

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

**Seventy-Third Session  
April 29, 2005**

The Committee on Judiciary was called to order at 8:13 a.m., on Friday, April 29, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, 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. Bernie Anderson, Chairman  
Mr. William Horne, Vice Chairman  
Ms. Francis Allen  
Mrs. Sharron Angle  
Mr. John C. Carpenter  
Mr. Marcus Conklin  
Ms. Susan Gerhardt  
Mr. Brooks Holcomb  
Mr. Garn Mabey  
Mr. Mark Manendo  
Mr. Harry Mortenson  
Mr. John Ocegüera  
Ms. Genie Ohrenschall

**COMMITTEE MEMBERS ABSENT:**

Ms. Barbara Buckley (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Joe Heck, Clark County Senatorial District No. 5  
Senator Maurice Washington, Washoe County Senatorial District No. 2  
Senator Dina Titus, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

Allison Combs, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Jane Oliver, Committee Attaché

**OTHERS PRESENT:**

Michael Metzler, Trauma Surgeon, Director, Trauma Services, Sunrise Hospital  
Rory Chetelat, EMS Office Manager, Clark County Health District, Nevada  
Ben Graham, Legislative Representative, Nevada District Attorneys Association  
Kristin Erickson, Legislative Representative, Nevada District Attorneys Association  
Bruce Nelson, Deputy District Attorney, Clark County District Attorney's Office, Nevada  
Todd Ellison, Captain, Southern Command, Nevada Highway Patrol, Nevada Department of Public Safety  
Bill Uffelman, President and CEO, Nevada Bankers Association  
Dean Kirsch, Owner, Milne Tow and Transport, Reno, Nevada  
Clark Whitney, Quality Towing, Las Vegas, Nevada  
Thelma Clark, Legislative Advocate, representing American Association of Retired Persons, Las Vegas, Nevada  
Jack Jeffrey, Legislative Advocate, representing B and E Auto Auction, Henderson, Nevada  
Troy Dillard, Administrator, Compliance Enforcement Division, Nevada Department of Motor Vehicles  
Bob Compan, Government Affairs Representative, Farmers' Insurance Group, Las Vegas, Nevada  
Scott Craigie, Legislative Advocate, representing Farmers' Insurance Group  
Fred Haas, Police Officer, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; and representing Nevada Sheriffs' and Chiefs' Association  
Kenneth Scruggs, Government Relations Director, HSBC North America, Glendale, Arizona  
Robert Ellis, Legislative Advocate, representing B and E Auto Auction, Henderson, Nevada  
Jeanette Belz, Legislative Advocate, representing Property Casualty Insurers Association of America

**Chairman Anderson:**

[Called the meeting to order and roll called.]

**Senate Bill 119 (1st Reprint): Revises provisions governing privileges of certain medical review committees. (BDR 4-884)**

**Senator Joe Heck, Clark County Senatorial District No. 5:**

This bill expands the protections from discoverability currently in statute, to include medical peer review committees of a county or district board of health that regulates emergency medical services in accordance with NRS [*Nevada Revised Statutes*] 450B.

These important protections for what is commonly called "peer reviews," already apply to other health care related organizations, including medical facilities and review committees of medical and dental societies, among others.

The reason for this proposed expansion is due to the changing health care environment in Clark County, and the development of a regional trauma system. Before I discuss the need for this important legislation, I would like to explain peer review. The process of peer review is an integral component of quality assurance and quality improvement in the provision of health care.

During peer review, health care providers from all disciplines come together as colleagues to present interesting and challenging cases in a professional environment that is designed to be educational. The attending physician would usually present the case including the history, signs and symptoms, diagnostic studies, diagnosis, treatment, and outcome.

A critical analysis and discussion of the case ensues. The goal is to determine best-practice models and learn from the experience of others. It is important to note that peer review in this process is not meant to be punitive, but to be educational.

Before February of this year, Clark County had only one trauma center, the University Medical Center (UMC). University Medical Center conducted peer review of the cases at their facility as is required by the American College of Surgeons. This is the national organization that verifies trauma center capabilities and verification, which the State Health Division requires, prior to granting a hospital trauma center designation.

[Senator Heck, continued.] That peer review was, and is, protected under current statute. Since that time, the Health Division has granted trauma center designation to Sunrise Hospital and Medical Center, and we expect that Saint Rose Dominican Hospital, Sienna Campus, will also soon receive designation. Each of these facilities can conduct their own peer review, under the protections of current law.

To build an integrated trauma system, and meet the recommendations of the American College of Surgeons, each trauma center must participate in a comprehensive peer review process that includes all facilities. In this manner, the entire trauma system benefits from the best practices identified by each center.

Unfortunately, current law does not protect each facility individually, if they should meet collectively. Additionally, although identifiable patient information is removed from all materials in an attempt to protect patient confidentiality, the very nature of the incident that caused the injury, or the nature of the injury itself, may lead to the identification of the individual and subsequent loss of personal privacy.

The following blinded information would leave no speculation as to who the patient was if during the peer review process the following statement was made: "A 59-year-old male was brought to the trauma center after sustaining puncture wounds to the neck, as a result of a tiger bite." That is the reason for this bill. If passed, S.B. 119 will extend these important protections to Clark County's newly formed Regional Trauma Advisory Committee (RTAC), so that southern Nevada can continue to build an integrated trauma system and ensure the best possible trauma care for our residents and visitors while protecting the patient's right to privacy.

It is important to note that all of the regular meetings of the RTAC that deal with policy, procedure, and regulation, will continue to be conducted in accordance with NRS 241. Only the medical peer review committee will be afforded this protection.

**Assemblyman Horne:**

Your whole presentation seemed to focus on protection of the patient's privacy. I think it would be good to also point out that this would provide protection for doctors and facilities. Am I correct?

**Senator Heck:**

Yes, it would.

**Assemblyman Horne:**

We would be expanding that immunity of liability, because during these reviews incidents of negligence and gross negligence come to light.

**Senator Heck:**

Not usually, that's not the purpose of peer review.

**Assemblyman Horne:**

I'm not saying it's the purpose, but it happens. If it was public knowledge, and the person didn't know that a certain procedure performed on them was done incorrectly, they wouldn't necessarily have any way to find that out. The reason why we have peer reviews to do this—and why we have these shields—is because we want doctors to be able to speak freely and learn from their mistakes, and correct them for future patient care.

**Senator Heck:**

That's correct.

**Assemblyman Horne:**

This is encompassing both sides: protection of patients, doctors, and facilities.

**Senator Heck:**

That is correct and is currently the case under statute.

**Chairman Anderson:**

The predominant area where peer reviews take place is in the learning environment of the medical school and during their residency in the hospital. The young, new physicians have an opportunity to make sure that their practices are supervised. They are reported in such a fashion that they understand these are not small incidences. We probably learn more from our negative behavior than from our positive behavior; therefore, you would not be able to do the job of teaching without a peer review.

**Senator Heck:**

The point you make is a valid one. Every hospital has peer review, whether they call them morbidity and mortality conferences or cancer registry conferences, where they talk about their current cases. Those conferences are open to everyone within the hospital who wants to come and participate, whether it's other physicians, interns, students, or residents, so that everyone in the medical community can learn from the care that has been provided.

[Senator Heck, continued.] This bill seeks to provide that same protection if the different hospitals decide to meet collectively. Right now, law does not allow them to gather at a third-party location and conduct these same activities.

**Chairman Anderson:**

They could conduct peer review in their individual locations and be protected by current law. These will be the more dramatic cases that will be shared with the other institutions.

**Senator Heck:**

In the American College of Surgeons criteria for trauma systems development, they recommend an integrated peer review for all cases. You get together once a month and each hospital selects the cases that were most interesting at their hospital.

We looked at trying to rotate from hospital to hospital to keep it within a hospital. Under current law that would not work. To be protected in that hospital, you have to be a member of that hospital's medical staff. If we brought the physicians from hospital A to hospital B, the physicians from hospital A did not have protection.

**Chairman Anderson:**

They didn't have protection unless they had the ability to practice at that hospital.

**Senator Heck:**

Correct, unless they had staff privileges at each hospital.

**Assemblyman Mabey:**

At UMC, under A.B. 1 of the Eighteenth Special Session, protection was given to the trauma center. The trauma center at Sunrise doesn't have the same protection as the trauma center at UMC, does it?

**Senator Heck:**

It does. It has the same protection for peer review that is done at their location.

**Assemblyman Mabey:**

As a physician, if I'm a trauma center physician, I have protection at UMC.

**Senator Heck:**

No, that is not the same at Sunrise, nor would it be the same at Saint Rose Dominican Hospital.

**Chairman Anderson:**

Trauma center physicians have peer review within their own structure. A student who's going through medical school, as long as that hospital is part of their medical school program, would be given staff privileges for that institution and the university.

**Senator Heck:**

That is correct.

**Assemblyman Carpenter:**

Do the protections in the bill lead to protection from malpractice suits?

**Senator Heck:**

It does not. It protects what was said in that conference room from discoverability. If somebody thought that they had a bad procedure and adverse outcome, they would still have all the avenues of any malpractice suit as they would otherwise have had. Whatever takes place in that meeting would not be discoverable.

**Chairman Anderson:**

Part of the issue is whether peer reviews should, or should not be, discoverable. Peer reviews are protected in the first instance, but they wouldn't be in the collective sense.

**Senator Heck:**

Correct.

**Assemblyman Horne:**

Discoverability is part of malpractice lawsuits. In a sense, you could say, all it does is prevent discoverability. That's what you do in malpractice suits and other types of litigation, you seek discovery.

**Senator Heck:**

That's correct. All it does is protect what happens in a peer review, which is already protected. It doesn't prevent discoverability in any other avenue that would be permitted in a malpractice proceeding.

**Chairman Anderson:**

At a hospital's peer review that would not have been discoverable, because that's already protected by state statute. If they chose to take that case to this new shared event they would not be able to take their protection with them, because it's brought into a public forum.

**Senator Heck:**

That is correct.

**Assemblywoman Ohrenschall:**

If what goes on in the peer review committee is already protected, why do we need the bill?

**Senator Heck:**

The way the law is currently written, the protection only applies if the peer review takes place at the hospital in which the care was rendered. Because we will now have three trauma centers in Clark County, the American College of Surgeons recommends that all the trauma centers in a given system, meet together to share their experiences. That's what we're trying to do with this bill. We want to be able to bring all three centers together at one of their own locations, or at a third-party location, making sure that each participant has the same protection they would have had if the meeting took place in their own facility.

**Assemblywoman Ohrenschall:**

I see.

**Chairman Anderson:**

Is there anyone else who wishes to speak on S.B. 119?

**Michael Metzler, Trauma Surgeon Director, Trauma Services, Sunrise Hospital:**

I have spent over 20 years in care of the injured and critically ill patients at the University of Missouri in Columbia, where I was Chief of Trauma, General Surgery, and Surgical Critical Care. I have chaired the American College of Surgeons Committee on Trauma, a committee that has to do with performance improvement and patient safety. I rise in support of this bill.

As you heard from Senator Heck, each trauma center is required to have a performance improvement and patient safety program that monitors the care of the injured patient from the site of injury, through rehabilitation. Peer review rules allow frank and open discussion of less than perfect patient care episodes, so that all involved may learn, and similar problems can be avoided in the future.

The only way this can occur is if those discussions of patient care are within the same institution. If physicians from different institutions were to try to discuss patient care problems, even under the umbrella of a licensing agency that's not listed in the present bill, they would not be protected by peer review statutes.



[Michael Metzler, continued.] Because of this, these discussions do not occur, and many opportunities to improve patient care are lost. This bill, if adopted, would allow interinstitutional performance improvement, and would allow these discussions across multiple agencies. It would allow any and all willing trauma care facilities to benefit from each others' problem cases and learn from their mistakes so they aren't repeated.

Nevada is not far from Orange County, California. The trauma system there is exemplary in performing quality improvement, which crosses many agencies that provide trauma care. This bill would provide the developing state trauma system with the peer review protection to do what Orange County has done.

With this bill, all providers can learn from review of less than optimal outcomes by anyone. Without this protection, discussions of adverse outcomes would be limited to single institutions. Patients who are cared for by the entire system may suffer from repeated misfortunes until all individual parties have made their own mistakes, and have discussed them in their own limited institution or agency.

I don't believe this latter approach serves the public well. Instead, I urge support of this bill as a much better alternative.

**Assemblyman Carpenter:**

Your testimony was mostly about care that wasn't as good as it could have been. On the other side of the equation, if the care was great then people would learn by that also, wouldn't they?

**Michael Metzler:**

You're absolutely right.

**Chairman Anderson:**

From your national experience with setting these peer review standards up, is this protection of information essential for the operation of peer review, and is it the most common practice throughout the nation?

**Michael Metzler:**

It's essential to have peer review protection so that people can discuss the nuts and bolts of what's happening in a medical case, and to get to the point where all people involved in it can benefit from what was done, and discuss whether it could have been done better.

[Michael Metzler, continued.] I used Orange County, California, because it is always held up as an example. This trauma program grew up and was dealt with in a manner that caused other places in the country to seek this legislation.

This is available in other parts of the country but not to the degree that it is in Orange County, California.

**Assemblyman Ocegueda:**

As a paramedic in the Las Vegas Valley for the last 16 years, I can tell you that the peer review process is a very valuable one for emergency services, where the rubber meets the road, all the way up the chain. The problem is that we were able to do a lot of that review at UMC, because that was the only trauma center. Now, the Health District doesn't have the ability to do that kind of peer review so that we can all learn from it.

I think it's a good thing. I am a big supporter of openness and having everything out and on the record, but in this case, I don't think we can learn and do better if we don't help them with this problem.

**Rory Chetelat, EMS Office Manager, Clark County Health District, Nevada:**

I am the Chair of the Regional Trauma Advisory Committee. The Health District is in support of S.B. 119. We need this because EMS [Emergency Medical Services] is a part of the whole trauma system, and we need to be able to provide an opportunity for all of us to learn from the process of patient care, from its beginning to its end. We would appreciate your support for this bill.

**Chairman Anderson:**

Let's close the hearing on S.B. 119. I'm going to hold it on the board for a little while and see if we can get it to a work session. We won't be taking a motion on it today.

**Senate Bill 141: Increases term of imprisonment under certain circumstances for driver of vehicle who leaves scene of accident involving bodily injury to or death of person. (BDR 43-362)**

**Ben Graham, Legislative Representative, Nevada District Attorneys Association:**

People get hurt and injured in automobile accidents and need to get to the trauma center. Sometimes, the only way they can get to the trauma center, is if the people involved in the accident are following their duties in summoning help.

[Ben Graham, continued.] We're not talking about situations that occur in urban areas where lots of people witness an incident. If somebody leaves the scene with victims scattered across the landscape dead and dying, there are other people who can call for help. We're talking about situations where an accident occurs and there may be culpability for causing the accident, and that can be sorted out. The one we see that is most common is the person who causes the accident and flees the scene.

We can speculate why they flee the scene, but frequently they have a fear that something else may happen to them if they stay around. For those of us who drive around in rural Nevada, it causes some concern. I was coming back last week and I took one of my daughters through Silver Peak, and she said, "Do we ever see another car?" I think we saw one other car.

If I ran into that other car, and I could still drive away, I would be in violation of current Nevada law. Current Nevada says if you're involved in an accident, you need to stop and render help, or call for assistance. That's the second half of an accident scenario. Whether you cause the accident, or you are the accident victim, you need to call, assist, and help. That's existing law.

Earlier, the Chairman talked about this Committee frequently being an appellate court, and that's kind of the case here. We had a case where an individual caused an accident, and fled the scene leaving people scattered around; three of them dead. We initially located the person that caused the accident a few days later, and ultimately convicted him of several counts of leaving a scene with dead people.

Our Supreme Court said, "Time out," there's only one leaving the scene ([Exhibit B](#)) so there's only one penalty. We want to call this to the attention of the Committee. We're asking, on the second page of S.B. 141, not to change the existing law requiring you to stop and assist, but if you leave the scene, and in that accident there's one person dead or injured, the law would remain the same; there would be a 2-year minimum, with a maximum of 15 years, and a fine. But, if you leave the scene and two people are dead or injured, the minimum time served would be 4 years. If you leave the scene with 3 or more people killed or injured, we would ask that the penalty be increased to a minimum of 6 years.

**Assemblyman Horne:**

I'd like to read that Supreme Court case myself. They said there was only one leaving the scene so there was only one penalty, but as for the harm that was caused, there were penalties for each of those deaths. When I first read this, I thought, if somebody comes in here and lobs a grenade and kills 4 of you, we're

talking about 4 counts of first degree murder with a life sentence for each count. That's usually how it happens. If there are 3 dead, and 3 others are injured, there would be attempted murder on those 3.

[Assemblyman Horne, continued.] Under this bill, you're stepping it up for each person even though you have only one act. It seems like there's a penalty for the act and an increased penalty for the result. I don't understand that.

**Ben Graham:**

We need to separate the accident. If you're to blame for the accident, there's a charge available for that. Let's say, in the incident where I'm out on the road and the other person runs into me, and for whatever reason, the care of the person who clipped me ran off into the ditch. Under current law, I should stop and say, "Hey buddy, you ran into me are you okay?" If I keep driving then I become guilty of an offense, because even though I wasn't at fault in the initial contact, my duty arises and I'm supposed to stop and see if the guy that hurt me is okay.

We initially charged for the 3 deaths. I'll provide the case in a moment for the Committee ([Exhibit B](#)) if they'd like, where it said there's only one leaving the scene so there's only one penalty. We're asking the Committee to say, if two or more people are dead or injured and you leave the scene, it's 4 years, if 3 or more, it's 6 years. The Supreme Court looked at the law and said, "Legislature, there's only one leaving the scene, regardless of whether you run over 10 people or 1.

**Chairman Anderson:**

What happens if you're driving down the road and someone clips you and flips over into a ditch and dies as a result of the accident? His two passengers are substantially injured and you go on your way. Because you didn't stop and provide aid, you're going to move the penalty up to 6 to 20 years. You're moving up the minimum part of the bracket, not the maximum part of the bracket, except in the multiples.

If it had only been me and one other person, the sentence would be 4 to 15 years. Under existing law, it would be 2 to 15 years. You've moved it up for the second person to 4 to 15 years. For the third person, you're going to go 6 to 20 years and it isn't your fault.

**Ben Graham:**

It's your fault when you leave 2 people, one dead and two in the ditch. I'll submit to you that by the time another car comes by and stops to ask what happened, those other 2 people are going to be dead too.

[Ben Graham, continued.] This brings responsibility and recompense for not doing your duty, regardless of whose fault the initial accident was. Like I said, this is a Legislative decision. We wanted to make sure that you knew this was happening.

**Assemblywoman Ohrenschall:**

Could you outline the present Good Samaritan duty within the state of Nevada? How will this bill change or increase the Good Samaritan duty, and also give us the citation for the case that you're referring to.

**Kristin Erickson, Legislative Representative, Nevada District Attorneys Association:**

The existing law is stated in the bill as Section 1, NRS 484.219. You have a duty to stop. The purpose of this statute is to make sure, regardless of who was at fault, that the person, who is able to, makes sure the other people are okay.

As Mr. Graham indicated, if someone is in a ditch on an isolated, desolate road, and there's only one person who's able to get help, they are obligated to get the medical help that the injured people deserve. Second, this statute change will remove an incentive to flee an accident. As Mr. Horne stated, if someone launches a grenade in here and kills 4 people, that's 4 counts of murder. When a person leaves an accident scene, oftentimes, there's a reason they leave the scene. They may be drunk and under the influence of alcohol or controlled substances.

If they're caught, they face a 2 to 20-year prison sentence for each person they kill or injure. If there are 3 people in the car, they're looking at 3 counts of 2 to 20 years. If they flee the accident scene, under current law, they're only looking at 2 to 15 years. If you're drunk or under the influence, why in the world would you stay and help these dying people. In essence, it creates an incentive for them to flee the scene and leave these people to die.

Since the Nevada Supreme Court decided that leaving the scene is, in fact, one act, we want to change that, and remove the incentive to flee the scene.

**Assemblywoman Ohrenschall:**

I'm not sure I follow the thinking, but I'll pass it on to the next questioner.

**Chairman Anderson:**

Even though Mr. Horne's question earlier made the comparison of somebody throwing a grenade in the room and killing 4 of us, the implication is that each of those would have been chargeable as a death. For anybody that was injured,

it would have been attempted murder. For each of those counts that person would have been subsequently charged, because the act of throwing the grenade is the chargeable event.

[Chairman Anderson, continued.] The car accident is not the chargeable event here. The fleeing of the scene is the chargeable event, and thus, the Supreme Court ruling is based upon the fleeing of the scene, not the auto accident itself. Is that what you're trying to tell me?

**Ben Graham:**

Yes.

**Assemblywoman Ohrenschall:**

You're trying to impose multiple standards of duty from one incident. In other words, you're trying to create multiple standards of Good Samaritan care, and you're trying to get around the Supreme Court, which said, there can be only one leaving the scene of an accident. Is that what you're saying?

**Ben Graham:**

We're addressing the Nevada Supreme Court decision rather than creating multiple counts, which would be multiple leaving the scenes. We've not asked to do that, we've asked to look at the harm caused.

**Assemblywoman Ohrenschall:**

You're creating a multiple Good Samaritan, instead of a one-time Good Samaritan for the incident?

**Ben Graham:**

Yes.

**Chairman Anderson:**

I'm not sure the term Samaritan is appropriate. The Samaritan would be somebody who comes down the road and passes the car in the ditch. They had no involvement in the accident but have an obligation to stop.

**Assemblywoman Ohrenschall:**

You're absolutely right.

**Assemblyman Carpenter:**

Is there a definition of bodily injury?

**Kristin Erickson:**

Bruce Nelson, down in Las Vegas, is actively involved in these types of cases. He could give us some specifics as to what bodily injury might be. The situation is, how are you going to know how injured someone is unless you stop and help.

**Bruce Nelson, Deputy District Attorney, Clark County District Attorney's Office, Nevada:**

In the current law there are two things: substantial bodily harm and bodily injury. Our Supreme Court has held that substantial bodily harm requires broken bones or more. Bodily injury is more than a bruised ego or a bump on the forehead. It would require a cut, or something along those lines. Currently, Nevada law does not define bodily injury. Other states have defined it as an injury to the body, something more than I bumped my head. A cut forehead, perhaps, or you cut yourself a little bit on the glass of the windshield. You don't have substantial bodily harm, because no bones were broken, but you do have bodily injury because you were cut.

**Assemblyman Carpenter:**

The last witness said there's no definition of bodily injury in Nevada. If you just had a bump on the head or a cut on the face, then you would be putting these people in prison for a much longer time. I could understand giving them a longer sentence if two or three people are dead, but if it's just bodily injury, I have a real problem with that.

**Chairman Anderson:**

Bodily injury is currently included in the law, even though it lacks a definition. Your question is what happens if you have three bodily injuries and nobody died, but the sentence is now 6 to 20 years.

**Ben Graham:**

The impetus of this is you need to stop. If you don't stop, how are you going to know? If you don't stop, you take the risk of those people bleeding to death. You stop and say, "Thank heaven you weren't hurt," and there's no foul, but if you drive off, we're asking for culpability and recompense.

**Chairman Anderson:**

What makes you believe the motoring public is going to remember that this is a major part of their driving responsibility, when they can't even remember who has the right of way at a four-way stop sign?

**Assemblyman Carpenter:**

I know you have to stop, and you should stop. If you don't stop and there was somebody killed, or like the Chairman said, if there were three people there and they only had cuts on their heads and you didn't stop, you could go to prison for 6 to 20 years. That's the problem that I see. I firmly agree that you should stop, but whether the punishment fits the crime, I have a problem with that.

**Assemblyman Mortenson:**

This bill troubles me a lot. Let's say there are two identical twins, and one lives in Colorado and one lives in Utah. Miraculously, one day, they are both driving along and somebody collides with both their cars and turns over and rolls into a ditch, both of them. This is exactly the same accident, but two states apart. Both identical twins, thinking alike, do not stop. To me, both of these guys did exactly the same crime. In my opinion, they should get the same penalty, but that's not going to happen because in Denver there are three people in the car, and in Utah there's only one person in the car. Here we have a random toss of the dice where one gets 6 to 20 years in prison, and the other gets one-third of that. It doesn't make sense to me. The law shouldn't be a toss of the dice. We do that in Las Vegas, but the law shouldn't do that.

**Assemblyman Manendo:**

Let me give you the scenario that I was involved in. A truck collided into a school bus, hit another car, and there were parts flying everywhere. There were parts hitting different vehicles including mine. I stopped to help the guy get out of the rolled over car. Would the other cars affected by the flying parts involved in the accident, but didn't stop, be affected by this?

**Ben Graham:**

Current law says the driver of any vehicle involved. That's the issue, what does "involved" mean? I would speculate, under your scenario, that you stopped, and other people stopped. The people that didn't stop, who might have been hit by a flying windshield wiper, would never fall under this.

**Assemblyman Manendo:**

Why, they were involved and they didn't stop?

**Ben Graham:**

Nobody's going chase after them, because you're there helping. When you get around to proximate cause and probable cause and the fact that a flying windshield wiper hit you, I don't think it will bring you in under this statute. Between here and Beatty, I don't see anybody chasing after you.



**Assemblyman Manendo:**

I'm not comfortable.

**Chairman Anderson:**

What about a rear-end collision where everybody is caught in the chain. Will all the vehicles in between be subject to the charge, if there was bodily injury in any of those vehicles?

**Ben Graham:**

If you all take off running, we'll catch who we can catch.

**Chairman Anderson:**

They are going to put an insurance claim into their insurance company because they have vehicular damage, so you're going to know who they are. They are going to be around because they can't get out of the squeeze of all the vehicles. The question is, did they get up and render aid to the person who may have bodily harm, and how are they going to know that bodily harm took place given the low threshold of bodily harm.

**Ben Graham:**

I want to emphasize that we need to separate the accident and the involvement. The law of the state of Nevada says, and the law in Utah and Colorado says, "You need to stop and assist as appropriate." If you flee, right now, you're facing 2 to 15 years in prison. We are asking the Legislature to impose a higher penalty if you flee and there are 2 or more people left in the roadway. If that's something you're uncomfortable with, I certainly respect that.

**Bruce Nelson:**

Let's say I'm drunk and I'm involved in an accident where three people are hurt, and I decide to run away. While I'm leaving, I run over two more people. Under current law, I can only receive a sentence of 2 to 15 years, even though I ran over five people. That's what we need to change, and that's the purpose of this bill.

**Chairman Anderson:**

Why couldn't you charge separately for the two people I ran over in fleeing the first crime? That is a separate vehicular event, is it not? It's not the accident; it's the people who are standing in the crosswalk.

**Bruce Nelson:**

Under current law, it's not. The case that the Supreme Court decided, which was *Firestone v. State*, [120 Nev. Adv. Rep. 3, 83 P.3d 279 (2004)] the guy hit one car and killed 2 people in that car, and pushed that car into another car,

which killed a person in that car, but the Supreme Court held that's only one collision. So, if you're in the general proximity of where the collision occurred, no matter how many people you run over, you're still only looking at one leaving the scene, according to the Supreme Court, and 2 to 15 year sentence.

**Chairman Anderson:**

Mr. Nelson, that's not the scenario you gave us.

**Bruce Nelson:**

The scenario is, if the people are in close proximity to that scene, let's say they have stopped to help, and I run over them as I'm leaving, that's still only one accident according to the Supreme Court. If I hit somebody 2 miles down the road, yes, that would be another collision. If it's at the same site, no matter how many people are hurt, according the Supreme Court, it is one count of leaving the scene because it's only one accident. It doesn't matter how many cars are involved, or how many people on the sidewalk are involved, if I drive off and leave them, I'm only looking at a 2 to 15 year prison sentence.

**Chairman Anderson:**

We'll close the hearing on S.B. 141 and put it on the board.

**Senate Bill 272:** Revises provisions governing confiscation and disposition of certain weapons. (BDR 15-321)

**Todd Ellison, Captain, Southern Command, Nevada Highway Patrol, Nevada Department of Public Safety:**

The purpose of the recommended changes in S.B. 272 is to reduce the amount of time, and redundant reporting processes, currently in place when we make an arrest for a controlled substance violation, and there are weapons associated with that arrest.

In all other criminal arrests where there are weapons associated with them, there's a specific set of disposition rules in place in statute. The exception to that is, any violation of the Controlled Substance Act of 1970, where you're required, separately from the criminal proceedings, to go through administrative seizure processes.

We've recommended that the disposition of the weapons be decided through the adjudication of criminal case. However, in the event that the criminal case is not proceeded upon by the State, then the administrative forfeiture case can be presented, and in either case, the weapon disposition is decided by due process.

[Todd Ellison, continued.] Currently, we'll make an arrest for a trafficking case, seize the weapons involved, process the case, and go through the adjudication. Even if you get a conviction on the drug case, you still have to go back administratively and submit a second report, and go through a second process just to dispose of the weapons. We're just trying to clean up that act. Currently, our trooper could make a stop, conduct the criminal case, submit his reports, and then spend eight hours putting together the administrative report in the package.

We're doubling the time that people are away from their task specific duties, just to get both processes answered. If we allow the adjudication of the criminal case to decide the disposition, it would simplify the process and allow us to get our people back to doing what we need them to do.

There are a number of cases where we would not go criminally in Nevada on controlled substance cases, and we hand the case off to a federal agency to do a controlled delivery to another state to proceed federally on the charges. In that case, we would proceed with the administrative side of it for weapon disposition, because the case itself has been handed off.

This streamlines the process, and puts the disposition of the weapons back in line with the rest of the criminal statutes in Nevada.

**Chairman Anderson:**

Are we penalizing somebody by taking away a piece of their property, which may have now been sold, even if they were found not guilty in the criminal trial?

**Todd Ellison:**

That's where the administrative process, if it's applied, would allow for those discussions to take place and for that side of the process to be done, to ensure that doesn't occur.

There isn't a way to say that if you're found not guilty, you automatically get your weapons back. There are a number of reasons why you can't give weapons back. The weapon itself may be illegal in how it's made or been altered. The person may be an ex-felon. There are a number of reasons you can't say you have to give the weapons back.

**Chairman Anderson:**

And, we're not changing that?

**Todd Ellison:**

Right, we're not.

**Chairman Anderson:**

For those confiscated illegal weapons that came from somebody who is a convicted felon, this really doesn't affect them. These people were not found guilty. We're not going to say they're innocent because that's a different scenario. The fact that you weren't found guilty doesn't mean that you're a good guy, right?

**Todd Ellison:**

Right.

**Chairman Anderson:**

It just means that you couldn't prove it at that particular moment in time. You're not going to sell the weapons that you've taken from this person. If you sell it in forfeiture, those dollars don't go back to the police agency. But now that they've been sold, I'm not going to be able to get them back. Is that what's going to happen if we put this in place?

**Todd Ellison:**

The disposition of the weapons is not decided until the case has been adjudicated. If the person is found guilty of the criminal act, then the weapons are disposed of according to the current statutes. In most cases, we don't sell them, we shred them. Even on the administrative side, you have to go through all the due process standards that are there, in order to decide if they get their weapons back.

In events where a person is charged with the crime and then found innocent of the crime and if there's no other reason that they should not have the weapons back, they are returned to them.

**Chairman Anderson:**

On page 2 of the bill, at lines 43 through 45, "unless the instrument or weapon is the subject of a forfeiture proceeding pursuant to NRS 179.1156 to 179.119, inclusive;" I thought that this provision said, "unless the instrument or weapon is the subject of a forfeiture," the instrument or weapon is not returned unless it goes that way.

**Todd Ellison:**

It's saying that the weapon would be returned unless there is some type of administrative civil forfeiture process where the weapons are being dealt with there.

**Assemblywoman Ohrenschall:**

The way I read it, somebody who's innocent of a crime better get his attorney to immediately file motions to prevent forfeiture, because if forfeiture starts and if he's late, he can't get it back even if he is innocent at the end. That's the way I read lines 41 to 45 on page 2 of the bill, "unless the instrument or weapon is the subject of a forfeiture proceeding ... " It doesn't say anything about the person being guilty or innocent. If a forfeiture proceeding is routinely started when you confiscate a weapon, that person better know enough to start some proceeding on his own to prevent going forward with the forfeiture, or he'd lose the weapon anyway. I hope that you can tell me that I'm wrong.

**Todd Ellison:**

The process in place is asset forfeiture through the administrative process, and it isn't even started until after the criminal case has been dealt with.

**Chairman Anderson:**

Does this give you the opportunity to move on civil forfeiture prior to the adjudication of guilt or innocence, for a weapon or an instrument of value, because that's a civil proceeding? You don't move simultaneously by your current practices?

**Todd Ellison:**

No, we don't.

**Chairman Anderson:**

By opening up this opportunity, if we were to change this, would it give you the opportunity to move simultaneously?

**Todd Ellison:**

I would say it does not, because we're asking that the criminal case be the decider, and so we do not have to proceed civilly in these matters. If they are then convicted of the criminal offense, we can dispose of the weapons accordingly.

**Assemblywoman Ohrenschall:**

It seems to me that they could start the forfeiture proceedings about the same time they're doing the criminal proceedings, but if Mr. Ellison says they don't, I'll have to be satisfied with that.

**Assemblyman Carpenter:**

On lines 41 through 43 it says, "Upon demand, to the person from whom the instrument or weapon was confiscated, if the person is acquitted of the public offense or crime of which he was charged."

[Assemblyman Carpenter, continued.] If he's acquitted, they have to give it back to him. There's the exception that if the weapon was taken during a drug bust, and if he was acquitted, he wouldn't be able to get it back, and he'd have to go through a forfeiture proceeding.

**Assemblywoman Ohrenschall:**

That's how I read it too.

**Risa Lang:**

It does seem that, upon demand, you would get it back. There are some exceptions under subsection 5(b) where it says, "Except as otherwise provided in paragraph (c).... " There are also the exceptions in subsection 6 to the return of the weapon. Unless they're subject, this provides an exception if they are subject to forfeiture proceeding, which is provided in Chapter 179 of *Nevada Revised Statutes* (NRS), for various things that are taken during a crime. This would allow it to remain until those forfeiture proceedings are completed.

**Assemblyman Carpenter:**

In any other crimes that were allegedly committed, where they took the weapons but you were acquitted, you would get the weapon back. Under this, if it was committed in a drug situation, you would have to go to forfeiture. Is that what it says? Are we treating drug crimes differently?

**Risa Lang:**

The way it is now, it's any weapon that would be subject to forfeiture. On page 1, you'll see that, currently, the firearms that are forfeitable under NRS 453.301, for those certain crimes concerning controlled substances, they are treated separately under forfeitures. I guess this would allow it to stay with the criminal proceedings, if I understand it correctly. It would allow them to continue it to a forfeiture proceeding, if upon conclusion of the criminal action, they have not found the person to be guilty.

**Chairman Anderson:**

Mr. Ellison, you don't see it quite this way. How do you see this happening?

**Todd Ellison:**

This change puts it back in line with the rest of the criminal statutes so that we're following the same standards of disposition when the case is adjudicated if there's a conviction, and we are allowed to dispose of the weapon according to the statutes that guide that. We do not have to pursue a second administrative process to dispose of the weapons after the case has been adjudicated. The section that talks about proceeding administratively is in place because there are a large number of drug-related cases, controlled substances

stat cases that we don't proceed with at the State level. We pass those on to federal agencies, and other agencies, to pursue to turn into bigger cases, and to move between multiple jurisdictions and multiple states. In those situations, we still need to follow the administrative civil forfeiture process to dispose of confiscated weapons. In either case, due process is still there.

**Assemblyman Horne:**

Administrative seizures have always given me heartburn. You get a warrant to search my home because someone, who you believe to be a reliable informant, said I'm operating a methamphetamine lab. You serve the warrant and search my home and seize a few weapons. There's no evidence of methamphetamine activity. The DA [District Attorney] refuses to proceed because that's all you have. William Horne's name has dropped a number of places, and you believe this is a bad guy, but you caught him on the wrong day. Do you keep the weapons?

**Todd Ellison:**

That's where the variables I was talking about apply. If it's someone with no prior history and the weapons are legal and registered to the right owner, and no case is pursued, then we would be told to return those weapons.

**Assemblyman Horne:**

What if I have a prior arrest, do you keep the weapon?

**Todd Ellison:**

We allow the attorney that handles the case to make that decision. Generally, those weapons are returned to that owner. If you're prior conviction is a felony, you wouldn't get them back.

**Assemblywoman Ohrenschall:**

You are giving discretion to the whole prosecutory team as to whether they will keep the weapon or not, and whether they institute this extra action, or when they decide to institute it.

**Todd Ellison:**

That discretion always lies at the prosecuting attorney's level. Our intent was to streamline how we do business.

**Assemblywoman Ohrenschall:**

We are specifically giving you that discretion. You may have used it before, but I don't think it was that black and white in the statute. You're asking us to put it in the statute.

**Todd Ellison:**

Before the changes, we were required to civilly take it. Even if we did a criminal case, we still proceeded with the civil case because it was required under NRS 453. We're trying to clean it up so that we're not required to proceed with the civil forfeiture, if we get the adjudication to the criminal case.

**Chairman Anderson:**

Let me close the hearing on S.B. 272. There are some questions about procedures that may need to be cleared up for the members.

**Senate Bill 41 (1st Reprint): Revises provisions governing priority of certain liens. (BDR 9-133)**

**Senator Maurice Washington, Washoe County Senatorial District No. 2:**

Senate Bill 41 attempts to resolve the issue between the tow companies and the financial institution of cars being left in tow yards after an accident, or for various other reasons. The bill, in its original state, moved the lien from \$1,000 to \$2,500 to accommodate the leases for the property of the tow companies. [[Exhibit C](#) was distributed.]

**Bill Uffelman, President and CEO, Nevada Bankers Association:**

The proposed conceptual amendment ([Exhibit C](#)) concerns the administrative charges related to towing and storage. As explained in the amendment ([Exhibit C](#)), during the first 30 days after a vehicle is towed and put into a storage yard, for whatever reason, any lien that accumulates related to those charges will not exceed \$1,000 as a first lien. Anything over \$1,000 in the first 30 days would become a second lien. In the end, if the vehicle stays past 30 days and accumulates a lien of up to \$2,500, that becomes a first lien, and anything in excess of \$2,500 is a second lien.

If you look at the second bullet under Motor Vehicles, it says, "After the first 30 days," that second sub-bullet should say, "The amount that exceeds \$2,500 is a second lien." In the end, as they accumulate charges for towing and storage, and the administrative charge for trying to locate the owner, you're working up toward that \$2,500 as a first lien, and the balance would be a second lien.

The first lien is a preference over the bank of the financial institution that financed the automobile. If you have a \$40,000 car with a \$25,000 bank lien against it, and if for whatever reason the financial institution hasn't come in and claimed the automobile or the owner hasn't come in and claimed the



automobile, and you have all these other activities going on, it's that first \$2,500 after 30 days that would be the towing companies first lien.

**Chairman Anderson:**

What's the advantage of moving from \$1,000 to \$2,500?

**Senator Washington:**

Mr. Kirsch can explain the reason why we had to move it from \$1,000 to \$2,500 to cover their cost of property, which has gone up. The cost of property, leasing property, and storage, has gone up.

**Chairman Anderson:**

This is the justification for the movement from \$1,000 to \$2,500.

**Dean Kirsch, Owner, Milne Tow and Transport, Reno, Nevada:**

This is an inflationary patch. Real estate has gone crazy in all of Nevada in the past couple of years, especially Las Vegas and Reno. This puts us in line with 90 days of storage. After 90 days of storage, a vehicle is going to owe \$2,000 or \$2,500. We're just bringing it in line with that.

**Chairman Anderson:**

My insurance carrier has his own towing program, and it's part of a towing service group.

You've been around for quite a while and you haven't bought new property. Most of the towing companies in our area have owned their yards for sometime. How is the price of land affecting these older establishments?

**Dean Kirsch:**

My company is 50 years old. I've only owned it for 2 years. It is a problem. Even if you own the land, if your real estate is worth more than the business, why not sell it and buy a beach house. Your income needs to match the value of your real estate.

**Chairman Anderson:**

It's difficult to follow the argument relative to the price of the value of land, as the generator for moving the cap from \$1,000 to \$2,500.

**Dean Kirsch:**

As everyone knows, fuel has doubled in the last 14 months. All of the costs associated with this lien are related to towing, administration, and real estate. Real estate was just the most brazen because most of these charges are storage

charges. Statute requires us to keep a car, generally, for at least 47 days, and sometimes 90 days, before we can move it off our lot if it's unclaimed.

[Dean Kirsch, continued.] Population is expanding. There are more cars that end up in this lot. When I bought the company two years ago, there were 180 cars in our inventory. Today, we have over 700 cars in inventory. Part of that is because we've changed the thrust of our business, but a large part of that is the population is increasing. Labor is more expensive today. I just got my insurance quote for this year and it went up 30 percent. My fuel has doubled in the last 14 or 15 months. The lien just gets expensive.

**Chairman Anderson:**

The higher number of tows that you have, by the law of large numbers, should offset that, other than the fuel cost question. You're saying the cost of doing business has increased and it's not offset by the volume of business.

**Dean Kirsch:**

It's not offset by the volume. There are more cars abandoned today. Most of these charges, as I said, are storage related. Five or six years ago storage charges averaged \$15 a day. Today, it's \$25 a day.

**Chairman Anderson:**

I've heard quite a few complaints in the last couple of years, particularly in the last 6 to 8 months, from people living in apartment complexes and getting their vehicles booted by tow companies, who have the responsibility of pulling vehicles out of those areas to cut down on the availability of space. It's easier to put a boot on them than it is to tow them away, because you don't require the same size rig. The tow companies still make money from endeavors, in part, through the management company of the apartment complexes.

**Dean Kirsch:**

Booting and towing are two totally different businesses. I doubt you'll find a tow company that can even stand a boot company.

**Chairman Anderson:**

My constituents talk to me all the time about both issues; towing and other charges associated with towing.

**Assemblywoman Allen:**

The argument about increased value of land would have worked better for me about two months ago, before we gave you a cap on your property taxes. The value has gone up, but you're not seeing that in taxes. When was the last time this was increased?

**Dean Kirsch:**

My company filed for a tariff increase in October of 2004. It had not had an increase since 1998. We're authorized to file for an increase once a year. We have not done that. We did not increase our storage this year, at the request of the TSA [Transportation Services Authority].

**Bill Uffelman:**

The issue in this bill isn't the total of the charges; it's the priority of the charges versus the value of the automobile. In the end, after 90 days, they auction the automobile off, but the original owner of the automobile owed a financial institution money against that automobile. It's a function of who gets the first piece of money. They would get their \$2,500 if it had gone to that extent. Next, we would get our money against the auction, and they would get any balance owing them if there was that much money in the automobile. It's not how much they're charging per day for the storage of the automobile.

**Chairman Anderson:**

We were concerned about increasing the charge. I understand the banking industry's point of view. They're concerned about receiving proper notification. They're concerned about a \$40,000 vehicle, which they have primary control of financially, and they want to make sure they don't lose their vehicle because of storage charges by the towing company. That is a different question than we're dealing with in S.B. 41. I want to make sure that we understand, we're trying to focus on two different bills with two different outcomes.

**Bill Uffelman:**

That's what I was getting at.

**Chairman Anderson:**

With S.B. 41 we're looking at the charges. In the first 30 days the lien does not exceed \$1,000 for the first lien. If the amount exceeds \$1,000 it is a second lien.

Will these amendments take care of some of your concerns?

**Bill Uffelman:**

Yes, they will.

**Chairman Anderson:**

Do the towing companies feel that these amendments will take care of some of their concerns?

**Dean Kirsch:**

Yes, we agree on this.

**Chairman Anderson:**

Senator Washington?

**Senator Washington:**

Yes, we've worked out the agreement on the conceptual amendment.

**Chairman Anderson:**

They didn't approach you on the other side?

**Senator Washington:**

They did. They came to me after the hearing of the bill, and we tried to work out some agreement on the amendments, but it wasn't until yesterday, or the day before, that we had an opportunity to sit down and hammer out an agreement that both parties could agree on.

**Assemblyman Mortenson:**

The \$2,500 seems like a lot of money. If you've got an acre, you could store about 200 vehicles on it. That's \$500,000 a month that you'd be collecting. You could buy an acre every month if you can fill that lot up. It's too excessive.

**Dean Kirsch:**

When we have an auction to clear our lot out every three weeks, we typically collect about 8 to 10 percent of the fees that are owed to us. If a car owes us \$2,500, we're going to be lucky to get \$40 or \$50. Not every car we store is a \$40,000 car. A lot of these cars are \$300 cars with no wheels and tires, but we're required by statute to care for and protect these cars, as we would a \$40,000 car. It is the same cost.

**Senator Washington:**

When S.B. 41 first came out of the Senate Judiciary Committee, the amount was \$3,000. In an agreement with the towing companies it was amended on the Senate Floor to \$2,500. This is their bare minimum, or their break even point, so it has been reduced once already.

**Assemblyman Mabey:**

If it was \$2,000, and less than 30 days, the tow company would be the second lien. Why wouldn't they want to wait two or three more days, and then they would be the first lien? It would be an incentive for you to wait a few more days to let them know, so that they would then switch the lien position.

[Assemblyman Mabey, continued.] In Section 1, subsection 2 of the bill it says, "The lien of the landlord may not exceed \$2,000." Don't we need to raise that to a higher number?

**Dean Kirsch:**

The landlord issue applies to mobile home parks that are renting to tenants. Normal storage charges in the first 30 days are \$600 to \$700. You have a couple of hundred dollars in towing and fees. It would take more than waiting two or three days to make that worthwhile. Above all, we manage our real estate carefully, and we want cars in and out as fast as possible. We don't like making money on storage because it doesn't pay.

**Bill Uffelman:**

There's another statute, NRS 706, which governs towing and other activities. It sets out deadlines to do things like giving notice. The lien holder and the financing arm are looking for that notice so they can retrieve that car and take action, as in the case of an insurance company, as opposed to the abandoned automobile that's sitting out there, which is the problem child in the system. There's a presumption, from the financial institution end, that our transaction will be over in that first 30 days. We're not going to let it sit there, if money is tied up in that automobile.

**Assemblyman Carpenter:**

The amendment says that if the amount of the lien does not exceed \$1,000, it is a first lien. If the amount exceeds \$1,000, it is the second lien. Does that mean the amount that's over and above the \$1,000?

**Bill Uffelman:**

Yes, it should be the amount that is over \$1,000, in the translation yesterday.

**Chairman Anderson:**

If we move with the bill we need to make sure that Legal has a clear understanding of what our intent is, so the language reflects that point.

**Clark Whitney, Quality Towing, Las Vegas, Nevada:**

I wanted to answer the question asked by Assemblywoman Allen regarding when the law was last adjusted. I believe it was 8 years ago. In my tenure in the towing business, it's been \$500, \$750, and \$1,000. The \$1,000 figure was 8 years ago.

**Chairman Anderson:**

We'll have Research check that out.

**Thelma Clark, Legislative Advocate, representing American Association of Retired Persons, Las Vegas, Nevada:**

On page 1, line 3 of S.B. 41, it refers to NRS 108.270 to 108.360. In NRS 108.355, which is before NRS 108.360, it includes manufactured housing. I don't understand why that would be. I picked up a copy of the law and NRS 108.355 and NRS 108.360 mentions manufactured homes. Will this include somebody's home?

**Chairman Anderson:**

If you're driving a motor home that might be towed, it would, because of the storage charges of the motor home, but I believe that the home in a mobile home park would not be subject to this, and the statute remains the same. I'll ask Legal if I'm interpreting it correctly.

**Risa Lang:**

Although some of these statutes address mobile homes, it appears to me that on this amendment, the way it's proposed to be amended, they're only addressing motor vehicles, so it wouldn't affect whatever the current law is on liens with respect to mobile homes.

**Chairman Anderson:**

Mobile homes would not be affected. Only those vehicles that are subject to being towed are what we're talking about here.

**Thelma Clark:**

But the lien is on a mobile home in NRS 108.355, and the bill says this includes NRS 108.270 to NRS 108.360, that's why I was concerned.

**Chairman Anderson:**

We'll make sure that it's clarified in the amendment. In the original bill, Ms. Clark's point is correct. The \$2,500 lien in the first lien would affect the area of a mobile home park. If we proceed with the bill, we want to make sure that we don't include mobile homes, unless that was the intent. Was that your intent Senator Washington, to include those groups?

**Senator Washington:**

No, it wasn't.

**Chairman Anderson:**

If we proceed with the legislation we'll make sure we exclude references to mobile home parks. Would you agree with that?

**Senator Washington:**

Yes.

**Chairman Anderson:**

We'll close the hearing on S.B. 41 and bring it back to Committee.

**Senate Bill 175 (1st Reprint): Revises provisions governing motor vehicles.  
(BDR 43-700)**

**Senator Dina Titus, Clark County Senatorial District No. 7:**

Senate Bill 175 makes some changes to the law, which I think work to the benefit of consumers. Whenever you're in an automobile accident, it's almost always a tragic or traumatic situation. It can result in loss of life, loss of limb, loss of property, and loss of time.

What happens after the accident can be equally as harrowing when you try to deal with insurance companies, tow companies, and getting your car back? Where do you go, what do you do, and how long does it take? This bill is an attempt to make the after-accident process easier for the consumer.

The bill will set a fixed time for accident reports to be completed by law enforcement. A step that reduces the towing and storage cost to consumers. The tow company that takes possession of a wrecked vehicle will not be allowed to impose an administrative or processing fee during the first amount of time, which in the bill is 14 days after the vehicle has been taken into the yard. Any lien placed on a towed vehicle can't include an administrative or processing fee or charge for that first 14 days.

If the vehicle is sold, the tow company or any other entity holding the vehicle has to provide some advance notice that it's going to be sold, because some people go to get their car and find out it has already been sold, and they weren't even aware of it.

The bill also requires that secured parties produce titles in a timely manner, and imposes a fine on those who don't comply with this provision.

When the bill was drafted, amended, and passed out of the Senate, it was the result of a collaborative effort by law enforcement, insurance companies, and tow companies. Since that time, it has come to our attention that there's a conflict with an existing statute, and we want to try to work that out, while still protecting the interest of the consumer.

**Jack Jeffrey, Legislative Advocate, representing B and E Auto Auction, Las Vegas, Nevada:**

There's been a problem with police reports. These lien sales run after a car has been on the lot 4 days, and they can start a lien sale on the fifth day. The police reports are taking up to four weeks.

Mr. Ellis worked with Las Vegas Metropolitan Police Department (Metro) on the part of the statute that required the police report be submitted within 7 days of making the request in writing. There is an exception when the car has been involved in an accident resulting in death or substantial bodily harm of a person, failure to stop at the scene of an accident, or during the commission of a felony. The exception is broad enough to fit any circumstance where they were unable to deliver the police report within 7 days.

The bill also requires the lien holder to submit the title within 15 days after the car is pegged off. There is a \$25 penalty if they don't do that.

These two provisions will help to dispose of the cars quicker. My client, B and E Auto Auction, has a tremendous amount of property out there, and I think some of you have been out to see that operation. Space and land are a big problem. He auctions off about 600 cars every two weeks. It amazes me that he's able to keep the cars moving in the space he has to accommodate them.

There is a problem with the bill that came up yesterday. There is an existing statute in Chapter 706 of *Nevada Revised Statutes* (NRS) that requires the tow companies to notify the registered owner within 15 days before they sell the car. If they can't start the lien process for 14 days, they may not have the information they need. There needs to be an adjustment, either in Chapter 706 of NRS or in S.B. 175, to take care of that problem.

We had a meeting this morning and I think we're going to be able to work it out. I'd like to ask you, Mr. Chairman, if you would hold the bill to work out the details and come back with a solution.

**Chairman Anderson:**

Given the nature of S.B. 175, and the chapter that it deals with, and our new restrictions relative to statute, can we go to Chapter 706 of NRS relative to this piece of legislation, if it leads there in trying to find a solution to their problem?

**Risa Lang:**

It seems that the subject matter is related and they need to be worked out together, and we certainly could add them.



**Senator Titus:**

It's really a matter of days. This bill says 14 days, that one says 15. You could lower this 14 to 10, or you might be able to raise that 15 to 21, we just don't know which works better, that's why we'd like to get input from the parties. I don't see it as being a complicated process.

**Chairman Anderson:**

What we're concerned about is trying to find agreement with the towing companies. The auction yards feel that they would be able to find agreement. The banking industry has an issue with the sale of vehicles. Are there any other known players?

**Jack Jeffrey:**

Not that I'm aware of, Mr. Chairman.

**Chairman Anderson:**

The insurance companies are concerned about this issue.

**Jack Jeffrey:**

We'd like the DMV [Department of Motor Vehicles] to be involved in this.

**Chairman Anderson:**

Do we have a DMV player?

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

We will participate in the process. We also testify in support of S.B. 175, specifically in regard to Section 2. We worked with the sponsor to clarify the administrative penalty involved with a secure interest holder, if they fail to release title within the appropriate time, which is already statutory guideline, it puts the DMV as the body that follows up on that, and we support that.

**Bob Compan, Government Affairs Representative, Farmers Insurance Group, Las Vegas, Nevada:**

We're in support of the original version of S.B. 175. We see that there are some problems. We're willing to work to help the group adjust either way, on NRS 706, or the current statute that stands in the bill right now.

**Chairman Anderson:**

Will you represent the insurance groups at this discussion?

**Bob Compan:**

It will be me and several others.

**Bill Uffelman, President and CEO, Nevada Bankers Association:**

From the financial institutions' perspective on the NRS 706 problem, we would like notice as early as possible in the process, because that cuts down on the expenses on the back end, and that's our interest in this bill.

**Chairman Anderson:**

Will you be representing the Nevada Bankers Association?

**Bill Uffelman:**

I will.

**Scott Craigie, Legislative Advocate, representing Farmers' Insurance Group:**

I've worked on this package from the beginning, and I will be there as well.

**Fred Haas, Police Officer, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; and representing Nevada Sheriffs' and Chiefs' Association:**

We would like to be involved in this process due to the regulations regarding getting the police reports to them within 7 days.

**Clark Whitney, Quality Towing, Las Vegas, Nevada:**

I don't have total consensus of the industry, but I am spearheading this. We apologize for not being aware of this bill when it was in the Senate. We would have voiced our opinions over there had we known. We just discovered yesterday that this bill exists, and that it affects our business.

There is a law that already deals with this issue. The part of the law that concerns us ...

**Chairman Anderson:**

Is this document your hand out?

**Clark Whitney:**

Yes.

**Chairman Anderson:**

I will make your document ([Exhibit D](#)) part of the record for the day. Could you take us through the towing process?

**Clark Whitney:**

The parts of the bill that affect us are Sections 3, 5, and Section 4, subsection 4. If a person is involved in an accident, or someone wants to have

their car towed, and they direct us to tow it to their home or body shop, we tow it there.

[Clark Whitney, continued.] In cases where that information is not available, we are directed to tow it, sometimes by the police, or sometimes by a property owner, to our facility for safe keeping.

Eight or ten years ago there were abuses by insurance towing companies. They were imposing a lien fee the night the car was towed. If it was on Friday night, it was ridiculous because you can't begin a lien processing until the DMV opens. They came and said you can't put a lien fee on it until the fifth day, which we supported at the time.

There's also a law that has been on the books for long time, and that was 5 or 10 years ago that says, "You must begin the lien processing before the fifteenth day, otherwise you just sit on the car and rack up storage. Right now, we have that 10-day window to begin.

Most tow companies, because of the shortage of property, begin it on the fifth day. We send someone out on the fourth day to look at the VIN [vehicle identification number] to make sure that's correct. We send for a car that's registered in Nevada. We fax the DMV on the fifth day with the cars that are still in our yard that have not been picked up within the 5 days. A great number of cars that will eventually be picked up are picked up in the first 5 days. I don't have those exact figures.

In a day or two, the DMV faxes us a list of the cars that they have currently registered including the names of the registered and legal owners. After we receive that, in a day or two, we send a certified letter to both the legal and registered owners that the car is in our yard, and that they owe this much for the towing and charges associated with towing. These charges include clean up or stand by if they apply, half of the lien fee, and the storage up until that date. The storage will continue to accrue at the rate of \$20 a day; ours is \$18.50 in one company I represent, and \$26 in another company. If the car isn't picked up then it will be sold on or after a certain date in the future, which is about 30 days in the future.

After sending that letter we have to wait 15 or 20 days and then we are required to notify the DMV that we are going to sell it. At the same time, we advertise in a local newspaper for three consecutive weeks, listing the name of the legal and registered owner, with a description of the car and when it's going to be sold.

[Clark Whitney, continued.] After that, if we still have the car, we sell it to recoup some of the charges. Mr. Kirsch said he recoups about 8 percent of the charges. I spend a lot more money on advertising, over and above what's required by law, and I recoup about 12 percent.

Someone said earlier, you could put 200 cars on an acre of land and it would make a wonderful amount of money. If you could collect that, yes it would. In the real world, a very small portion is collected.

**Chairman Anderson:**

If you feel like we've touched on the basics of the concern of the towing industry, the lending industry, insurance questions, and the auction yard, the only person I think we have left to hear from would be Mr. Kenneth Scruggs, and Ms. Cheryl Blomstrom.

Mr. Kirsch, will you be coming to the meeting, or are you letting Mr. Clark Whitney be the spokesperson for your group?

**Dean Kirsch:**

I would like to be involved. Mr. Whitney is from the southern half of the state. I contacted most of the towing companies in the northern area yesterday, and they'll give a consensus to whatever we work out.

**Chairman Anderson:**

Mr. Whitney, will you be involved in the meeting, or are you going to let Mr. Kirsch carry the ball?

**Clark Whitney:**

Yes, I want to be involved.

This is already covered in the prior law. There is something that happens that the Committee needs to be aware of. Many times when we tow abandoned cars from public property, apartment complexes, or stores, thieves have stolen the cars and abandoned them there. The apartment complex asks us to tow this car. Part of that process is we must notify the local police agency within one hour of towing the car. They later cross reference it and find it is a stolen car, and they have recovered the car. In the meantime, on the fifth day, we have started the lien processing. We notify the owner, and many times that owner comes and says, "I reported this to the police, how come I had to hear from you that you found my car?" It's a matter of bureaucracy. Sometimes they get backed up at the police department, but we just don't have that luxury, we have to get the car out.

[Clark Whitney, continued.] If we pushed the notification back to 10 or 14 days it would not help the general public because that storage would continue to mount.

**Kenneth Scruggs, Government Relations Director, HSBC North America, Glendale, Arizona:**

We finance automobiles. I signed in to testify on Senate Bill 41, which is a bill that we agreed with the amendment on, and were willing to support, but as the issue has come up here with the conflict between those two bills, Mr. Uffelman will represent us at the meeting. I want to make the point that the critical thing for us is to be notified that a car is in storage as early as possible during the process, particularly if we're talking about increasing the amount of the first mortgage that the tow company gets from \$1,000 to \$2,500. We need every opportunity to get that car out of storage before that threshold is met.

**Robert Ellis, Legislative Advocate, representing B and E Auto Auction, Henderson, Nevada:**

I would also like to be included in the meeting because I represent in excess of 200 insurance companies and, naturally, most of them can't be here.

**Chairman Anderson:**

We'll close the hearing on S.B. 175 and bring it back to Committee.

**Jeanette Belz, Legislative Advocate, representing Property Casualty Insurers  
Association of America:**

[Presented [Exhibit E](#).] We've been working through Mr. Compan. If there's room  
in the meeting that's fine, if there's not that's fine.

[Chairman Anderson adjourned the meeting at 10:49 a.m.]

RESPECTFULLY SUBMITTED:

---

Jane Oliver  
Committee Attaché

APPROVED BY:

---

Assemblyman Bernie Anderson, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** April 29, 2005

**Time of Meeting:** 8:13 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Meeting Agenda
<u>S.B. 141</u>	B	Ben Graham, Legislative Representative, Nevada District Attorneys Association	Testimony in support of <u>S.B. 141</u> . Document on Nevada Supreme Court case <i>Dettloff v. State of Nevada</i>
<u>S.B. 41</u>	C	Senator Maurice Washington, Senatorial District No. 2 (Washoe, parts of Lyon and Storey)	Amendment to <u>S.B. 41</u>
<u>S.B. 175</u>	D	Clark Whitney, Quality Towing, Las Vegas, Nevada	Automobile towing process flowchart
<u>S.B. 175</u>	E	Jeanette Belz, Legislative Representative, Property Casualty Insurers Association of America	Letter in support of <u>S.B. 175</u> from Samuel Sorich, Vice President, Property Casualty Insurers Association of America