

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

**Seventy-Fifth Session  
April 23, 2009**

The Committee on Transportation was called to order by Chairman Kelvin Atkinson at 2:14 p.m. on Thursday, April 23, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/75th2009/committees/](http://www.leg.state.nv.us/75th2009/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Kelvin Atkinson, Chairman  
Assemblyman Mark A. Manendo, Vice Chair  
Assemblyman John C. Carpenter  
Assemblyman Chad Christensen  
Assemblyman Jerry D. Claborn  
Assemblywoman Marilyn Dondero Loop  
Assemblyman Pete Goicoechea  
Assemblyman Joseph M. Hogan  
Assemblyman Ruben J. Kihuen  
Assemblywoman Ellen B. Spiegel  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator Maggie Carlton, Clark County Senatorial District No. 2  
Senator Michael (Mike) A. Schneider, Clark County Senatorial  
District No. 11

Senator Shirley A. Breeden, Clark County Senatorial District No. 5  
Senator Mike McGinness, Central Nevada Senatorial District

**STAFF MEMBERS PRESENT:**

Marjorie Paslov Thomas, Committee Policy Analyst  
Darcy Johnson, Committee Counsel  
Marlen Schultz, Committee Secretary  
Steven Sisneros, Committee Assistant

**OTHERS PRESENT:**

David F. Kallas, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc., Las Vegas, Nevada  
Bill Bainter, Lieutenant, Nevada Highway Patrol, Department of Public Safety  
Chris Perry, Chief, Nevada Highway Patrol, Department of Public Safety  
Tom Roberts, Lieutenant, Las Vegas Metropolitan Police Department, Las Vegas, Nevada  
Michael Geeser, Media/Government Relations, California State Automobile Association, representing AAA of Nevada, Las Vegas, Nevada  
Scott Craigie, Reno, Nevada, representing Farmers Insurance Group, Las Vegas, Nevada  
Fred Hillerby, Reno, Nevada, representing Verizon Wireless, Irvine, California  
Mark Fiorentino, Private Citizen, Las Vegas, Nevada  
Gage Fiorentino, Private Citizen, Las Vegas, Nevada  
Erin Breen, Director, Safe Community Partnership, Transportation Research Center, University of Nevada, Las Vegas, Las Vegas, Nevada  
William Birkmann, Reno, Nevada, representing the Nevada Alliance for Retired Americans, Minden, Nevada  
Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada, Las Vegas, Nevada  
Dawn Lietz, Supervising Auditor, Motor Carrier Division, Department of Motor Vehicles  
Doug Busselman, Executive Vice President, Nevada Farm Bureau, Sparks, Nevada  
Paul Enos, Chief Executive Officer, Nevada Motor Transport Association, Reno, Nevada

**Chairman Atkinson:**

[Roll called. The Chairman reminded everyone present of the rules and expectations of behavior before the Committee.]

I will open the hearing on Senate Bill 9.

**Senate Bill 9:** Extends the maximum period that a hybrid electric vehicle may be used as a taxicab. (BDR 58-165)

**Senator Maggie Carlton, Clark County Senatorial District No. 2:**

In looking at the opportunity for cab companies to use hybrids and the amount of time that it would take for them to make the money back for the expense of the hybrid, I want to incentivize them into using more hybrid vehicles on the roads. It would be very good for our air quality in southern Nevada. The intent is to allow cab companies another 24 months to use the hybrid vehicles. Right now, the cab companies are mandated to pull the hybrids off the road after a certain time period. Keeping in mind what it takes to recoup the cost for the hybrid vehicles and the desire to keep these vehicles in serviceable operation, this bill would give cab companies time to recoup their costs as well as preserve the good air quality of southern Nevada.

**Assemblyman Goicoechea:**

The cab companies are required to pull the hybrid cabs off the road after 55 months, is that correct?

**Senator Carlton:**

I believe so. It may be different. Existing law provides that a vehicle may be operated as a taxicab for 67 months based on the date it was originally placed into operation. So under section 1, line 6, it has 67 months.

**Assemblyman Goicoechea:**

Then I look on line 1 on the second page where it says ". . . for 55 months based on the date it was originally placed into operation . . .," but mileage is not reflected in that language; is that correct? It is just the months that are presently used?

**Senator Carlton:**

I believe so, unless it is a used cab or has a used component, which we did not discuss. We were assuming that these hybrids would probably all be new and right off the lot. I do not believe there is a mileage component. I used the month provision because of the "55 months based on the date it was originally placed into operation" to give the certificate holder this extra two years.

**Assemblyman Goicoechea:**

And then you would give them another year if they were a hybrid?

**Senator Carlton:**

Twenty-four months. Two years.

**Chairman Atkinson:**

Is there anyone else who would like to testify on S.B. 9? I do not see a problem with the bill. I will close the hearing on S.B. 9.

This Committee is now moving into work session. We will address Senate Bill 116, which we have heard previously in this Committee. I gave individual members, proponents, and anyone against this bill the opportunity to satisfy any concerns they may have had. There were many concerns as well as good testimony discussed for well over two hours. I received an amendment today that, in my opinion, is very lengthy and would require this Committee to reopen the hearing on S.B. 116, and I am not willing to do that. The time to submit amendments is during the presentation of the bill. This is a work session, and I will not allow any further amendments to be submitted.

**Senate Bill 116:** Makes failure to wear a safety belt in a motor vehicle a primary offense. (BDR 43-20)

**Marjorie Paslov Thomas, Committee Policy Analyst:**

Senate Bill 116 ([Exhibit C](#)) was sponsored by the Senate Committee on Energy, Infrastructure and Transportation. It was heard on April 14, 2009. It makes the failure to wear a seat belt a primary offense, where a vehicle may be stopped and a citation may be issued to a driver or an adult passenger for failure to wear a safety belt, whether or not that vehicle is stopped for another alleged violation or offense. There are no proposed conceptual amendments.

**Chairman Atkinson:**

The Chairman will entertain questions from the Committee members on S.B. 116.

**Assemblyman Manendo:**

I received quite a few emails from folks who are interested in seeing this bill pass. I know that Senator Nolan came around yesterday with a packet of information, which I have not had the chance to review. As the Chairman said, the amendments which this packet represents would require another hearing. I respect the wishes of the Chairman, even when we disagree on some of these issues. I had a lot of folks from University Medical Center (UMC) of Southern Nevada email me and tell me about how many lives we could save and

how much money it costs the taxpayers for folks involved in vehicular crashes because people are not wearing their seat belts. I have seen figures as high as \$70 million. I have always been a proponent of public safety issues.

**Chairman Atkinson:**

Senator Schneider, I am not trying to be disrespectful, but we are not about to open another hearing on this bill. You were not here when I said that we are not going to allow you to go over these amendments in full because these amendments should have been before us way before today. I asked the proponents of this bill to talk to Committee members and discuss these things with us nine days ago. We just received this today, and if we go over these seven or eight amendments, then we are reopening this hearing and I will not let our Committee do that today.

I will allow you to speak briefly, and then we will continue with our vote.

**Senator Michael (Mike) A. Schneider, Clark County Senatorial District No. 11:**

The amendments that were presented today were from Senator Nolan. Senator Nolan is in Washington, D.C., today. He called and asked me to present these amendments. When I brought this bill forward, I was just concerned about the cost to UMC. If someone wanted, they could do something with Clark County, even as an experimental project with UMC. We have been in discussion with Virginia Valentine. She says any relief you could give us would be greatly appreciated, because they are shutting down departments at UMC due to the high cost of these catastrophic accidents where people are not wearing their seat belts. Senator Nolan's amendments are his amendments. It has always been a cost bill for me.

**Chairman Atkinson:**

I understand. I have been dealing with you for the past month or two on this, and I want to thank you for your fairness and patience.

**Assemblyman Hogan:**

I have considered the arguments we heard when we had our hearing. I was certainly concerned about the allegations that it might be unconstitutional, but I am entirely satisfied that, having been the law of the land in many states for a number of years and having never been found unconstitutional, I cannot agree with any part of that argument. I would urge people to realize it has become very common to say that anything you do not like or anything you find irritating is automatically unconstitutional. That is not an argument here.

The other areas I have considered very seriously are both the monetary costs and the cost in lives lost and lives ruined by terrible injuries. There is a lot to

gain by reducing the amount of defiance of the seat belt laws. I do not accept that we have anything close to a 90 or 92 percent compliance, as we are told. When you take that survey in the daytime and do not make any effort to determine that compliance is perhaps less than half that high at night, and you do not take into account the fact that the survey only asked about the front seat usage, your results will be skewed. A lot of injuries happen to people who go flying from the back seat through the windshield. Having considered the things that we heard, I feel stronger than ever that, in the overall best interests of the people of Nevada, it would be greatly beneficial to permit this as a primary offense and let our law enforcement people reduce the tragic losses that we have as a result of not having a primary seat belt law.

**Assemblywoman Spiegel:**

I am very disturbed that it seems as if our children are being taught that our laws do not count. We are not communicating to our kids that a law is a law. It troubles me that we need to have a law that says, "No, we really mean it is a law." We need to teach our kids that a law is a law.

I have asked numerous people numerous questions over the past ten days about how we would get the incremental savings that the proponents claim we will get in terms of lives that are saved. Not one person has been able to come back and give me a plan and say to me, "Here is what we are going to do. Here is what it is going to take. Here is how we are going to go about it. Here is what it is going to cost." No one was able to answer that simple question for me. How are you going to achieve the results? No one has answered that.

Finally, I do recognize that wearing seat belts is important. I do recognize that we do need to be saving lives. But if we are going to be doing this and we are going to make it work, then we will be obliged to add to law enforcement. If we are going to do that, I am concerned that there was no fiscal note on this; no plan to have additional law enforcement people put to the task; no plan to have additional resources allocated towards making sure that this "We really, really mean it" law works better than the law that we have. I am troubled by these things. For these reasons, I will be voting no.

**Chairman Atkinson:**

The Chairman will first entertain a motion on S.B. 116, and then we will discuss it.

**Assemblyman Manendo:**

I did not want to open up another hearing. I only wanted to see if Senator Schneider's intent was to make it apply only to Clark County. I was amenable to that as a way of getting it started. With the \$70 million alone that we talked about earlier from UMC, if folks are interested in going that route, I would make a motion that we amend and do pass and make it apply to populations over 400,000.

**Chairman Atkinson:**

For the same reason I will not accept other amendments, I will not accept yours. It is not fair to bring up an amendment when others do not know about them. We have not given people the opportunity to vet them, to talk to local entities, to talk to other people, to talk to the proponents, about this bill with the suggested language. There has been plenty of time to work out the differences between the parties, and it was not done. I will allow Mr. Manendo to restate a different motion.

**Assemblyman Manendo:**

There are a lot of pages here. I have not had a chance to read through them all. However, in my eight terms here, I have been in numerous committees which have allowed minimal amendments to be made at this late date. I thought that a population cap, as a way of getting it started, would be agreeable. With that, I would make a motion that we do pass.

ASSEMBLYMAN MANENDO MOVED TO DO PASS  
SENATE BILL 116.

ASSEMBLYMAN HOGAN SECONDED THE MOTION.

**Chairman Atkinson:**

Is there any discussion on the motion?

**Assemblyman Goicoechea:**

While I support seat belts and the enforcement of the law we have on the books today, I believe, with strict enforcement of the seat belt law, we can accomplish what we need without moving the offense to the primary position. I will be voting against this bill.

**Chairman Atkinson:**

Is there any other discussion on the motion?

THE MOTION FAILED. (ASSEMBLYMEN ATKINSON, CARPENTER, CHRISTENSEN, CLABORN, GOICOECHEA, SPIEGEL, AND WOODBURY VOTED NO.)

I will open the hearing on Senate Bill 136 (1st Reprint).

**Senate Bill 136 (1st Reprint)**: Prohibits a person operating a motor vehicle from using a telephonic device to write, send or read a text-based communication while the motor vehicle is in motion or stopped at certain intersections. (BDR 43-776)

**Senator Shirley A. Breeden, Clark County Senatorial District No. 5:**

Good afternoon Chairman Atkinson and members of the Committee. I am here to review Senate Bill 136 (1st Reprint), a bill which will prohibit using a cell phone to write, read, or send electronic messages while driving.

[Continued to read from prepared testimony ([Exhibit D](#)), ([Exhibit E](#)).]

**Assemblyman Claborn:**

When they passed the law banning cell phone usage while driving three or four years ago in California, I thought it was foolish to ban cell phones while still allowing texting. They did not include that in the law. They can still text message while driving in California. These text messages are much worse than cell phones. How will we enforce this? There are lots of supporting statistics, and it is a good bill, but how will you enforce this? It is quite a problem with me. How will law enforcement catch perpetrators?

**David F. Kallas, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc., Las Vegas, Nevada:**

I think we would enforce this law like we enforce any other law. We would have to look at the circumstances, based on what we see, what we know, what we believe, our experience, and our training. From that, we make a determination: is somebody doing something they should not do? Certainly, if I am driving down the street and see a car weaving in and out of lanes, when that car finally comes to a stop because traffic is backed up and I see what I believe to be a young female texting with both hands over the steering wheel while her knees are up on the steering wheel operating the vehicle, based on my experience and training, I would have to believe she was texting. If I was driving a patrol vehicle, I would initiate a vehicle stop and would write her a citation for texting. If she believed she was not doing that, then she would have the opportunity to go in front of a judicial body and argue that she was not. It would be my job to argue why I believed she was.



**Chairman Atkinson:**

What about those who are using one hand?

**David Kallas:**

Again, that would be my job to articulate the infraction and the violator's job to articulate why they were not in violation.

**Assemblyman Claborn:**

I heard you say that you "believed" they were texting, but if you do not know for sure and you pull someone over, if they chose to go to court, with over 80,000 text messages being sent daily, would this bill not flood our courts overnight?

**David Kallas:**

In law enforcement, we are not overly concerned with what happens after our actions. Our job is to enforce the laws. If that means we are going to send 80,000 more people who are breaking the laws to our court system, then so be it. But if that saves one officer from responding to an accident, one paramedic or emergency medical technician (EMT) from responding to an accident, or if it teaches one person that it is illegal, who then may teach the next person, it is worth it. We believe that this will become a deterrent. Hopefully it takes care of most of the problems itself. Those problems that it does not take care of become our responsibility. The violator as well as the judge may not agree, but when I say "I believe," I believe there was probable cause, at that time and that place, that they were committing a crime, and I took the appropriate action.

**Assemblyman Claborn:**

As elected officials, we have to be concerned about our courts. We have to be concerned if they are congested. I was on the Assembly Committee on Judiciary for two terms, and that is all we talked about. We do not have enough judges. The courts are full. The jails are full. Our prisons are full. What are we going to do? And this is what you want to do? I disagree with you. It is a great bill, and it will stop a lot of accidents. But there is more to it than this. This bill is not going to work overnight. This issue has got to have some thinking and some planning from everyone. The prison system has to work and the law system has to work.

**David Kallas:**

I understand. As you can see by the language in the bill, this is not a crime. This is not even a traffic violation. This is a nonmoving violation. It is no different than a parking citation. The only difference is that this person is operating a vehicle that can do significant damage to other property and certainly to life. That is the way we are looking at it, from our perspective.

**Assemblyman Claborn:**

I cannot go along with that, Mr. Kallas, because when you are driving an automobile and a police officer pulls you over for nothing, the situation is elevated. It is not just an ordinary, everyday event. You are talking about going to court. If the person works, he has to take a day off work to go to court. This is a big issue, and we need to put some thought into this before we pass this bill.

**Assemblyman Christensen:**

I appreciate the merit of your intent. This is a significant issue. My mentor said, "In addressing issues and problems of life, you could hack at the leaves or you can hack at the root." I want to make sure we are hacking at the root. We are talking about saving lives and making sure we do not see many of these pictures on Nevada's roads.

I look at what motivates people to change their behavior. I am sure that the intent here is to change the behavior of texting while driving. That motivation could come from the fear of receiving a ticket or by safety concerns because they are exposed to something. For me, going through high school, I did not wear a seat belt. That was 20 years ago. I certainly do now because I was taught that it was a better way to go. This is interesting because in a recent Will Smith movie, *Seven Pounds*, there was a scene in the movie where something really bad and life-changing happened to the main character while he was sending a text. It addresses the heart of this bill. My wife said, "Everyone needs to see this part of this movie, because they will never text again while they are driving." Looking at this, I feel that is a significant motivation.

I think it should be a moving violation. I do not know if it is a moving violation or if it is like a parking ticket similar to how the hands-free cell phone issue works in California. There certainly needs to be teeth. I understand motivating drivers by fear of penalty. In the meetings you have had with the professionals, have you had any good ideas as to what we can do as a legislative body to talk to high school and college students about this issue and motivate them through the promotion of safety?

**Senator Breeden:**

When this all came about, I spoke with Ms. Traci Pearl from the Office of Traffic Safety, and they do have a traffic safety awareness program; however, I found out that their next program is over a year away, and it did not include text messaging at all. That is something that she will put into the program. I have been in communication with the editor of the University of Nevada, Las Vegas (UNLV) *Rebel Yell* paper, and they have been writing articles and bringing awareness about the dangers of texting while driving. As far as

meeting with any other organizations, I have not done that. I spoke briefly with a former colleague from the school district who works with Safe and Drug Free Schools and asked for some guidance on possible avenues within the school district. It takes money for fliers and information. When the original bill came out, there was some press coverage of the issue, and it has brought about some awareness. As far as printed documents, however, we have nothing so far.

**Assemblyman Goicoechea:**

You said it was not a moving violation, but we do have a first, second, and third offense. Who will track that? I would assume it was a moving violation and would go on your record, so when you got a second or third ticket, there would be some way of knowing whether it was your first, second, or third offense. Clearly the justice courts are not going to track that.

**Senator Breeden:**

Let me back up a little bit. When we were drafting this bill, because it is new to Nevada, we originally tried to mirror it in a certain way after California's bill, except we exempted the use of a cell phone for talking. Being a freshman legislator, I wanted to take baby steps. I thought to just bring about awareness and make people accountable. Awareness is great, but if there is not some type of consequence for your actions, people will keep doing it. I do not want to send anyone to jail or anything; I just wanted to make them aware.

**David Kallas:**

I am not the author of the bill, but offenses like expired license plates, lack of vehicle registration, or other similar infractions are not moving violations. I believe they would be tracked in the same manner through the Department of Motor Vehicles (DMV). The justice courts only keep records of incidences that take place within their jurisdiction. There are municipal courts in different cities and municipalities, so I would presume, based on the author's vision, that it would somehow mirror those types of nonmoving violations for which you currently have the authority to stop vehicles.

**Assemblyman Goicoechea:**

So it would be reported to the DMV?

**David Kallas:**

It would be a no-point-deduction violation. With any citation you have, there is a box on it to specify if the violation involved a state statute or county or city code. It would be processed with the appropriate bail or fine amount.

**Assemblyman Goicoechea:**

A possibility could be that you pull someone over for texting and he could claim that no, he was simply putting in a number to call. The phone itself could have evidence in its records of text messaging. Could you seize the phone as evidence?

**David Kallas:**

Legally, I do not believe we could. Certainly, by our policy, you would not have any reason to take the phone. We are talking about a traffic violation. Your articulation of what you observed would be enough to write a citation much like you would for speeding or driving an unregistered vehicle. You would have no authority, under those circumstances, to take that phone and/or to access it. The officer would be violating the law if he attempted to access the phone without permission of the owner.

**Chairman Atkinson:**

The bill indicates there is no fiscal note. However, Mr. Kallas, the way that you explained it, even if the DMV is processing all of this, I am sure there is going to be a cost. It changes this bill. There is going to be a cost associated with this bill, and the people from the DMV are shaking their heads in the affirmative. There will have to be some programming and other things done to prepare the DMV for this new responsibility.

**Assemblywoman Spiegel:**

I think it is great that you are looking at ways of improving safety on the road, especially because of the accidents due to texting while driving. When you were putting this together, did you consider including such activities as entering phone numbers or looking up names? I have thousands of contacts, and I cannot quickly find particular numbers I want to find. It requires me to pay attention to the phone and search through the whole thing. It could take a lot of time and divert attention from driving. Have you had any thoughts about or discussions on these aspects?

**David Kallas:**

We have enough faith and trust in officers. When our house is being broken into, we call them. If our child is missing, we call them. If an officer is driving down the street and driving next to you, and you have one hand on your phone, I cannot say with certainty that I believe you are texting. But when I see two hands over the front of the steering wheel, based on my training and experience, I believe you are texting. Under the circumstances you described, I could not, in good conscience, stop you and write you a ticket for texting because I do not believe that you were.

**Assemblywoman Spiegel:**

That was not the question I asked. I was asking a different question: should this not have been expanded to include typing in numbers or looking up data on your phone?

**David Kallas:**

That is certainly within the sponsor's purview to do that. I believe the intent was to get those people who are taking both hands off their steering wheel and using their hands for purposes other than driving. If you are making a motion to include it, I would be happy to support that. But we are trying to take small steps here and address what we believe to be a prevalent issue. Certainly there are other issues that can be related to it.

**Assemblywoman Spiegel:**

I am less concerned with taking your hands off the wheel as taking your eyes off the road.

**Senator Breeden:**

Yes, that was in one of the original attempts. However, in speaking with numerous folks, that was not an idea that was acceptable to everyone. Some were in support and some were in opposition. As a freshman, I decided to start with baby steps. With a text message, the distraction is huge. It takes more concentration from driving, requires more time, and is very dangerous. Your suggestions were discussed, but we decided to limit it to text messaging for the time being.

**Assemblyman Manendo:**

In the time I was trying to text while traveling at 35 miles per hour, I probably would have covered about 80 yards. I would presume, in Las Vegas, I probably would have hit a car, possibly struck a pedestrian, ran a red light, or ran a stop sign. I commend you for bringing forth this piece of legislation. Public safety is a huge issue for me, and I appreciate you letting me be a co-sponsor of this bill. I appreciate your baby steps. I think that if your head is down and you are using your phone, whether it is inputting numbers, texting, playing games, or reading a message, it becomes addicting. People cannot put their phones down. We need to have a law that will deter people from this behavior. Your number one priority is to pay attention to the road, drive your vehicle, and get you and your family from point A to point B safely without killing yourself or others, or damaging property. So I would be agreeable to putting into the bill additional types of distracting cell phone behavior.

**Assemblyman Claborn:**

I will offer another hypothetical scenario in the same spirit as Mr. Manendo. Suppose I am going down the road, and I am reaching over to the passenger side and fumbling to find a compact disc (CD). Before I know it, I have covered 80 yards and have hit a car. This is the same scenario; it is the same problem. We have had radios in cars for many years. If you do not pay attention to what you are doing, you could hit somebody. Still, this is a good bill. How will we enforce it? We could never enforce a ban on reaching across to search for a particular CD. It is not just the cell phone; it is a lot of distracting things. We are dealing with cell phones today, and I love the bill, but how are we going to enforce it? We need to teach our children about text messaging the same way we educate them about seat belts. I am in support of saving lives, but I am also in support of protecting our rights as well.

**David Kallas:**

I am here in support of S.B. 136 (R1). I believe it is an important piece of legislation. As it is your responsibility to pass good public policy, our job as police officers is to enforce the laws that you give us. We do that to the best of our abilities. I have been through many hearings regarding this bill and the previous bills on seat belts where I have heard statements made that this will lead to abuses by law enforcement. It is disturbing to me to hear those types of things because you trust us in many different venues. Regardless of what you may personally feel about what it is we do or do not do, if you have an opportunity to implement good public policy, please have enough faith and trust in us to implement that policy and let us do the job that you entrust us to do.

I listened to Assemblyman Christensen speak about how to change behavior. I just saw the movie, *Seven Pounds*, and the scene he spoke about was a frightening scene. It happens all too often. I agree that you cannot change behavior just by implementing punitive action. Certainly a fine is punitive action. There are many components to changing behavior. Education is one component. Publicity and awareness is another component. Having this hearing is a component. Hopefully having the foresight to go ahead and pass this piece of good public policy, and the type of publicity it is going to receive, is going to make for good public awareness. It will provide the opportunity for those high school educators who are taking our children out and putting them behind the wheel of a car to say, "You should not be texting because it is not a good thing to do; you should not do texting because it is illegal." That resonates. When you are talking to an impressionable 15- or 16-year-old, when you tell them something is illegal, it resonates. When you add that illegal term, it has a whole new meaning to teenagers. If you take those components together—education, public awareness, publicity from the passage of this

legislation, and the punitive action taken when we stop a driver—something can be accomplished.

Police officers do not always issue citations when they pull someone over. It depends upon how egregious the offense is. If I stop somebody for texting, and he is a law-abiding citizen, I think the embarrassment of being stopped might deter him from doing it again. If their actions are egregious and they are weaving across the road, and I stop them and write them a citation, maybe that \$20 to \$100 ticket will deter them from doing it again. If you take all those components together, it could help us create a better public policy and keep our roads safer. We in law enforcement will take the opportunity and use the power of discretion that we currently have with everything else, and do what we think is best when we are dealing with it, just like the Legislature does when you sit here and make decisions on what is and is not good public policy. From the perspective of the 4,000 police officers that I represent in Clark County, we think this is good public policy and urge you to support it.

**[Vice Chair Manendo takes the gavel.]**

**Bill Bainter, Lieutenant, Nevada Highway Patrol, Department of Public Safety:**

The Nevada Highway Patrol (NHP) supports S.B. 136 (R1). Even though we do not have current crash statistics that support this bill, studies have shown that divided attention increases perception-reaction time with drivers when they observe a traffic hazard. Prohibiting texting while driving is clearly common sense, and this bill represents good legislation that would improve traffic safety on roadways.

**Assemblyman Carpenter:**

How would it be enforced if it is not a moving violation? Where would that go? The DMV? The Department of Information Technology? How would it be enforced?

**Chris Perry, Chief, Nevada Highway Patrol, Department of Public Safety:**

Currently, there would be no statewide system that would be able to track a violation of this type. It is not a moving violation, so the DMV would not pick it up. It would be housed in local databases of individual police organizations, for example, computer-aided dispatch (CAD) centers scoped for southern Nevada and other types of data warehouses. There would be no way that somebody in Wells would necessarily know if it was a second or third offense for someone who was driving in Las Vegas.

**Assemblyman Carpenter:**

So it would not be able to be enforced for the second or third violation anywhere else except in Las Vegas where the original infraction took place?

**Chris Perry:**

No, sir. You would be able to enforce it if you had a local database that had information to which you had access. For example, a highway patrolman in Wells would have information throughout the state if that individual had been stopped and cited for text messaging through our computer-aided dispatch center. They would be able to get that information statewide. However, a Metropolitan Police Department officer would not necessarily have the ability to access our CAD system.

**Assemblyman Goicoechea:**

I have been receiving emails from a Justice of the Peace (JP) in eastern Nevada. That is where some of my information is coming from. He said in his particular court they could not track it at all.

**Chris Perry:**

That would be my opinion as well; however, we would keep track of it in our CAD system, so our officers on the road would know if it were a second offense.

**Vice Chair Manendo:**

How often do you see people on the phone, texting, or doing something other than reaching for their coffee cup?

**Chris Perry:**

It becomes apparent through other means. If someone is not paying attention to driving, we are going to see something else occur. They are going to violate a lane change statute, or a speed regulation, or a distance regulation. If that were the case, my officers would probably take the enforcement action on the more serious of the two and give them a warning on the texting if they were to see that occurring at the time. This bill is more of an educational tool. It is about reaching out and becoming an educational tool for that type of violation.

**Assemblywoman Spiegel:**

Could you tell me approximately what percentage of accidents are caused by people who are texting while driving?

**Chris Perry:**

We do not currently track that. If we have an issue that comes up at the scene of a crash and we have direct evidence, an eye witness, or if the person



confesses it, we will put that down as a contributing factor. Currently, it is something that has not been tracked because it is a relatively new phenomenon.

**Tom Roberts, Lieutenant, Las Vegas Metropolitan Police Department,  
Las Vegas, Nevada:**

One of our major goals is developing and implementing solutions to improve traffic safety in the Las Vegas metropolitan area. Over the last two years, some of the programs that we have implemented have reduced fatal accidents in our valley by 33 percent for two consecutive years. We believe that this bill will improve on those programs. We support the intent of this bill. I am a firm believer that we will save lives if we pass this.

**Assemblyman Carpenter:**

What were those programs you initiated in Las Vegas that reduced accidents by 33 percent?

**Tom Roberts:**

There are a multitude of programs. Number one is the Joining Forces program, in which Las Vegas Metro and other local jurisdictions target the specific areas in which we are seeing an increase in accidents. One example is on our freeways. We recognized that a majority of our fatal accidents and major injury accidents were occurring along our freeway corridors within Las Vegas. So we joined forces with NHP and conducted traffic enforcement along our highways. By doing that, you adjust driver behavior from the freeway to those surface streets when they exit. That reduces the traffic accidents. That is just one example. One of the other things that we do is partner with traffic engineers, members of our agencies, NHP, and all of the other local jurisdictions in southern Nevada and meet on a regular basis to discuss engineering flaws and items we may notice in our day-to-day interactions and decide how we can fix them.

We are not only looking at enforcement, but we are looking at the design of our highways. We have brought some bills forward this session as a result of those meetings. One was the white line traffic bill that this Committee passed, and another was the red light cameras proposal. There was a moped bill that came out of those committees. Those are just some of the things we are doing. We also, through our southern Nevada fusion center, crunch vehicular accident data weekly and push that out to our patrol officers and our traffic officers so they can target those types of accidents and those intersections that are the most dangerous to our citizens in the valley. We proactively work those. Those are just some of our programs. I could go on and on, but I do not want to bore you to death.

**Michael Geeser, Media/Government Relations, California State Automobile Association, representing AAA of Nevada, Las Vegas, Nevada:**

We support this bill. We conducted a couple of surveys in 2008 that showed how prevalent texting is, especially among those aged 18 to 24. When this bill was heard on the Senate side, law enforcement and the towing industry had asked for an exemption on texting. The more we talked about it, the more we realized we should not be texting either. There are no exemptions in this bill. No one should be texting while driving because it is unsafe.

**Scott Craigie, Reno, Nevada, representing Farmers Insurance Group, Las Vegas, Nevada:**

I agree with all the testimony that has been given so far. We are happy to see this bill. If you take a look at page 2, all of the subsections under section 1 of the bill, subsections 1, 2, and 3, are well thought-out components that should go into the *Nevada Revised Statutes* (NRS). This is an appropriate set of enforcement steps. We at Farmers Insurance Company support the entire concept.

**Fred Hillerby, Reno, Nevada, representing Verizon Wireless, Irvine, California:**

We are here in support of the bill. We understand the sudden influx of new technologies and the need to keep up. We also understand the common sense that says you ought not to be texting while driving.

**Mark Fiorentino, Private Citizen, Las Vegas, Nevada:**

I would like to introduce to the Committee my son, Gage. Late last year, Gage's fourth-grade class was going through a process of discussing different ways they thought they could make our community better and laws they thought made good sense. They went through a very deliberate process, talking it through, debating it, and voting on some ideas. The end result, after a number of debates and votes in his classroom, was to support a law to make it illegal to text while driving a car. It is purely a coincidence, because their process ended in mid-February. We discovered that Senator Breeden had actually proposed such a law. We spoke to her and asked her if we could help support it.

**Gage Fiorentino, Private Citizen, Las Vegas, Nevada:**

I am representing my fourth-grade class. I think this bill should be passed because I look at it as an opportunity to make the world a better place. People and children are getting injured and dying because of accidents due to not paying attention while driving. Here is a story about a person. This person happens to be my dad. He was trying to answer email as he turned to get on the freeway. He accidentally went on the off ramp and was going the wrong way on the freeway. Luckily he was not injured. I have told my dad thousands

of times to stop texting while driving. He does not like to be told what to do, but he will follow the law. If you pass this bill, you can stop my dad from texting while driving.

I would like to read a letter from my fourth-grade class and our teacher, Mrs. Fevurly. [Read a letter into the record ([Exhibit F](#)).]

**Erin Breen, Director, Safe Community Partnership, Transportation Research Center, University of Nevada, Las Vegas, Las Vegas, Nevada:**

In order to talk about the texting issue, we have to talk about the entire cell phone issue. In the last four months, the American Medical Association and the National Safety Council have both called for a nationwide ban on texting while driving. Rational people listen when the National Safety Council and the American Medical Association speak. Researchers in the United Kingdom found there is a 400 percent increase in time spent with eyes off the road while texting versus other forms of distraction such as changing your radio. The Harvard Center for Risk Analysis reported in 2008 that cell phones contributed to 6 percent of car crashes. Six percent of car crashes does not necessarily sound like a lot until you put the numbers to it. It represents 636,000 crashes, causing 330,000 injuries, 12,000 serious or critical injuries, and 2,600 fatalities. The cost is \$43 billion a year in the United States.

Texting is even more dangerous than simply talking on your cell phone. Teens themselves who were surveyed for a study by Students Against Destructive Driving rated texting while driving the most dangerous of all behaviors practiced behind the wheel by almost a two-to-one margin over any other behavior. Talking on the cell phone was at the bottom of the list. The same report offered suggestions to parents and consequences established by the teens and parents together. Interestingly, 52 percent of the teens in this survey reported that their parents would not follow through with the consequences so there was little fear that any consequence they had developed would actually be implemented. Sixty-two percent of those same kids reported that their parents talked on the phone while they were driving.

I think we need to talk about what we do as role models. Millions of people operate their vehicles while using a phone. Eighty-one percent admit it when asked, but few admit it when they crash, which is why the data does not exist. Even for fatalities, police are just starting to subpoena cell phone records to see if the driver was on the phone talking or texting when the crash happened. As Senator Breeden talked about, the most famous fatality was the train crash in Los Angeles that killed 25 people. There was also a terrible crash after graduation back east last summer with five teenage girls going to a graduation celebration who were all killed because the driver was texting. We hear about

these deaths because they are high profile. There are many others that go unreported in the media.

Driving and texting is this generation's drunk driving. I can only hope it does not take as long to put a law in place to address the problem. I applaud your willingness to stop this carnage. I too am a parent of a teen who can type faster than any secretarial school graduate in history. She communicates almost exclusively by text and instant messaging. If I asked her if she could text without looking at the keys, she said, "No way, too hard." I hate to use my child as an example, but if she cannot text without looking, I doubt that anyone who reports that they can text while keeping their eyes on the road is telling the truth.

My child sends 350 to 400 text messages a month, which I hear is very little compared to other teenagers. This is big business and a cultural phenomenon. But, as we have discussed already this afternoon, do not make the mistake that this is just a teenager's issue. Ask yourself how many people are starting to text you? The large increase in text messages being sent is not only by teenagers. In reality, you are talking to me: a traffic safety advocate who would never drive after drinking, tries not to speed, watches out for pedestrians, is a faithful seat belt wearer; but I use my cell phone in the car. I have been known to stop at a red light and look down to see who sent me a text message or tried to dial my telephone. I am the person this bill would affect.

I would stop doing this immediately simply for the embarrassment that I would incur if I were to receive a ticket, but for most people, it would be the possibility of receiving a ticket. I do not know how this would be enforced. It would be difficult, but it is worth having this in the toolbox. I agree with Mr. Kallas that this is sending a message and telling teenagers or anyone else that it is against the law. There are law-abiding citizens who will not do this because it is a law.

We do lots of education. We just got back from taking a group of teenagers to Disneyland. They had entered a traffic safety contest. There were a few projects that dealt with texting. One of last year's winning projects dealt with text messaging. It is not that kids do not know this is dangerous; they know absolutely it is dangerous. However, they think that, like any other thing, it is not going to happen to them. We all live in this world where we know what the dangerous activities are, but we choose to do them anyway because we believe we are not going to be the person in that scenario. I think this law is very much needed and could hopefully start a trend that will get larger and larger.

**Vice Chair Manendo:**

Do you see any difference between someone who is using the cell phone to text and someone using the cell phone to use the Internet or play a game?

**Erin Breen:**

Absolutely not. They are equally as bad, if not more so. The issue is how long you take your eyes off the road.

**Assemblyman Hogan:**

We have heard a lot of very interesting and helpful information from the witnesses. This is the first time this particular legislation has been before us. Detective Kallas said that based on his many years of experience as a police officer, he is convinced that young people will react to the fact that something is against the law. That makes a difference to a very large portion of the population of all ages. They may know that it is dangerous, but most kids think they are immune to danger. If they know it is against the law, and there are penalties, even if the likelihood of being pulled over and subjected to the process of prosecution is slim, the fact that they know it is against the law will influence a lot of them to just not do it and wait until they get out of the car to text. Even though we lack the technical capabilities to detect whether an offense is the first, second, or third one, we should not hold up this legislation until the enforcement mechanism is perfect.

A lot of members became persuaded when they learned that 92 percent of the population buckles up because they think it is safer or they know it is against the law not to. The same theory applied to this situation tells me that whether it is 92 percent or whatever, that portion of the public that may stop texting while driving will be a significant reduction in the possibility of accidents. If the number gets high, it will show up on the statistics. It will certainly show up in the lives of a lot of people who might otherwise have been killed or injured. I think it is an important step, even if we cannot immediately resolve all of the enforcement questions. I would be satisfied with the bill as it is, and we can work out the enforcement details later.

[Chairman Atkinson resumes the gavel.]

**Chairman Atkinson:**

Is there anyone who wishes to speak in favor of S.B. 136 (R1)?

**William Birkmann, Reno, Nevada, representing the Nevada Alliance for Retired Americans, Minden, Nevada:**

My members are losing their reflexes, and they are full of surprises. So when you are on the road, you have to be watching out for my members. Thank you.

**Chairman Atkinson:**

Is there anyone in Carson City or Las Vegas who would wish to testify in opposition?

**Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada, Las Vegas, Nevada:**

I have apologized to Senator Breeden for having missed this bill in the Senate, so the testimony and concerns that I am about to present to you were not originally considered in the other House. I want to extend my apologies to this Committee, as well, for that oversight on behalf of our organization.

The American Civil Liberties Union (ACLU) is not opposed to the intent of this legislation. Quite clearly, there is a serious public safety issue that has been presented and supported with numerous facts. We are addressing some of the concerns from the civil libertarian perspective and the lack of a process laid forth in the bill. The ACLU believes it is critical that whenever new laws are put into place, they be clear and that the procedures therein be clear, particularly when it comes to an expansion of law enforcement powers.

From a civil libertarian perspective, due process becomes particularly vulnerable. Vague laws are passed that result in the potential for arbitrary application of those laws. This law is a very good example of the vagueness of a law that would expand law enforcement power. What is most striking is that this bill does not present any sort of objective standard or manner that would be available to help law enforcement differentiate between whether someone is writing a text message, dialing a number, looking at something on the Internet, playing a game, or pulling up their calendar. That lack of objectivity is where the clear problem lies in this bill.

Although this bill actually specifies that a violation of this law would not be considered a moving violation, it is listed in a portion of the law that addresses assigning demerit points. It does not specify whether or not it is a primary offense. Clearly, though, this law could not be enforced unless it were a primary offense, otherwise it would be impossible. A law enforcement officer would literally have to be standing at the street corner in order to enforce it, were it not to be a primary offense.

That it would be a primary offense would result in the possibility that people would be pulled over on numerous occasions when a law enforcement officer could not otherwise tell what that person was doing. The example presented by Mr. Kallas is particularly poignant in that he described a situation where an individual would have both hands over the steering wheel, driving with their knees and swerving in and out of a lane. Clearly that would fall under

NRS 484.377, which is reckless driving. The reckless driving statute creates a list of situations. One of those is the disregard for safety of other drivers or property. An instance like that, when it is clear someone is text messaging with two hands, would certainly fall under the purview of that statute. We believe that, in instances when reckless driving is the result of using a cellular phone, regardless of what it is for, it is already covered by law. Law enforcement does have the opportunity to pull that person over because it is a primary offense.

Beyond that, what is most striking is that this law would also fall under Chapter 484 of the NRS. It specifies that, unless otherwise exempt, any violation of that chapter is a misdemeanor. Even though this would not perhaps be considered a moving violation, there is no exemption to the misdemeanor application. This would result in an individual perhaps being given only a \$20 ticket, but it would actually be considered a misdemeanor. Clearly, that is a criminal offense. Subsequent violations would cause a person to go to driving school and deal with other sorts of ramifications.

Also troublesome is that this would create an additional broadening of police and law enforcement search power. It is similar, from the perspective of the ACLU, to the primary seat belt law. We think it is really important that when law enforcement has an expansion of power, it be precise. This law clearly is not precise. It is vague in that it has no objectivity.

**Assemblyman Hogan:**

How would you address this particular activity within the definition of reckless driving? If we made an effort to define it as clearly as possible in the language, would that allay some of your concerns about making it an offense?

**Rebecca Gasca:**

While I understand the natural inclination to include it in the reckless driving statute, the objectivity standard still exists in that it would be impossible to create a training program for law enforcement to determine whether a person was indeed pulling up their calendar or looking up a map on their BlackBerry versus sending a text message, receiving a text message, or dialing a telephone number. The objectivity standard would still present a problem even if it were to be put in the reckless driving statute.

**Assemblyman Hogan:**

If the offense were categorized as a very serious failure to give full attention to your driving, so that it included almost anything you voluntarily did which would prevent you from giving attention, would this work? There needs to be a way to try to limit this kind of activity and its damage without infringing on any

rights. We may have to consider that if there is sufficient concern by the Committee on the issue of constitutional rights.

**Chairman Atkinson:**

Is there anyone who wishes to speak in opposition to the bill? Is there anyone who is neutral on the bill? Seeing none, I will close the hearing on S.B. 136 (R1) and open the hearing on Senate Bill 199.

**Senate Bill 199:** Revises provisions governing the weighing of farm vehicles for purposes of vehicle registration. (BDR 43-987)

**Senator Mike McGinness, Central Nevada Senatorial District:**

This bill changes existing law so that farm and ranch vehicles have to be weighed by a certified scale and use the printout from the certified scale rather than a public weigh master. There are a lot of certified scales, but not that many public weigh masters. Farmers and ranchers have to drive their vehicles for hundreds of miles to the public weigh master. This would allow them to go to the certified scale, one that is certified by the State of Nevada. They get a printout that they can use to register them. That is the extent of the bill.

**Dawn Lietz, Supervising Auditor, Motor Carrier Division, Department of Motor Vehicles:**

I am here today in support of S.B. 199. The Department has received complaints from a lot of our rural counties regarding the difficulty in getting the public weigh master certificate to register their farm equipment. This bill will allow the Department to accept a printout from a state-certified scale to meet the registration requirements for the vehicles. We have worked with industry representatives regarding this issue and the Department's policy regarding farm vehicles. This bill will alleviate some of the issues associated with getting the vehicles weighed in order to comply with the registration requirements.

**Doug Busselman, Executive Vice President, Nevada Farm Bureau, Sparks, Nevada:**

We are here today to voice our support of S.B. 199 and encourage its adoption. Our members oftentimes have to drive hundreds of miles to get their farm trucks weighed by a public weigh master. En route, they pass a number of certified scales that they could use if the bill passes. We encourage you to save a lot of farm vehicles from having to travel out of their way to get weighed.



**Paul Enos, Chief Executive Officer, Nevada Motor Transport Association,  
Reno, Nevada:**

We are here today in favor of S.B. 199. I will keep it short and say that I echo the comments from the previous testimony. This bill will save those carriers time, fuel, and money.

**Chairman Atkinson:**

Is there anyone else who would like to testify in support of S.B. 199? Anyone in opposition? Anyone neutral? Seeing none, I will close the hearing on S.B. 199 and entertain a motion.

ASSEMBLYWOMAN SPIEGEL MOVED TO DO PASS  
SENATE BILL 199.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER,  
CHRISTENSEN, CLABORN, AND GOICOECHEA WERE ABSENT  
FOR THE VOTE.)

We are adjourned [at 4:03 p.m.].

RESPECTFULLY SUBMITTED:

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Marlen Schultz  
Committee Secretary

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Robert Gonzalez  
Transcribing Secretary

APPROVED BY:

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Assemblyman Kelvin Atkinson, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Transportation

**Date:** April 23, 2009

**Time of Meeting:** 2:14 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda.
	B		Attendance Roster.
S.B. 116	C	Marjorie Paslov Thomas	Work Session Document.
S.B. 136 (R1)	D	Shirley Breeden	Written testimony in support of <u>S.B. 136 (R1)</u> .
S.B. 136 (R1)	E	Shirley Breeden	Pictures of accidents and victims.
S.B. 136 (R1)	F	Gage Fioretino	Letter from his fourth grade class and teacher regarding <u>S.B. 136 (R1)</u> .