevada:

I appreciate the opportunity to be here in support of the sponsor of the bill and the piece of legislation. The amendment that was passed out ([Exhibit B](#)) is simply at the discretion of the Chair and the Committee, if you are so inclined. This Committee, a couple of sessions ago, passed an Assembly bill that allowed for the Civis to operate on a stretch of North Las Vegas Boulevard. That is the only bus rapid transit vehicle that now operates in the dedicated corridor that employs this type of device. That's why the amendment is there; it allows us to be included in the legislation and allows us to use this type of device. It is not one that preempts emergency vehicles. We do not do that. What the device simply does is allow the green light to stay green a couple of seconds longer if the bus rapid transit vehicle is approaching. If the lights are red for the traffic flowing in that direction, it would allow the bus rapid transit light to turn green just a second sooner so that the bus can get to the head of the line to keep on its path. So it's at the discretion of the Committee whether you choose to incorporate the amendment. We don't wish to slow the process down. We already have it on the record that the intent is not to include us. We are perfectly fine with what has already been said. The amendment is purely at your discretion.

The point that Mr. Christensen brought up, it's actually 1,100 to 1,300 triggers a week using those devices. We understand through a study that a majority of them are nonemergency vehicles and that it takes up to 25 minutes for the cycle to get back to normal. You have not only impacted that light, but then you have the domino effect for everything else that is impacted in the string. It's not only the critical danger of the intersection that's impacted, but if you do this during a rush hour, you have the domino effect of other lights in the chain that have been impacted because of the trigger.

Chairman Ocegüera:

It is just the bus lane you are talking about along North Las Vegas Boulevard or would it affect other lanes?

Bryan Gresh:

Just that one lane.

Assemblyman Hogan:

Do you have a situation in North Las Vegas where the change you trigger will also affect lights that are synchronized or coordinated with that further down the way?

Bryan Gresh:

No sir, not that we have seen. It is truly a matter of a second or two. It's simply to give it a jump to get moving quicker, or to allow the green to stay green a moment longer as that bus is approaching, hence the term bus rapid transit.

Chairman Oceguera:

We will close the hearing on Assembly Bill 348.

Assemblyman Carpenter:

I feel that the gross misdemeanor needs to be changed to misdemeanor. I have a problem with confiscating the vehicle, but maybe that is necessary.

Assemblyman Christensen:

The impounding of the vehicle is only if they need to take it to permanently remove the emitter. A number of other states have gone ahead and passed legislation purely aggressive on this, and it seems to be favorable from what I hear.

Chairman Oceguera:

The Chair would be inclined to take a motion.

Assemblyman Manendo:

If the person is caught with this device and is able to remove it from the car, then they wouldn't have to impound the car. I just want to make sure that we have legislative intent that if someone is in violation of this law and they are able to take out the device, then the car would not be impounded.

Chairman Oceguera:

In further reading of this Mr. Carpenter, you might actually be right. I think this might have been written in such a manner that it shall cause them to move it. How about this, we alter that motion, fix that to a "may" with regards to Mr. Christensen's comments about "if you can't remove it, alter it, suspend it, fix it on the scene, then you can tow it." I think we can make that amendment just to get the process moving.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 348 AMENDING IT TO A MISDEMEANOR AND ADDING THE AMENDMENT LISTED IN EXHIBIT B.

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Open hearing on Assembly Bill 239.

Assembly Bill 239: Makes various changes relating to motor vehicles, drivers' licenses and certain operations of the Department of Motor Vehicles. (BDR 43-566)

Assemblyman Joe Hardy, Assembly District No. 20, Clark County (part)

In talking with the DMV [Department of Motor Vehicles] and the industries that are affected, I have an amendment to A.B. 239 effectively taking out Section 6, vis-à-vis the honorable discharge from the armed forces.

In Section 8, subsection 5 (Exhibit C), dealing with the valuation of ultra-low emission vehicles, parenthetically that section would be obsolete as soon as we would do anything with it, because the federal definition of ultra-low emission vehicles has gone away.

In Section 10, subsection 6, remove an change the regulations for control of emissions of motor vehicles as to the 1995 time frame, as well as remove line 26 and 27 from Section 12. Strike Section 13 dealing with The Department of Wildlife and all of the hunting, and fishing licenses.

The rationale for removing those is quite simple. The fiscal impact on both the state and the industry would be at this time prohibitive, but I would like to say that the Department of Motor Vehicles and the industry is willing to work towards the biennial smog evaluations and those other things that would affect both the state and the industry. I have appreciated working with the industry and the DMV on this bill.

Assemblyman Claborn:

I have a question regarding hunting and fishing licenses on page 10, line 26 through Section 13, I presumed that would come out of Natural Resources.

Chairman Oceguera:

If we were to move forward with any of that, I would certainly pass it over to your Committee so that you could explore it. He is removing that from the bill, it is just collecting fees. I think he was making it a collection of fee outpost for the Department of Wildlife.

Assemblyman Hardy:

I was trying to increase the availability of the licenses to hunters and fisherman, and women. You will notice that the bill has gotten shorter, and there are two essential portions of the bill that I would address.

Section 2 of A.B. 239 is addressing the problem that came to me from a constituent. In the letter ([Exhibit D](#)), she explains her plight as a daughter-in-law, and taking the mother to the DMV so that she could get an ID [Identification Card] and not a driver's license. She has been diagnosed with a brain problem that is not curable, and would not be reliable driving. The family was interested in making sure that she was safe. Her experience at the DMV was less than optimal. The technician insisted on giving her mother-in-law a driver's license. It was quite a consternating moment for the family. What Section 2 does is take advantage of forms that already exist with the DMV. The family can have the Department of Motor Vehicles assess or re-assess a person who is in a questionable state of safety when they drive. That is the essence of Section 2, and Section 3.

Chairman Oceguera:

Why don't you go ahead and complete whatever you have left of the bill.

Assemblyman Hardy:

Section 4 as it relates to Section 9 of the bill deals with the concept of epilepsy and driving. As a physician we see people who have seizures or who have loss of consciousness. There is a way that we are supposed to report to the State of Nevada and usually the physician doesn't do it the right way. He usually writes a letter to the DMV. Once the physician writes the letter that says that their patient had a seizure, the DMV takes that letter into consideration, and takes the person's license for a minimum three month period. The DMV then waits for the physician's second letter stating the reasons why the person had a seizure and if they would be able to drive safely. What happens is the person doesn't want to tell the doctor that he had a seizure again, because he will not be allowed to drive again for three months. The clever patient figures that out, and reluctantly, does not tell the doctor that he's had another seizure. So the doctor then is not in a position where he can change medicine or increase the dose of the medicine to allow that person to be safe on the road.

[Assemblyman Hardy, continued.] The folks with epilepsy have organizations. The Epilepsy Foundation of America, when they have addressed this mandatory physician reporting, took a stand in 1974, and it has continued to be the same. I quote "Whereas epilepsy is not a communicable disease and poses no threat to the public health, and whereas the physician-patient relationship has long been legally recognized as one of privileged information, and whereas any statute that requires a physician to report a patient with epilepsy to an agency of the government such as the state Department of Motor Vehicles, destroys the physician-patient relationship; therefore, be it resolved that the Epilepsy Foundation of America takes the position that epilepsy should not be classified as a reportable disorder." That paragraph basically brings to mind some of the myths, misunderstandings, and assumptions that have been attached to epilepsy. Some of those assumptions are: persons lose consciousness when they have a seizure; once a person has a seizure, he or she is always at risk of having another one; and those persons with epilepsy are more unreliable than persons with other medical conditions. Those misunderstandings are indeed that. In state statute, we have at least 14 other conditions, which if they cause a loss of consciousness in some way, are self-reported and not reported by the physician. We already have a mechanism for self reporting to the DMV, and the bill as it stands would allow the physician to report a seizure or a loss of consciousness, should the physician feel that the person is unsafe, or if that person has not had the commitment to voluntarily surrender his driving privileges for a period of time where the physician deems it safe.

[Assemblyman Hardy, continued.] What we tried to do with this particular bill is word it in such a way, and I am appreciative of the help that I have had with Robert Crowell, that it would be compatible with legalese that is necessary. That it, in essence, gets at the root of the bill, both the senior safety, and the seizure patients confidentiality.

Chairman Ocegura:

In section 2 of A. B. 239 it talks about a person who is 18 years of age or older may file with the Department or request that the Department examine a licensee. Then it says who can do that. It talks about how you can file that report. That concerns me for one reason. What about a bad relationship between a cousin and a brother, a husband and a wife, and they do a bogus report? Then in Subsection 2 (c) it says this will be kept confidential, except for the request of licensee or the court. I am having a little concern over that.

Assemblyman Hardy:

I have the same concerns. What we tried to do is to put in lines 25 and 26 a limit to how much you can harass somebody. You cannot do that more than once in a 12-month period. You also have to have, in line 16, personal

knowledge observation. On line 19 it goes on and explains what kinds of things, as well as, if a law enforcement officer has made a report of some kind. What this would require is not that the license be taken away, but that the DMV have an opportunity to evaluate the person and make a ruling. This does not remove the license, it allows the family member to have access to the process for safety.

[Assemblyman Hardy, continued.] For your other question, Mr. Chair, consanguinity, I talked with a nephew yesterday who said he's in that position. He's the only one who can do something, and that's where that comes in, and sometimes people do not have a child or a parent left, when they are in this position.

Assemblyman Carpenter:

I have a concern with this bill. I don't see in here who's going to make the examination. It seems to me there needs to be some kind of medical condition that would enter into this so a physician would have to make that examination. In the first part of the bill it says, "requesting that the Department examine a licensee." I don't know how they are going to do that unless they have a doctor on staff. I can see that there is some kind of need for this, but I thought they already had it in their rules and regulations that it could be done. I think what the Chairman said about somebody trying to get back at someone is a real possibility in a real world. I think it needs to be tightened up, if in fact the DMV doesn't have a procedure now.

Assemblyman Hardy:

I concur with your assessment; I am willing to work on the language. I am willing to work on keeping our seniors safe as well as other people who are in similar conditions who need to be protected. I do have folks who would like to testify as to the insurance aspect of this, particularly vis-à-vis the epilepsy portion of that. I think that there are many people have the same concerns that we all do about how you are attacking somebody. That's where, as a physician, we're constantly put in that position of, how do I tell somebody is or isn't picking on somebody else? The physician many times isn't privy to how that person actually drives, so he takes the family observation or knowledge into account, and that is one of the ways it happens now, where the physician is involved with that process.

Chairman Ocegüera:

I remember a similar bill last session and I had some concerns and I voted against it. Under your epilepsy section, the physician warns the individual that it would be unsafe to drive, and then unbeknownst to that physician, the patient goes out and gets in a wreck. How would law enforcement, DMV, or the court

system know that person was under a physician's care? The physician had told the person to not drive. Have we solved those problems?

Assemblyman Hardy:

If I look at page 8, Section 9, lines 6 through 7, I have struggled with that particular phrase, "A physician may upon request of the Department of Motor Vehicles, provide to the Department of Motor Vehicles a copy of the statement signed by a patient, pursuant to ..., signed by the physician pursuant to ..., and the Department of Motor Vehicles confidential." If you look at line 7, to clarify that statement, I would have inserted "should DMV become aware of a pertinent applicable incident," after the word "vehicles," and before the word "provide." That may not be the best way to look at it, but that is a way to allow them into a loop and allow the physician permission to release to the DMV confidential information. I would suggest that as a potential clarification should the Committee move forward on this.

Chairman Ocegueda:

How are those agencies going to know there was an applicable accident if we have it the way we have it now, where the doctor has to tell the DMV about it. If that person gets in an accident and they are transported to the hospital, we are going to know that they have this epilepsy brand on their registration, license, or whatever.

Bob Crowell, Private Citizen, Carson City, Nevada:

You raise a good question about the self-reporting nature on epilepsy. The law says that if a person with epilepsy or thinks they have epilepsy goes to a doctor, and the doctor diagnoses epilepsy, whether it's grand mal or petit mal, that doctor has to report that to the Department of Health, who in turn has to report that to the Department of Motor Vehicles. That will kick in some additional issues with DMV. That's current law right now.

What this bill attempts to do is to say this gives the doctor discretion whether or not they make that filing with the Department of Health and Department of Motor Vehicles: it leaves it to the discretion of the physician. It removes the mandatory nature of it, and leaves it with the discretion of the physician as to whether or not that is to be submitted. That's the policy decision that I think Dr. Hardy is asking you to make today, whether or not it should be mandatory disclosure or voluntary disclosure on behalf of the physician.

I am here to tell you a related incident of why doctors should have that degree of discretion. I have a personal interest because I know a young lady who has been diagnosed with petit mal for a long period of time. She has also had a driver's license for a long period of time, because medication takes care of her

petit mal. There has never been a problem driving. That young person, after a long period of time went to another neurologist to get a second opinion to see if the petit mal was still there. I am not here to criticize the medical profession or the Department of Motor Vehicles. That neurologist said I don't think you have petit mal, I am going to take you off the medicine that you have been on for a number of years. As soon as that happened this person had a grand mal seizure. She goes back to the doctor and reports that to the doctor, and the doctor says, I have to report that to the DMV. I am putting you back on the medicine that you were on before. When that happened DMV then suspends that person's license for 90 days, even though that person has had a clean driving record and has driven for a long period of time with no problem. The question is should that doctor have the discretion to say, this person has been treated for petit mal, has had a history of having petit mal, and medication has taken care of it. Should that doctor have the discretion not to report that, so you don't kick in the automatic 90 day suspension?

[Bob Crowell, continued.] That's what is going on in section 9 of this bill. This is not an easy issue because it relates to the safety on the road. It seems to me that they should be consistent with the need to have the ability to make sure that our roads are safe. There should be a way that people can go safely to the doctor without the fear of having their license revoked. That's what Section 9 of the bill does. One of the first things that comes to mind when someone is diagnosed with petit mal, or has a seizure is, "Do I tell it to my doctor or not?" There is a safety issue out there and you want to be careful, but on the other hand you know that it will be a 90-day hit to your license. The young lady that I was speaking about called the doctor and said, "I am back on medicine, can you write a letter to the Department of Motor Vehicles and say I am now seizure free and back on medicine." The doctor says, "I can't do that, it's a DMV issue." Then she goes to DMV and they tell her to get a letter from her doctor. The end result is that this young lady is without a driver's license for 90 days, back on the medicine, and never had a problem with her driving.

Here is my recommendation to you on solving the issue on self-reporting. On page 8, line 6, where it says, "a physician may upon request of the Department of Motor Vehicles..." strike the words "upon request of the Department of Motor Vehicles" and say "a physician may provide to the Department..." and leave it up to the physician whether they want to report it or not.

Assemblywoman Gerhardt:

How would this affect Alzheimer's patients? Would doctors be mandated to report in an Alzheimers case or is that discretionary? I think family members would be relieved if the doctor would go ahead and take that step, because it's

often very difficult for family members to convince a loved one that they need to give up that license.

Assemblyman Hardy:

I think you got at the very heart of that section of the bill, and that is so pervasive. As a physician you are going to need some kind of family history in order to be able to make that determination. That is the senior part of that issue, and the example that I have in ([Exhibit C](#)) is of a person who basically has a memory problem because of a growth in the brain. They are powerless in the family to say "don't drive mom," so the doctor or the DMV has to. As the statute stands now, the doctor's under no obligation to report any medical condition other than those things that are under statute, such as epilepsy. It is a loss of consciousness statute instead of a safety statute as it is now.

Assemblywoman Gerhardt:

If you got the information from the family, the doctor would then have to report to the DMV, is that correct, or is that still discretionary?

Assemblyman Hogan:

It is still discretionary. The doctor has no obligation at this point to say anything to anybody about the driving. The reality is, doctors all the time tell grandma that she is not supposed to drive. Right now the people who are in the family are at a loss as to how to have the DMV even reassess the driving capability of that person. The DMV is very willing to do another assessment for that person. There is no reticence on their part to be willing to do that.

Assemblyman Goicoechea:

Under the statute, anytime there is loss of consciousness, you are supposed to report that to the DMV. At that point, the medical profession will be accepting the exposure, if not the liability, because they chose not to report that person.

Assemblyman Hardy:

I think you are also correct, and this proposal is to try to allow the physician some umbrella coverage. That's why I am so appreciative of having an attorney help with that kind of language.

Assemblyman Goicoechea:

I guess I don't see that protection, I still think that the physician would have to bear that responsibility or liability.

Assemblyman Carpenter:

This is a very difficult issue, because I have personal knowledge of what happens. To me it's just too serious of a problem to leave voluntary or the honor system.

Chairman Oceguera:

I know from my personal experience when we come upon folks who have had seizures in automobile accidents, the first thing I do is talk to the police officer on scene and say, I wouldn't rule out that this was a seizure, because there is nothing else that would cause this. I think that the police officer is then required to submit an accident report within a few days to the DMV. I would assume the police officer would then go to the hospital to interview this patient and talk to the doctor. I would assume the provisions of the current statute then kick in, and that doctor has to report. That is where I have a problem, because I think that they should report that this accident was caused by someone who had a seizure.

Assemblyman Hardy:

There is already a form for a law enforcement request for reexamination, and form for reexamination of a confidential physicians report. If the report has already been done, that person has already been in the system and DMV knows about it. That person usually has been in the emergency room, and the emergency room physician has initiated that report. Every physician who sees that person subsequently does not need to do the form over and over.

Chairman Oceguera:

What about the first time?

Assemblyman Hardy:

As the law is now, if the physician is aware in a professional way, he has to report. If the person is injured and goes to the emergency room, then that emergency room doctor has to report it.

Chairman Oceguera:

Your change would say he would not have to report.

Assemblyman Hardy:

The change would allow that to be voluntary. Physicians tend to be reasonable, so they would say this person has a problem.

Wendy Simons, Private Citizen, Reno, Nevada

I distributed copies of ([Exhibit E](#)). I am a health care administrator, involved in geriatric care for over 35 years. In that capacity, the first part of A.B. 239, it

deals with a reporting mechanism or a turn-in mechanism for individuals who should not be driving. I have personally written over 50 incidents of individuals still driving with a dementing condition, and the pains that the families went through to try to disable vehicles, among other things.

[Wendy Simons, continued.] You also raised the question about the person who has a vendetta against you and wants to turn you in and there is nothing wrong with you. I would bet that 99 percent of the public wouldn't even know this law existed and wouldn't go out seeking revenge against a relative to take their driver's license away. This really comes to the forefront when an individual's family or somebody who truly cares about an aging, or dementing individual says, what can I do, I need help? That part of the bill is very much worth considering.

The second part as outlined in testimony that I offered to you ([Exhibit E](#)), is that I have had a similar experience as Assemblyman Carpenter. My son developed epilepsy at the age of 16. I don't know if the general public is aware of the stigma with the tag "epilepsy." We all tend to freak, we are uncomfortable, and we don't know what to do when we see somebody having a generalized seizure, which used to be called grand mal. You may not be aware that there are over 24 different varieties of seizures that will be categorized in the tag "epilepsy." I have had four employees who were diagnosed with epilepsy and had seizures. Those employees would call in, not being able to come to work because they had a seizure. I would ask them to please talk to your physician, let them know that you are having a breakthrough seizure so that you can be coordinated, and have your medications adjusted. They said no because if I do, I will lose my driver's license and I can't get to work, so I will just stay home today and I will be back tomorrow. I gave counseling to these people; it really does support what Doctor Hardy is saying here.

I can see the liability side; I can see the general public concern about allowing epileptics to drive. For all I know, somebody sitting in this room may have epilepsy; it's controlled, and it's fine. Bear in mind as you are limiting or continuing to limit, and not considering Doctor Hardy's approach to this, there are 24 different varieties of seizure patterns. Not all are tonic-clonic or generalized convulsive seizures. Some are merely the loss of ability to speak and some are the loss of ability to respond. Those are called an absence seizure. I want to applaud Dr. Hardy in his creativity in looking at this, and I will continue to come before you as he works on this. If you cannot take this bill forward today, maybe make an appropriation to create a study group to truly identify how many seizures in the state are limited on their driver's license, and really what could be done in a proactive measure to encourage these patients to continue to seek proper medical care without fear of being penalized. I would

bet that at least 75 percent of this room has driven impaired at one time or another, but they are not drunk. I would bet that 50 percent of the Assembly and the Senate are exhausted when you go home, and what is the risk of you driving on the roads? There is a risk for all of us who drive; it's just interesting that some medical conditions now have a tag, which serves as a barrier for competent treatment. Please give his proposal serious consideration regarding both dementia and seizures.

Joe Guild, Legislative Advocate, representing State Farm Insurance, Reno, Nevada:

Doctor Hardy asked me to come before you anticipating a question relative to insurance, and at least in State Farm's case, the kind of people that you have been talking about today as an insured. The factors that are considered by State Farm are whether there is clearance from a doctor, and the person is properly medicated. They don't treat epileptics any differently than any other applicant at State Farm Insurance. There is insurance available for these folks.

Leo Drozdoff, Administrator, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources:

We did meet with Assemblyman Hardy on the provisions that he has struck. We have prepared a fiscal note and based on those provisions that have been struck, the fiscal note goes away and so does our opposition.

Colleen Cripps, Chief, Bureau of Air Quality Planning, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources:

One of the concerns that Assemblyman Hardy had was with the biennial smog check program. I wanted to let you know that we have made a commitment to Assemblyman Hardy to take a look at the way smog checks are being done, and the commitments that we have made with EPA [Environmental Protection Agency] to see if there is going to be an opportunity in the future to maybe change the way those are done so that we are not necessarily going to have to do them annually. That will take some work on our part and approval by EPA before we can make that happen.

Clay Thomas, Deputy Director, Nevada Department of Motor Vehicles, Carson City, Nevada:

I would like to thank Assemblyman Hardy for the opportunity to meet with him prior to the introduction of this bill, and to work through some of the issues. The Department's position is that we will continue to work with Assemblyman Hardy and other members of this Committee or industry to find the best resolution possible to address these issues.

Chairman Oceguera:

I will close the hearing on A.B. 239.

I will open hearing on A.B. 315.

Assembly Bill 315: Enacts provisions relating to event recording devices in motor vehicles. (BDR 43-894)

Assemblywoman Peggy Pierce, Assembly District No. 3, Clark County (part):

I am here to talk about A.B. 315. This has to do with event recorders in cars. When a plane crashes, one of the first things investigators look for is the black box. These recorders store information that can solve the mysteries of a crash. Today, there is similar technology in about 25 million vehicles. The chances are, if you drive a new car you have one hidden under your seat. Data recorders in newer vehicles note the use of brakes, seat belts, air-bags, and the speed. The National Transportation Safety Board urged manufactures to install this technology in new cars to make crash investigation and reconstruction easier. The devices start recording once airbags have been deployed, about 5 seconds before a crash when most witnesses are not able to remember what happened. Did they hit the brakes or were they speeding? These questions will be answered more easily through the use of black boxes. Most, if not all, of the data from the box can be downloaded onto a computer.

To protect the privacy of the car owner, the California Legislature recently passed the first law regulating the use of these black boxes. Unlike those used on airplanes, the boxes installed in vehicles do not record sound or conversation. Yet, the sponsor of the California bill believes the information in these data recorders should be protected by the Fourth Amendment of the *United States Constitution*. Under the new law, the vehicle owners must be informed that their car has a recorder, and that the data can't be downloaded unless the owner gives consent. The only way around that stipulation is through a court order or if the information would be used for medical or safety research and can't be traced back to the individual car and owner. That tells you what my bill is about.

Chairman Oceguera:

Did you say this is what your bill is going to do, or this is what federal law says now?

Assemblywoman Pierce:

No, this is what my bill will do.

Section 1, subsection 1 talks about the manufacturer of a car. It would disclose in the owner's manual that there is an event recorder but, also, I went on to say that I wanted the dealer to actually verbalize that there is an event recorder in a car when someone buys the car, because I think a lot of people don't read their owner's manual. It also goes on to say that the dealer and the manufacturer need to tell the buyer what the event recorder does, and what kind of data can come from it, and I also included that the data cannot be downloaded without the permission of the owner of the vehicle. In Section 1, Subsection 3, paragraph (b), "or pursuant to the order of a court of competent jurisdiction," or "it can be downloaded for use in research." In that case the owner would not be identified in the research. That is the basics of the bill. I have been contacted by the Property Casualty Insurance Association of America, who proposed an amendment, and I would have to look at that, but, I am willing to work with anybody about concerns of the bill.

[Assemblywoman Pierce, continued.] I have a letter ([Exhibit F](#)) that the Association of International Automobile Manufacturers has sent to you, Chairman Ocegüera, and I would be willing to work with them. I was speaking to someone who represents car dealers, and he suggested, instead of a verbal communication about the event recorder being in the car, that it be included on the sticker on the window. I would be willing to think about that; I think that might be sufficient. I think that people do look at the sticker on a new car. I would be willing to work with anyone who has concerns about the bill and see if we can come to an agreement that makes everyone comfortable.

John Sande, Legislative Advocate, representing Nevada Franchise Auto Dealers Association, Reno, Nevada:

I had never even heard of this until I saw the bill. I didn't know there were black boxes in motor vehicles. We support the right of a consumer to know, and the appropriate way to do that we would have to leave up to you. I think there are also some federal regulations pending, but they haven't been drafted as yet. We would like to say from a dealer's perspective, we wouldn't have any information as to whether or not there was a black box in a vehicle or how it operated. We believe it should be a manufacture's decision, and also a manufacture's obligation to notify the purchaser of a car that they have this black device and whether they want it or not and what it does.

Kate Diehl, Legislative Advocate, representing Property Casualty Insurers Association of America, Sacramento, California:

PCI [Property Casualty Insurers] represents 276 insurance companies who are doing business in the state of Nevada who write more than 50 percent of the automobile insurance policies in the state. Yesterday, I sent an email ([Exhibit G](#)) to the Committee regarding my testimony and suggested an amendment. This

would allow the insurance industry access to the data from the electronic recording devices. The objective data from these devices would be very helpful in determining the events surrounding an accident, and would allow adjusters more specific data in adjusting and investigating claims. I have been advised by the claims adjusters in our association that this data is rarely used because it is, as many electronic devices, not easily accessible and very expensive to use. It would only be used in a very serious accident or very serious concerns about the accident.

[Keith Diehl, continued.] The insurance industry is very concerned about our policy holder's privacy. We are highly regulated in that regard. We would very strictly adhere to any privacy issues regarding the data.

Chairman Oceguera:

I received an email from a law enforcement official and it talked about the fact that they used this information in accident investigations. If they can use that, wouldn't that be available to you already?

Kate Diehl:

By virtue of this statute, we would not be able to access that data without one of the entities that has access to the data giving us permission. In the event that law enforcement is not available or would not have the ability to get that permission to us right away, or a court order, it would be cumbersome for us to get that information.

Chairman Oceguera:

Is this a one-time download or is it downloadable several times? Would it be egregious or difficult for someone to plug their computer in and get that information more than once?

Roger Vind, Lieutenant, Human Resources, Nevada Highway Patrol, Nevada Department of Public Service:

In regards to the downloading of that information, the manufacturers are the only source to be able to download that information. It is time consuming and it is expensive to do. The Nevada Highway Patrol has only used that resource on a couple of occasions the last couple of years, since the inception of the black boxes.

The Nevada Highway Patrol opposes this draft as worded, only because it does limit and require under subsection 3(b), "pursuant to the order of the court of competence jurisdiction," That this is the only means in which we are going to be able, as a law enforcement agency, to obtain the black box, should this bill pass.

[Roger Vind, continued.] Our concern is that as technology changes, and looking at the past history, we have been able to determine vehicle speed based on braking, skid marks, et cetera. We have been able to take a look at other equipment items on the vehicle, tail lights, head lights. The way that they burn when broken determines whether they were actuated or not actuated. These are all pieces of evidence at a scene that help us to be able to tell a story. The way that we look at this black box is that it's another piece of equipment that tells a story. We don't necessarily believe that it holds the same Fourth Amendment rights to require us to have to obtain a search warrant, when in plain view. The Nevada Highway Patrol would like consideration to amend the language in this, in order to make some exemptions for issues of prosecution; exemptions for having to obtain a warrant under issues of prosecution, DUI accidents involving serious bodily injury or death, primarily for the purpose of preservation of evidence; immediately being able to react; and to do a speedy recovery of evidence.

Assemblyman Goicoechea:

How long does this black box record? Does it work all the time? If you hit a rough spot in the road does it click on? As I read the bill, it sounds like more than a five-second blurb.

Roger Vind:

It is my understanding there are various different devices in the marketplace based on the manufacturer. I have been told that some boxes record the last 15 minutes. I have been told that some information is not gathered until the air-bags are deployed. I am not an expert in the field, but I do know there is a great deal of information that it does record, braking speeds, whether the vehicle is under acceleration, seat belts on, and other electrical equipment that is being utilized.

Assemblywoman Gerhardt:

Can anyone tell me how reliable this technology is? If we are talking about giving this information to insurance companies and using this as evidence of a crime, do we know how accurate this information is?

Roger Vind:

As far as the Nevada Highway Patrol goes, we have different officers trained at different levels, from basic accident reconstruction all the way to advanced, and occupant moving training. The use of the black box for us would do nothing more than to support our already trained finding. The instances that come to my mind in which the black boxes were used, were two cases involving prosecution. Exactly what that was used for was to support the officer's finding

of the speed and vehicle movement and whether the vehicle was under braking or not braking at the time of the accident.

[Roger Vind, continued.] I have been told that they are extremely reliable, more so than the mathematical equations that we use that gives a mathematical braking speed. We are always testifying to the minimum speed not the maximum speed. These black boxes are much more detailed in gathering information at the impact of where we are working with fractions of seconds and distance covered which could fluctuate.

Michael Geeser, Government Relations, Automobile Association of America (AAA), Las Vegas, Nevada:

AAA supports the privacy of car and truck owners, and we believe all manufacturers selling vehicles with event data recorders should be required to disclose the existence of such devices. We also support the amendment which forbids access to the information without a court order or permission from the owner. AAA supports A.B. 315 in its original form as well as in its amended form so long as the disclosure is added.

Chairman Ocegüera:

This gentleman is telling me that you may get speed for 6 seconds, what is termed the algorithm, as well as the engine speed, throttle position, and whether the brake switch was on or off. You also get a y-axis of the acceleration graph commonly called the delta-V for up to 150 micro-seconds. It records whether a seat belt is worn or not, the number of key cycles, et cetera. I will forward this to the Committee members and Ms. Pierce.

Bob Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police department, Las Vegas, Nevada:

We are neutral on this bill and don't have any issue with regard to the need for a court order to obtain information.

Troy Dillard, Administrator, Compliance Enforcement Division, Nevada Department of Motor Vehicles:

We have no position on the bill, however, we are concerned about the oral disclosure of the device in the vehicle. Subsection 6 makes it a misdemeanor for the dealer not to disclose that. With regard to the investigation of these cases, the oral disclosure is obviously much more difficult to prove. If an amendment were offered as discussed earlier having the disclosure on the sticker, that would reduce the problem that we see with the bill.

Chairman Oceguera:

I had some other correspondence that I received from Ms. Pierce, and I will forward that on to you as well.

I will close the hearing on A.B. 315.

Open the hearing on A.B. 381.

Assembly Bill 381: Authorizes use of single center lane when making left-hand turn onto highway. (BDR 43-628)

Assemblyman Hettrick, Assembly District No. 39, Douglas and parts of Carson City, Washoe, Counties:

I have brought before you today A.B.381. This Committee passed A.B. 414 of the 72nd Legislative Session. In the rush at the end of session, this bill ended up as one of those that didn't make it out in the end. I brought it back because I think the bill does what needs to be done to correct the law in Nevada, and stop making what I think are law abiding citizen's criminals.

This is the infamous two way left turn lane bill that you've all heard of before. Because of the wording in the existing law, it has been determined that if you do that, you are breaking the law. This bill is very simple language. On page 2, lines 5, through 10, it allows you to merge into that center lane and then merge safely into traffic, so you are not breaking the law when you do that. I think last session this bill simply didn't make it out in the rush at the end of the session.

Chairman Oceguera:

If there is a center turn lane, we can pull into the center lane and then merge into traffic, correct?

Assemblyman Hettrick:

Exactly right. Line 5 indicates "A vehicle may be driven in the center lane only for the purpose of making a left hand turn." We are adding the words "onto or from the highway," which allows you to turn into the center turn lane both ways, and therefore it is not illegal for you to pull out into the center turn lane. What we are trying to do is let you pull out there, and sit until you can merge safely. This clarifies that it is "onto or from the highway," and the next language says "you cannot travel more than 200 feet." We don't want you to pull out there and use it as an acceleration lane and try to race to get ahead of everybody, but you should be able to pull out and gain enough speed to merge with traffic safely, and that is the intent.

Chairman Oceguera:

As I recall there was a question last time about accidents occurring in that 200 foot area, when another car comes into you head on trying to turn into the same area that you were just coming out of. What happens then?

Assemblyman Hettrick:

I think that law enforcement is going to have to go out and look at that, because there are multiple ways that can happen. I know all of you have pulled into a center left turn lane and have a car approaching the other way do the same. If you are not paying attention, you can have an accident. Because of that, I don't think there is any perfect law. I think what they are trying to do with the 200 feet is say, we don't want you to get out in that lane and use it as another lane. The idea is to merge safely into traffic and allow you to gain a little speed to do that. If there is an accident, I think it is going to be investigated to see if someone went beyond that, or if the traffic was coming the other way and they didn't pay attention. I think the rest of the traffic rules would apply.

Chairman Oceguera:

The person coming towards you would be going into his left hand lane, which would be the turn lane, and that is where that accident could occur possibly.

Assemblyman Hettrick:

Yes, I think that is the situation. It is a left turn lane for both directions of traffic; it has to be used mutually by both directions of traffic. It takes the same awareness by the drivers, and caution. I think it is still a law enforcement decision. They will have to investigate and decide who was in the wrong.

Fredrick Drees, Chief Traffic, Safety, and ITS Engineer, Nevada Department of Transportation:

We are neutral on this proposed bill. We have the same concerns that have already been expressed. The conflict of two vehicles vying for the same space on the highway, especially a person who is making a left turn from the side street or driveway who is usually looking over their right shoulder or in their mirror trying to merge with traffic, is unlikely to be looking forward in the direction he is traveling when someone else tries to enter that lane. For those reasons we are concerned about conflict, increases in crashes, and the severity in those crashes.

Assemblyman Carpenter:

Do you have any statistics on how many accidents there are when people are doing this?

Fredrick Drees:

Not specifically. We would have to do an extensive analysis of our crash database to retrieve that information. We have not done that, and I am not sure that the information is finite that we could.

Assemblyman Sherer:

Do you know how many tickets have been given because people have done that?

Roger Vind, Lieutenant, Human Resources, Nevada Highway Patrol, Nevada Department of Public Service

No, I don't have any statistical information. Most of our police officers would give a verbal warning in that scenario.

Chairman Ocegüera:

We will close the hearing on A.B. 381.

We will open the hearing on A. B. 435.

Assembly Bill 435: Revises provisions governing administration and collection of certain fees and taxes by Department of Motor Vehicles. (BDR 43-1038)

Dennis Colling, Chief of Administration, Nevada Department of Motor Vehicles:

I am here to present information and answer questions on A.B. 435. As you are aware, the Department currently accepts credit cards for payment of fees and taxes owed to the state. The Department has made a simple proposal in A.B. 435 to pay for the cost associated with taking these credit cards, debit cards, and other forms of electronic payment, from each payment of taxes and fees, prior to making the appropriate distribution. This proposal through A.B. 435 has been built into Budget Account 4745 for the Administrative Services Division for the Department of Motor Vehicles, and is an integral part of our budget.

In order to provide a picture of this process and to show the impact, please look at the flow charts ([Exhibit H](#)). The first flow chart is an actual transaction from Clark County. It shows the flow of money for that transaction through the DMV application, and subsequent distribution. This transaction was a late transaction, and has various penalties attached to it. The credit card charges are not shown on this transaction as they are currently paid through an appropriation to the Department. The second flow chart is the same transaction with the credit card

charges being removed from the transaction, prior to the distribution of the funds. It shows an amount in parenthesis which represents that actual credit card charge spread throughout the transaction. We are basically asking that each entity or fund that we collect money for pay their share of the cost of collecting that money.

[Dennis Colling, continued.] Although this is primarily a fiscal bill, there is a paramount underlying policy issue in the acceptance of payment for the use of credit cards or any electronic method of payment accepted by the state. The acceptance of electronic payment by governments is a relatively new phenomenon within the last decade. Throughout the country, governmental entities are struggling with how to pay for the costs associated with these payments. The options are limited, and each one has certain problems associated with it.

It is, of course, theoretically possible to charge the user of the electronic payment method for any costs incurred because of that payment method. You can charge whoever uses the credit card. There are contractual issues with this; some credit card use will not allow this to occur. This is a very distinct possibility that usage of alternative service methods will be reduced because of the additional cost of the customer. There is an issue of this charge being an aggressive tax upon those least likely able to pay for it. It is possible to continue as we have been, and pay for these costs through an appropriation. The Department currently receives a Highway Fund appropriation for projecting during the next biennium. It will be \$11 million out of the Highway Fund to pay for the collection of all the various types of monies that we collect.

There is a visible downside to this; we don't know who to take the appropriation from if we decide not to take it from the Highway Fund. We don't know how much to appropriate. The payment process that we are talking about is not a mature enough process to be accurate in our projection of our expenses. I have been off by millions in my projections into the future. Three years ago when I projected what we would be spending in 2005, I projected about \$1.98 million; we are looking at \$3.7 million, and that is a considerable difference. I have been before the Interim Finance Committee asking for additional funding from the Contingency Fund, and we have a supplemental in to look at additional funding to make it through the year.

The method the Department has proposed is to take the costs off the top of the transaction, prior to the distribution of funds collected, is in my mind the best proposal to go forward, and that's what this bill does. This method forces each entity that the Department collects funds for to pay for their portion of the costs charged, for the use of electronic payments.

[Dennis Colling, continued.] Another proposal would be to do a statewide cost allocation similar to what is used for state purchasing. This would be something that would be available once the process has matured. We are having a 30 to 35 percent growth in our usage of credit cards, which is not a mature process that we cannot factor into our projections, just the demographic growth. We are continuing to add processes and we are continuing to add additional customers that become aware of it and want to use it; it is not mature yet.

There is a policy issue that the State needs to look at, and the Department needs to have this bill move forward. If it doesn't move forward we will need a Highway Fund appropriation of approximately \$11 million to pay for the costs associated with electronic payments.

Chairman Ocegüera:

I am not sure I understand your second sheet ([Exhibit H](#)), I understand the fee associated with the credit card, and I understand the revenue collected when distributed. What are the green numbers on the bottom right?

Dennis Colling:

This is the proposed process that we have under this bill. We're proposing that for each of the entities that we collect fees, we will take whatever their percentage is off the top of that distribution. As an example, for a \$200 registration fee, the rule of thumb is that approximately 2 percent are credit card fees, and you take \$4 off the top. You run that into a budget account to pay the fees associated with merchant fees, and then you distribute \$196 throughout the various entities that we have collected under that particular transaction, whether they be Lake Tahoe plates, Supplement Government Services Tax, registration, or Highway Funds.

Chairman Ocegüera:

I am not following the breakdown of the credit card fees as associated to the numbers on the page. If you add up all these numbers in parenthesis they're going to come to \$27.05?

Dennis Colling:

That's correct. That would be the credit card fee for a \$1,395.75 transaction. We have had transactions as much as \$90,000, which cost the state \$1,800 for that transaction.

Assemblyman Carpenter:

One of these boxes has the DMV Field Services 6 percent commission. Where does that go to?

Dennis Colling:

The Department collects the 6 percent commission for the collection of Supplemental Government Services Tax. Those funds go directly to the Field Services Division to pay for our operations there.

Assemblyman Carpenter:

You are collecting a commission on the Supplemental Government Services Tax, is that right?

Dennis Colling:

That's correct; we have collected that commission for as long as anyone can remember. It was put in a number of years ago. This particular method of payment was not contemplated back when the 6 percent commission was originally put in.

Assemblyman Carpenter:

It says you are paying 1.936 percent. It seems to me like that gives the credit card company a huge commission on something that they are sure to get. Won't they reduce that commission somewhat? Have you talked to them?

Dennis Colling:

We are currently in the process of doing another RFP [request for proposal]. This is a statewide contract done through State Purchasing, and this is not a DMV contract. Neither the current one nor the future one will be a DMV contract. One of the specific questions that we are asking in the RFP relates to the low risk of doing business with the government, specifically the DMV. We do have a hammer that we are able to hold over their head. If they don't pay, we can suspend their driver's license, we flag their registration, and eventually we generally catch up with them. We have a very low problem rate with credit cards. That should get us a better rate, but our current rates are very competitive when compared to other states that have rates. We are paying American Express, 2.35 percent, that is our highest rate. Discover is 1.6 percent, and as of last Friday the base rate went from 1.82 percent to 1.83 percent for Master Card and Visa. There are additional add-ons, as there always are in these, that add another approximate 0.1 of a percent, but we are negotiating now.

Chairman Oceguera:

When I was reading this bill, how would you figure that out? When I use my American Express versus my Visa, you have different rates for different cards, right?

Dennis Colling:

That is absolutely correct. We have asked that the implementation date of this bill be January 1, 2006. It will take us that long programmatically, but we will basically have a chart and will be able to identify what credit cards are being used, and it will automatically go to that chart and pick that rate out.

Assemblyman Goicoechea:

Local government is picking up the ticket on this for 6 percent. As you go through the graph, it seems that we get 2 percent here and 2 percent there, plus a 6 percent commission. It looks to me like we are already paying the 6 percent in local government for the facility of DMV, and actually we are picking it up for everybody who chooses to use a credit card versus those who pay by cash or check. As you look at the graph, we start with the Supplemental Governmental Service Tax, and then we impose it on Clark County; we also impose it on the 6 percent. Looks like lots of percentages are stuck together there.

Dennis Colling:

That is very true. In this proposal, we charge everybody the same amount for collecting the funds on their behalf. The bulk of the funds collected in a registration, averaging \$225, are for Supplemental Government Services Tax. Currently, under the process that we have now, the State Highway Fund is projected to carry all of those expenses. Only \$33 of that transaction is a Highway Fund. The question is asked why the Highway Fund should pay for the collection of those monies. If we project out into the end of fiscal 2007, we estimate that in the 6 years since activation of the use of credit cards, we spent almost \$23 million of Highway Funds.

Chairman Ocegueda:

I am concerned with the use of the Highway Funds as well.

Assemblyman Goicoechea:

The Highway Funds are not paying the commission to anybody. You are concerned about the registration fee, the late fee; none of those are paying a commission presently. I guess if you wanted to access the money for the credit cards, I would suggest you go there.

Assemblyman Sherer:

I understand how these work also; we manage a grocery store. It helps with your transactions; you don't have to deal with cash and bad debts on checks. You don't have to go to collections and have that nightmare scenario. Doesn't this take away from some of that? What have your bad debts been? Has that gone down since these electronic payments have been put in place?

Dennis Colling:

Our bad debt collection does so well that it nets more money through the use of application fees and penalties than is actually written in bad debt. It is a program that's in the black. Normally you would think, yes, but we have a very low bad debt ratio, it's less than 1/2 of 1 percent of the checks written. As a businessman, you understand how good that is. Our bad debt has flattened out as far as the number of checks that are written to the Department in the last four or five years. It has stayed level even though our volume has gone up. I cannot tie that directly to the use of alternative methods such as credit cards. I can only infer that perhaps that has helped. We make money on bad debt.

Ginny Lewis, Director Nevada Department of Motor Vehicles:

I would say if we have more people using alternative services, it has less of an impact on our field offices and the need to hire additional staff. I think the bottom line is we are down the road 6 years. We started in 1999 accepting credit cards. We started in 2000 with alternative services, primarily the Internet, which is 100 percent credit card. At that time it was the decision of the Governor that the Highway Fund would absorb that cost. None of us at that time anticipated the tremendous response and use of those services. Here we are today at \$11 million for the next biennium, and that is why we are before this Body, not just Transportation, but certainly our money committee asking the question, is it appropriate, and is it fair? We believe that it's time all entities that we collect on behalf of, pay their fair share.

Dennis Colling:

The Department recognizes that there are issues out there. We are to looking to the future, and we have pushed for a payment platform. We're in the testing phase now of a "soft launchable" as we call it. We will be able to accept any method of payment, whether it be credit card, pinless debit, or e-check, we are looking forward to all of these. The transaction cost for an e-check is \$0.20 per transaction. The same transaction that the DMV pays an average cost of about \$4 for the use of credit card; we are going to pay \$0.20 if they use an e-check. A change of habits from credit card to e-check or pinless debit should see a significant impact on all of this. We are looking at this and hoping that the e-payment platform will significantly help us long term.

Assemblyman Carpenter:

It says here, your field services collects \$3.73 for processing those credit cards, then you collect another dollar from the Highway Fund. The total of \$11 million is coming out of the Highway Fund, unless you use the money that is going to your agency.

Dennis Colling:

I believe you are looking at the proposed process of how it would be. Under that process the Highway Fund portion of the registration would pay its fair share. Currently, we do a direct appropriation into the Budget from the Highway Fund. For each year there is an appropriation into Budget 4745, and all of the merchant fees are paid out of that appropriation. That is on the first page ([Exhibit H](#)) that says current process. It shows no expenses to any of these additional entities. That's what we are looking at as far as the current process. It all comes out of Highway Fund money. Under the proposed process, approximately 15 percent goes to the Highway Fund and only that percentage of the transaction fee would come out of the Highway Fund.

Jeanette Belz, Legislative Advocate, representing the Nevada Chapter of Associated General Contractors , Reno, Nevada:

This situation first came to our attention when I was attending Interim Finance Committee meetings, and the folks from DMV were constantly coming back asking for more money for an additional appropriation for credit card fees. The credit card fees that they were asking for seemed so large. What runs through the DMV that was costing so much money? It was then that I asked Ginny Lewis, what are you paying this on, and she said that includes the whole transaction, including the Supplemental Governmental Services Tax. That was of great concern to us. In the example that Mr. Colling gave, if you have a \$200 transaction and you pay \$4 out of that to credit card user fees, that would mean that the net to the registration fee would only be \$29, or \$33 registration fee minus the \$4 that they would be picking up.

One of our goals has been to try and increase Internet services, and the noncash, noncheck fee type of transactions. We are only one click away from being first in line. Why should the Highway Fund constantly absorb the cost of doing that business?

Assemblyman Sherer:

Are you saying maybe we should raise the fees on the government services?

Jeanette Belz:

Everybody should absorb their own percentage, whatever the percentage, thirty- three dollars is to the total transaction and that should be the percentage of the credit card fees that they should absorb; everyone should absorb their own.

Pat Zamore, Legislative Advocate, representing the Clark County School District, Las, Vegas, Nevada:

[Referred to [Exhibit I](#).] The Clark County School District is opposed to [A.B. 435](#). For the year ending June 30, 2004, the District received almost \$2 billion in various tax collections to support the operational and capital needs required to educate students in Clark County. As with all taxes received, the District is dependent on some other state agency or local government to fulfill their statutory responsibility to collect and distribute those taxes to the school district.

Although [A.B. 435](#) specifically speaks to the fees on the electronic transfer of funds and payment of the GST [Government Service Tax], the District is not willing to really open the door to be assessed the costs of collecting any tax that will ultimately reduce the resources available to educating students in Clark County.

I have also been authorized to add the "me too" in opposition to this bill for the Washoe County School District.

Andrew List, Nevada Association of Counties, Carson City, Nevada:

[Referred to ([Exhibit J](#))] I oppose this piece of legislation. The total could be between \$9 million and \$11.5 million to local governments in the next biennium. Our objection mostly has to do with the business decision that was made, presumably when the State decided six years ago to take credit cards. They thought there was a good reason in doing so, probably customer goodwill, shorter lines, and bringing the State up to speed with technology. They should reap the rewards of such a business decision. We also believe since it was a business decision which was done without the input of the counties and the cities, they should also accept any detriment that goes along with that, and that includes the vendor fees.

As we spoke with Mr. Colling, and heard him testify in the other committees, the DMV is doing a lot of different things right now technologywise. That is one of the things they are doing, accepting credit cards, and kiosks are also accepting credit cards online. We believe there is a cost savings associated with that. People no longer have to go into the DMV. In the long run it would mean fewer employees and fewer buildings. We believe there is a cost savings associated with the credit cards. It could be equal to or more than the vendor fees. We believe since the State made this business decision, it should be the State's burden to carry any detriments that go along with it.

Mr. Colling asked the policy question before you, whether or not the Highway Fund should continue to pay for these credit card vendor fees. That's one policy

question. The second policy question is whether or not the county should pick up the tab for a business decision made by the State, which the State feels it can no longer live within a financial sense.

Nancy Howard, Assistant Director, Nevada League of Cities and Municipalities:

We are strongly opposed to A.B. 435, in addition to what has already been stated here today. We listened to this during budget hearings in March at the Joint Senate Finance, and Ways and Means Committee meetings. There was discussion about their ability to renegotiate their contracts to reduce the fees that they are being charged. That wouldn't just apply to DMV, it would apply to the whole State of Nevada. If you can imagine how much money the State could save just by renegotiating their contract.

We view this as a business decision that was made by the State, and right now all it is doing is transferring those costs to local government.

I would like to mention that the Department of Motor Vehicles is also holding the administrative fees a couple of months before they are distributing them out to local governments. They are making interest on that money. If you add up all the fees that they are charging, it adds up. The DMV fees in general were part of the fair share adjustments that were made in 1990, and it doesn't seem right to go back and take away something that we previously agreed to.

Chairman Ocegüera:

We are all in this together, this is all one state, and the counties are part of the state. I am offended by that actually, and then you say, that we were part of it, but Mr. List said no, we weren't part of it. I am sure you were part of the discussion six years ago when these fees were originally agreed to, but didn't say anything. I don't know where this is going to go, and I am not chastising you, but we are all in this together, we should look at it like that instead of "they and us."

Mary Henderson, Legislative Advocate, representing the City of North Las Vegas, Nevada:

As our colleague stated, we are in opposition to the bill. I worked closely with then Assembly Government Affairs Chairman Doug Bache back in 1995, to get the State into the business of credit cards. We ran into several stumbling blocks and as a result, the bill was not passed until 1997. When it was put into law, one of the things that we dealt with was the issue of, if you have a fee the State needs to get its entire fee. When you take a credit card fee percentages off the top, then the State's not getting the full money that is available to it. NRS 353.1465 deals with the acceptance of credit cards and it authorizes a couple of mechanisms for the State to be able to recoup those fees. One is to

charge the user a surcharge, which is equivalent to whatever the cost of the credit card fee would be. The other one is to put a plan in place through the State Treasurer. Over the years as various state agencies have gotten into the business of credit cards, they have all come up with a different solution as to where they are going to get those monies. My concern would be, what are we charging the users? We do it in local government as a surcharge, and people consider that a convenience. There is a mechanism in law that allows that to be done right now. Or they can go through the Department of Administration to get reimbursement. It's a budgetary decision on the state's part to pull that money from the Highway Fund. The law itself does not say where the money must come from, that's a budgetary decision that the State is making on its own.

[Mary Henderson, continued.] In Clark County alone, this particular fee generates \$75 million. The flow is not just on the administrative fees, the state actually collects the fees, keeps them for two months and gathers interest off that. I think if you figure 6 percent of \$75 million, you will find that is \$4.5 million that we are already paying the state to do this right now.

For us the issue is not about the State Highway Fund. It's about the fact that we already pay fees to the state Department of Taxation. The State is getting interest money off of this, and we are already paying them an administrative fee. I think they have the mechanism in place other than shifting that burden to local governments. These are all tax dollars, and if it doesn't come out of the State's road fund, either let it go to the users of the cards or don't shift these costs off to us.

Stephanie Garcia-Vause, Legislative Advocate, City of Henderson, Nevada:

I would like to express our opposition to this bill, especially to the reasons that Mary Henderson just expressed. There is already a mechanism in state law which will allow the DMV to recoup these costs, and we think that is an appropriate way to charge the user for that convenience, if that's necessary.

Neena Laxalt, Legislative Advocate, representing City of Sparks, Nevada:

The City Council unanimously voted in opposition to this bill. The fiscal impact to the City of Sparks is \$40,000.

Dennis Colling:

The Department of Motor Vehicles funds go into the Motor Vehicle Fund. The Department does not earn any interest on any of the funds. The State Highway Department may, but the Department of Motor Vehicles does not, nor do we hold money and not distribute it.

Joe Guild:

On behalf of Elko County, just echoing NACO's [Nevada Association of Counties] opposition to the bill.

Chairman Ocegüera:

We will close the hearing on A.B. 435.

We will open the hearing on A.B. 445.

Assembly Bill 445: Transfers Committee on Testing for Intoxication from Department of Motor Vehicles to Department of Public Safety. (BDR 43-665)

Chuck Abbott, Highway Safety Coordinator, Office of Traffic Safety, Nevada Department of Public Safety; and Chairman, Committee for Testing on Intoxication

This Committee was established by the NRS to certify alcohol testing devices, and to certify forensic analysts for testing for alcohol. The Committee was originally established under the DMV and Public Safety when it was relocated to the Department of Public Safety. Fortunately, the wording in the statute was never changed and that's what this bill proposes.

Chairman Ocegüera:

This is what we are already doing?

Chuck Abbot:

That's correct, sir.

Ginny Lewis:

This is pretty much a clean-up from when both Departments split out of the 2001 Session. I absolutely support this.

Chairman Ocegüera:

We will close the hearing on A.B. 445. I will accept a motion.

ASSEMBLYMAN MANENDO MOVED TO DO PASS
ASSEMBLY BILL 445.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

[Chairman Ocegüera, continued.] We have one bill on work session, A.B. 293.

Assembly Bill 293: Provides exemption from governmental services tax for vehicles registered by resident of Nevada who is on active duty in armed forces of United States. (BDR 32-948)

Marjorie Paslov-Thomas, Committee Research Analyst, LCB:

[Referred to Exhibit K]. This exempts vehicles registered by a resident of Nevada who is on active duty in the armed forces of the United States from the Governmental Services Tax. A person must submit proof of his active duty status to the DMV. It also provides that the Department may grant the exemption annually for all vehicles registered to that person, until the person is no longer entitled to the exemption.

If a person provides false proof to the Department and receives the tax exemption, he is guilty of a misdemeanor. If a vehicle ceases to be exempt from taxation after the beginning of the year, the amount of the tax must be reduced on a pro rata basis, and a person may waive his exemption and designate any additional amount credited to the gift account for veteran's homes.

There are a few proposed conceptual amendments and these were proposed by the sponsor of the bill, Assemblyman Parks. The first one would be to amend the bill to clearly define active duty. Active duty would be defined as a person who is a member of the United States Armed Forces, including a member of the National Guard or Reserve unit called to duty outside of Nevada in support of worldwide contingency operations of the United States Armed Forces. The second amendment would be to delete provisions requiring that a person who is no longer on active duty to immediately notify the DMV that he is no longer eligible to receive that exemption. The third one adds a new section to provide that a person who is on active duty and receiving that exemption, from paying the GST, and then ceases to be on active duty during the period in which he is receiving the exemption, must notify the DMV as soon as it's practicable, rather than immediately, that he is no longer on active duty. The DMV then shall charge the person a prorated amount of the GST for the remaining portion of the annual registration period. If a person who ceases to be on active duty fails to notify the DMV of that fact prior to when his next registration payment becomes due, he must pay the prorated amount for the portion of the registration period during which he was no longer eligible for the exemption along with the registration fees and GST for the coming registration period.

Mr. Parks has also provided a worksheet of proposed costs behind Tab A ([Exhibit K](#)). Because there wasn't a fiscal note he estimated his own fiscal note for you.

Chairman Ocegüera:

I would entertain a motion to accept Mr. Parks amendments and re-refer to Ways and Means.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS WITH ASSEMBLYMAN PARKS' AMENDMENTS AND
RE-REFER TO WAYS AND MEANS.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

There being no further business, the meeting adjourned at [4:12 p.m.].

RESPECTFULLY SUBMITTED:

Angela Flores
Committee Manager

APPROVED BY:

Assemblyman John Ocegüera, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: April 5, 2005

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda (2 pages)
AB 348	B	Brian Gresh	Proposed Amendment A. B. 348
AB 239	C	Assemblyman Joe Hardy	Amendment to A. B. 239
AB 239	D	D. Smith	Email regarding DMV and the elderly (4 pages)
AB 239	E	Wendy Simons	Testimony A. B. 239, changing the status for individuals with a diagnosis of epilepsy.
AB 315	F	Assemblywoman Pierce	AIAM letter A. B. 315, Event Data Recording Devices ((2 pages)
AB 315	G	Kate Diehl	Email testimony regarding A. B. 315, Event Data Recording Devices requesting adoption of amendments (2 pages)
AB 435	H	Dennis Colling	Clark County Reg Renewal Current Process and Proposed Process (2 pages)
AB 435	I	Pat Zamora	Prepared testimony A. B. 435
AB 435	J	Andrew List	Memo referring to A. B. 435
AB 293	K	Marjorie Paslov-Thomas	Work Session document, A. B. 293. (6 pages)