

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-sixth Session
March 24, 2011**

The Senate Committee on Transportation was called to order by Chair Shirley A. Breeden at 2:54 p.m. on Thursday, March 24, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Shirley A. Breeden, Chair
Senator Michael A. Schneider, Vice Chair
Senator John J. Lee
Senator Mark A. Manendo
Senator Dean A. Rhoads
Senator Elizabeth Halseth

COMMITTEE MEMBERS ABSENT:

Senator Mike McGinness (Excused)

STAFF MEMBERS PRESENT:

Kelly Gregory, Policy Analyst
Bruce Daines, Counsel
Patricia Devereux, Committee Secretary

OTHERS PRESENT:

Shari Brooks, Hillary LaVoie Effort
Yanelly Colon, Hillary LaVoie Effort
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Paul J. Enos, Chief Executive Officer, Nevada Motor Transport Association
Lynn Chapman, State Vice President, Nevada Eagle Forum; Nevada Families Association
John Wagner, State Chairman, Independent American Party

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Orrin J.H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Wendy Ellis
Tina LaVoie, Hillary LaVoie Effort
Capri Barnes, Friends That Click Together Stick Together
Maggie Saunders
Col. Tony Almaraz, Chief, Nevada Highway Patrol, Department of Public Safety
Lt. William A. Bainter, Statewide Commercial Commander, Nevada Highway Patrol, Department of Public Safety
Brian O'Callaghan, Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada
Detective Michelle R. Jotz, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; Southern Nevada Conference of Police and Sheriffs
Emily Sermak, Nevada Legislative Affairs Committee; Citizens in Action
Kyle Davis, Policy Director, Nevada Conservation League
Richard J. Nelson, P.E., F.A.S.C.E., Assistant Director, Operations, Nevada Department of Transportation
Terry K. Graves, Graves Communications
P. Michael Murphy, Clark County
Steve K. Walker, President, Walker & Associates, Inc.
Jeanette K. Belz, M.B.A., J.K. Belz & Associates; Nevada Chapter of The Associated General Contractors of America

CHAIR BREEDEN:

We will open the hearing on Senate Bill (S.B.) 235.

SENATE BILL 235: Makes failure to wear a safety belt in a motor vehicle a primary offense. (BDR 43-38)

SHARI BROOKS (Hillary LaVoie Effort):

On September 26, 2010, many lives were changed forever when my friends Yanelly Colon, Hillary LaVoie and I drove from Reno to Las Vegas. I was the driver, Hillary was in the passenger seat and Yanelly was in the back falling asleep. I drove off an exit too quickly and lost control, and the car rolled.

Yanelly and Hillary were ejected because they were not wearing seat belts. I was belted, so I remained in the car. Yanelly was badly injured, and Hillary lost her life.

Not a day goes by when I do not constantly replay in my head that the 7 percent of Nevadans who do not use their seat belts are not just a number. They are people with lives at risk. The primary-offense seat belt law will spare others the pain I and so many others feel. Put yourself in my shoes: what if you were the driver and someone close to you died—due to a split-second error you made—because she was not belted? Would you not be sitting here fighting for the ones we lost? I hope the Committee will do what is right for Nevada's citizens and pass this law.

CHAIR BREEDEN:

Thank you for spreading this message to other young people.

YANELLY COLON (Hillary LaVoie Effort):

This bill is crucial, so we keep in mind that we have lives at risk. Even though people say there is already a secondary-offense seat belt law and that people should wear belts anyway, that is not the case. Belts are not worn for many reasons or are removed for a split second during a crash, and then people are ejected and killed.

A primary-offense law would make people belt up without a second thought. If it is the law, you have to do it, and it could potentially save your life. If you were raised in an environment in which you are taught that seat belt use is mandatory, you will always use one. No longer would 7 percent of Nevadans who do not use belts become nonexistent.

SENATOR MANENDO:

Are you trying to say if Nevada had a primary-offense law, more younger people would be more likely to follow that law? With the secondary-offense law, maybe people think, "If I am not breaking any other laws, I will not get caught. The law is not on the books, so it must not really be illegal"? This is analogous to not having a law prohibiting cell-phone use while driving. Do you agree with that?

MISS COLON:

That is exactly what I am trying to say. I was raised to treat the secondary-offense law like it was a primary offense. As a child, as soon as I stepped into a car, I put on my seat belt because I had to. Later, I realized it was for safety reasons. It became second nature to me to belt up immediately. I have younger cousins and siblings who do not have the primary-offense mentality. They step into a car and do not even think about touching their belts. They think it is not really mandatory and they will not get caught—the exact reasoning Senator Manendo mentioned.

If the law was primary, young people would belt up immediately. These are our future drivers. It will become second nature to them, and they will tell their passengers to belt up because it will be the law. I was shocked when, at age 16 or 17, I discovered that belt use was not a primary offense. It breaks my heart to see children not even touching their belts because they live in a state where buckling up is not mandatory.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):
My group has testified many times about our support for a primary-offense belt law. People must buckle up on airplanes, and no one questions it. In a car, people ask if they have the right not to buckle up. The Committee has seen enough documentary evidence to know a primary-offense law would save lives. Anyone who knows the men and women in law enforcement realizes that this is a public safety issue. We are here to save lives, not to collect fines and harass drivers.

PAUL J. ENOS (Chief Executive Officer, Nevada Motor Transport Association):
We support S.B. 235 because a primary-offense seat belt law could save lives. Truck drivers in our association are one of the lowest belt-usage groups on the road. Most deaths in the commercial vehicle industry are caused by rollovers, and seat belts would save drivers' lives.

SENATOR HALSETH:

Are you saying your drivers do not wear seat belts, in violation of the law?

MR. ENOS:

In surveys conducted by the Federal Motor Carrier Safety Administration, U.S. Department of Transportation, the lowest seat belt usage among drivers is that of commercial motor vehicle drivers. Drivers have a false sense of safety in

a big-rig cab, so they do not wear belts. Our member companies have conducted many educational campaigns, but unfortunately, not all drivers wear belts. It is harder to catch an unbelted driver in a truck than in a passenger vehicle. We are highly concerned about the issue of unbelted truck drivers, and anything we can do to encourage belt usage would benefit safety.

SENATOR HALSETH:

Do you have any belt-usage statistics for Nevada truck drivers? Belt usage is mandatory here, and I would be disappointed if truckers were not driving safely.

MR. ENOS:

I do not have specific belt-use statistics for Nevada truckers. It is a federal law that truckers wear belts. The Code of Federal Regulations specifies that any commercial motor vehicle driver, occupant or person in a sleeper berth must wear seat belts or use bunk restraints.

SENATOR HALSETH:

State and federal law make seat belt use mandatory, but people still choose not to wear them. Do you think a third, compounding law would make them choose differently?

MR. ENOS:

People will make up their own minds, whether or not it is the law. However, just having a primary-offense belt law will help encourage truck drivers' use of them, thereby improving road safety for everyone. If we can have fewer highway deaths, the trucking industry will benefit in many ways, including relief of traffic congestion caused by crashes.

LYNN CHAPMAN (State Vice President, Nevada Eagle Forum; Nevada Families Association):

Nevada Eagle Forum State President Janine Hansen could not speak today, but she has provided the Committee with her views on S.B. 235 ([Exhibit C](#)). We oppose this bill. When my daughter was young, I led by example, putting on my seat belt before I started the car. When I taught her to drive, the first thing she learned was she could not use the car until her belt was on. If she had friends in the car, they also had to be belted or leave the car. It was our responsibility as parents to teach our child to use belts. This bill should be about acting responsibly.

The U.S. Supreme Court has ruled Mazda Motor Corporation can be sued by a California family whose mother was killed in a crash, even though she was wearing her seat belt. So now we have to worry about further lawsuits. Pregnant women wearing seat belts are sometimes injured, and their fetuses are killed. An applicable quote is, "The law should not protect careless people from themselves. It should protect the peaceful from the dangerous." People are going to do what they want to do. A young maintenance worker at my gym told me, "I have blackened-out windows in my car. Cops cannot tell if I have on my seat belt." That is true.

I called Farmers Insurance Group, State Farm Insurance and Allstate Insurance Company and asked if they would give discounted premiums to people who wear their seat belts, or if wearing a seat belt in an accident would be advantageous in a crash settlement. The company representatives laughed and said, "Of course not."

Many times, the problems with a primary-offense seat belt law have a lot to do with it being a law-enforcement revenue source, and states will receive federal funding if they enact such laws. Nevada has one of the highest seat belt-compliance rates in the Nation. It is silly to force all of the people already using belts to continue to use them because of the few who know they should use belts but do not. It all comes down to personal responsibility.

SENATOR HALSETH:

Did you say that insurance agents said the use of safety devices does not lower insurance premiums?

MS. CHAPMAN:

That is what they said. I also asked, if someone were wearing a seat belt and had an accident, would that count as a "gold star"? The insurers said it makes no difference.

SENATOR HALSETH:

That is interesting because some people would argue that if you do not use belts, your insurance premiums would rise. I will verify the accuracy of that.

SENATOR MANENDO:

There are safety devices, such as airbags, that do lower insurance premiums. Current law states people must wear seat belts, so it would be interesting to see if insurers will drop rates if the law becomes primary.

JOHN WAGNER (State Chairman, Independent American Party):

I was wearing my seat belt and installed belts in the back seat of my car before it became mandatory. A primary-offense law allows officers to pull over people then perhaps search the vehicle. There is a blind spot behind drivers, so if officers pull over people, drivers can quickly put on their belts then deny they had been off. What would happen if you had just removed the belt in order to reach into your pocket for your driver's license?

When an officer asks people to step out of their vehicles and display their licenses, how does the officer know who was the driver? I was in the car of a speeding driver who ran a red light. When he was pulled over, he begged me to switch seats so the ticket would not be the one causing him to lose his license for a year. I got out of the driver's seat and was issued the ticket.

Seat belts save lives, but even though their use is mandatory, people still do not use them. Making non-usage a primary offense will not make a difference. Drunken driving is a primary offense, but people still do it; it is the same argument.

ORRIN J.H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

As Senator Halseth indicated, it is important to note that S.B. 235 is not about whether wearing a seat belt is a good idea or whether they save lives. It is not about whether seat belt use should be mandatory in Nevada because it already is. This law is exactly at the intersection of liberty and safety. The question remains, how do we actually enforce the law, and how much do we allow the coercive power of the police to intrude upon our lives in order to increase public safety? I submit that we do not need this law.

It is difficult for officers to see what is happening inside vehicles, especially if they have tinted windows. At classic-car events, some vehicles lack shoulder harnesses, so it is impossible to ascertain if a belt is being used. I have seen people get pulled over for an offense then get secondary tickets because they took their belts off to reach for their registration in their glove compartments. It

is incredibly difficult to see what is actually happening inside a car versus seeing what it is doing in traffic. We would like to keep that bright line where it is so that when officers contact people in negative ways, like during a traffic stop, interactions are on the straight and narrow.

Statistics do not support the necessity for a primary-offense law. Nevada already has a significantly higher compliance belt-usage rate than the average of states with such laws. Statistics can be interpreted in many ways, but these suggest that if we implemented a primary-offense law, our compliance could drop. It is more logical to read the numbers in that way. Nevada has done a good job with getting people to buckle up without having to increase traffic stops. That needs to continue.

As a public defender, I know these issues are litigated. Many of my cases involve people being pulled over for one offense then officers finding another—and then we litigate whether the stop was legitimate. We will have to litigate seat belt stops because they will invariably be “he said, he said” cases without dashboard-mounted car cameras recording the events. These cases engender extra litigation time and expense.

I urge the Committee to look back through the minutes of meetings in many previous legislative sessions that dealt with this issue. Each time, after committees have considered the liberty-versus-safety themes, similar bills have been not passed. This body has determined it is not worth the extra intrusion into citizens’ liberty needed to enforce existing law in a new way.

SENATOR SCHNEIDER:

This same bill passed out of the Senate last Session.

MR. JOHNSON:

It did.

SENATOR SCHNEIDER:

That refutes your statement that this body rejected the bill. It was held up by an Assembly committee chairman. Even though his committee voted to pass the bill, he would not bring it to a vote.

MR. JOHNSON:

I specifically researched the bill's history, and last Session, the Assembly actually voted it down in committee. It was the only bill I have ever seen voted down in committee. When I said "this body," I meant the entire Legislature. The bill was voted down on April 11, 2009, but was amended back into a different bill which was heard later.

SENATOR SCHNEIDER:

The bill was not in the Assembly on April 11, 2009. Bills switch houses on April 15.

MR. JOHNSON:

I examined the minutes of the April 11, 2009, Assembly Committee on Transportation meeting.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):

In my written testimony ([Exhibit D](#) was Exhibit G in the meeting held on March 22, 2011, of the Senate Committee on Transportation), I want to address two previously mentioned issues concerning S.B. 235. Mr. Adams noted that airplane passengers automatically buckle up without questioning if they have a right not to do so. The fundamental comparison is like that of apples to oranges. If you are in a vehicle, you run the risk of being pulled over and cited. In a plane, you do not. There is no racial profiling when it comes to airplane seat belt usage; whereas, that is a high level of concern on the road.

My testimony noted that the advanced A.B. No. 500 of the 71st Legislative Session authorized a study that proved law enforcement perpetrated racial disparity in the enforcement of traffic laws. African-American and Hispanic drivers have a greater likelihood, relative to their population, to be pulled over than do whites. This is a risk not experienced in a plane. I ask the Committee to dismiss as unfair the comparison between airplane and vehicle seat belt usage.

As a state, we make laws that are generally in the best interest of individuals in order to protect their safety. Individuals may decide to go outside of that realm to break the law and are then incarcerated. Individuals will break the seat belt law if it is a primary or secondary offense. Data support the high usage rate in Nevada. The Nevada Department of Transportation (NDOT) and other agencies have waged the highly successful "Click It or Ticket" campaign, which includes

flashing electronic directives on highways to "Buckle up—it's the law." Generally, drivers do not realize whether failure to do so is a secondary or primary offense, or what the difference is between them. They just know it is the law, and that is why the compliance rate is 93 percent.

If we change the offense to primary, the only difference will, in most people's minds, be that law enforcement can use what could be considered subjective reasoning to pull them over. Echoing Mr. Johnson's comments, this type of pretextual stop is often a source of individual and larger litigation. Several affiliates of the American Civil Liberties Union (ACLU) have done multiple studies around the Nation indicating that "driving while black or brown" entails a higher risk of being pulled over than does "driving while white." Some affiliates have been in litigation with law-enforcement agencies regarding primary-offense belt laws.

This is not to say by any means that law enforcers are racist or continually use racial profiling as a matter of practice. Sometimes, as part of human nature, it is clear that individuals do things that are not necessarily concerted in nature. This is how we have become human and how our stress-response mechanisms and socialization evolved. Sometimes, those things are underlying factors in an officer's decision. The ACLU is not saying officers are negligent in their duties or doing anything intentional. But, generally speaking, the unintended consequence is racial or ethnic minorities are pulled over at a higher rate than are their white counterparts. This bill would exacerbate that problem.

SENATOR MANENDO:

Does the ACLU have statistics on the rate at which Italian Americans are pulled over?

MS. GASCA:

The data compiled in this area, from the federal government to the local level, have classified race and ethnicity in the larger context. From a sociological perspective, one could argue that things like certain races should be included in the data. But generally speaking, data have been classified by African Americans, Latinos, nonwhites and Asians. I can look into the A.B. No. 500 of the 71st Legislative Session study, which specifically compared African-American and Hispanic drivers with whites, to see if a substratum was studied.

SENATOR SCHNEIDER:

The prison minority population is also much higher than that of whites. That is a national social problem not caused by seat belts. According to studies over the last couple of sessions, the minority population—especially young people—uses seat belts less frequently than do whites. Therefore, minorities are more at risk than whites for crash injuries and deaths. Should they not be demanding that this law pass to better protect their young-adult children?

MS. GASCA:

African-American males have a much higher incarceration rate than any other population substratum. One could argue that has more to do with public policy decisions. An example is the sentencing disparity between crack and powdered cocaine sales which forced individuals charged with crack offenses to be found guilty of a crime 300 times more serious than that of people selling powdered cocaine. The latter criminals tended to be white. Whites smoke marijuana at a much higher rate than do African Americans, who are more often caught doing so. This type of thing contributes to the excessive incarceration of minorities. The ACLU believes this is partly due to pretextual stops, during which minorities are more likely than whites to be questioned by officers.

While there may be no direct connection to the seat belt issue, this leads to Senator Schneider's second point concerning young-adult minorities. Maybe their parents are not here because they see a primary-offense belt law as another reason for their children to be pulled over if they are not breaking other traffic laws.

In the past, S.B. No. 116 of the 75th Session failed in the Assembly Committee on Transportation on April 23, 2009. The bill was amended into a hospital bill, and last-minute negotiations ultimately fell through, causing the bill to fail.

SENATOR SCHNEIDER:

Robert L. Compan, representing Farmers Insurance Group, testified in favor of S.B. 235. He said that wearing a seat belt reduces the cost of claims, which ultimately may reduce premiums.

WENDY ELLIS:

I oppose S.B. 235 because officers are not supposed to be nannies. Current law mandates seat belt use and speed limits. If a driver is going too fast, he gets a speeding ticket. We are all guilty of this and of running stoplights, but have not

always been caught. Speeding and red-light running are more likely to cause accidents and injuries than not wearing a seat belt. The police should concentrate more on the first two offenses. Officers should not waste time looking for people not wearing seat belts just so they can collect a \$25 fine.

The effort to make this a primary offense is not to protect people; belt use is a personal responsibility. My car has dark-tinted windows, and I and my three daughters always wear seat belts when we drive. Maybe this bill's proponents could be more effective as advocates for seat belt use, talking to groups of youths who choose to not wear belts. Do not allow the rest of us to be harassed for a frivolous reason.

SENATOR MANENDO:

You mentioned that you taught your daughters to wear seat belts. If they choose not to, should they be ticketed?

MS. ELLIS:

I do not think they should be pulled over specifically because an officer thought he saw they were unbelted. It is the law, and if my children have a moving violation or they are pulled over while not wearing seat belts, they should be ticketed. That should not be the primary reason they are pulled over.

SENATOR MANENDO:

Why did you teach your daughters to wear seat belts?

MS. ELLIS:

I felt it kept them safer, and then it became the law. Young people on the backs of motorcycles are not required to have any protection except a helmet. School buses do not have seat belts. This bill targets the largest group of drivers simply to get \$25 out of them.

SENATOR MANENDO:

There was a time when vehicles did not have seat belts, and motorcycles do not have them. This body has discussed mandating seat belts on school buses.

TINA LAVOIE (Hillary LaVoie Effort):

On the afternoon of September 26, 2010, I received a phone call from my daughter, Hillary LaVoie, to let me know that she, Miss Brooks and Miss Colon were leaving the University of Nevada, Reno to return to their Clark County

homes. In a quick conversation, I told Hillary I hated to see them leaving so late because I worried about them driving home in the dark. I said, "I love you," and hung up at 1:42 p.m. By 3:09 p.m., my baby was gone. Had I known that was to be the last conversation with her, I would have said so many other things, even though they would not have included, "Wear your seat belt."

I also lead by example, always wearing my seat belt. Hillary's siblings wore belts, too, and she was always the first to buckle up. Her friends have shown me photographs of the fun times they had, including images of Hillary in vehicles' passenger or back seats wearing her seat belt. Shortly before going to Reno, she changed her Facebook profile picture to an image of herself in the passenger seat of a friend's car with her belt buckled.

I do not understand why Hillary was not wearing her seat belt when she died; I assume it was to be more comfortable. She knew that since it was a secondary-offense law, she could take off her belt. Speeding, inexperience and distraction caused that crash, but Hillary's lack of a seat belt caused her death. That is the point I want to drive home. The driver, Miss Brooks, was belted and came home to her family. That seat belt made the difference between the on-scene officer calling a tow truck or calling the coroner.

Having a primary-offense belt law can save Nevadans' lives. Senate Bill 235 can prevent families from going through what mine is experiencing. This bill is about prevention and telling young drivers seat belt use is a law, not an option. Hillary knew it was an option. This bill is not about giving officers free rein to pull over people; I have more faith in our Nevada officers than that. They are not driving around looking for people without seat belts. If they have a reason to pull you over, they will. This bill is not about money. It costs Nevada millions of dollars to close roads; summon fire departments, medics and trauma units; fund hospital stays—everything involved in the aftermath of a crash.

I have faith in our government, our system and this Committee. As my husband, Brian, testified on March 22, we know little about the ins and outs of politics. We do not understand why something as important as this bill is discussed in terms of statistics, percentages, dollar signs and racial profiling. Why do we think it is a good thing that 93 percent of our population wears seat belts? Why not 100 percent? Why not protect everyone?

What I do understand is we lost our beautiful baby girl; Kelly Thomas Boyers lost her son, Adam; and Capri Barnes lost her best friend. When will it be enough? Who do we have to lose before we step up and do the right thing? In a poll, 86 percent of Nevadans supported a primary-offense seat belt law. We look to and have faith in this Committee to do that right thing: pass S.B. 235. I will leave you with this quote from Hillary's journal, "Today is the only day in all days that will ever be, for what will happen in all other days depends on what you do today."

CHAIR BREEDEN:

As a mother, I cannot imagine losing one of my children. I am sure my boys have made the same decision as Hillary, but they just came home lucky.

SENATOR MANENDO:

What time was the crash that killed Hillary?

MRS. LAVOIE:

The death certificate stated she was pronounced dead at 3:09 p.m. The girls were barely an hour outside of the Reno-Sparks area.

CAPRI BARNES (Friends That Click Together Stick Together):

I support S.B. 235 in memory of my best friend, Monica Ruiz-Mapile. I support this bill from a teen's perspective and as a resident of Las Vegas. Monica was an active, vibrant, loving and well-educated teen. While she excelled in all of her classes, she had dreams of success in the fashion industry. After attending Catholic elementary and middle schools, she attended the Las Vegas Academy then graduated from College of Southern Nevada High School in 2009. In 2010, while pursuing an associate's degree, Monica planned to transfer to the University of Nevada, Las Vegas (UNLV).

At about 8:50 p.m. on March 4, 2010, I received a call from Monica's mother asking if I had recently seen or heard from her daughter. In her last call, Monica had told her mother she was on her way home. Ten minutes later, I had a conversation with Monica's mother that I had never dreamed I would have. With many "Whys?", tears, grief-stricken sighs and much stuttering, she told me in less than three words why Monica would not be coming home.

After spending the afternoon with her cousins, Monica was driving home when she attempted to make a left turn into an intersection where cross traffic does

not stop. A vehicle traveling west hit Monica's car, and she was pronounced dead at the scene at age 18. She was not wearing her seat belt.

Discussions of S.B. 235 involve controversial arguments about racial profiling and the number of deaths of unbelted people who have become mere statistics. As a 19-year-old African-American woman, when I lost my 18-year-old Filipino-American/Asian best friend, when the LaVoies lost their 18-year-old Hispanic daughter or when Kelly Thomas Boyers lost her 21-year-old white son, it is clear that the victims' races did not kill them. Their ages did not determine their fates. The fact that they are three out of many teenagers—not only teens, but humans—who have been killed without seat belts in Nevada crashes makes this bill important. As you have heard from the families and friends in this room, the victims left legacies much greater than the statistics or percentages you may see them as.

If this bill passes, the law will save the lives of my generation, families from grief, friends from enduring memorials and siblings from counseling. Knowing the dangers of driving unbelted is not enough to scare teens into complying with the existing seat belt law. We need a new law to save us from ourselves. As a teen, I make generalizations. I like to imagine if AIDS were illegal, and knowing unprotected sexual activities could engender a life-threatening disease was obviously not enough to force people to take precautions, dying would not be an ethical consequence. To prevent AIDS, practitioners of unsafe sex would be ticketed, which would encourage more people to use condoms.

Monica, Hillary and Adam were not killed by their skin color, ages or fears; it was their personal choice not to buckle up. With that choice, they became their own worst enemies. Senate Bill 235 mandates the use of one small strap weighing less than a pound to keep people safe from ejection from a vehicle. While my other best friends are reading Facebook wall postings and comments, I have read coroners' reports and death certificates over and over to reach the conclusion that if Monica had been wearing her seat belt, she would have walked away from her crash with minor scratches. The deadly blunt-force trauma was sustained because she was an unrestrained driver in a two-car collision.

I have faith this bill would save thousands of others from the pain these three victims' loved ones have endured. If I could save just one family from the pain I have observed in the Ruiz-Mapile and LaVoie families, I would push every

day until my last on earth to ensure it does not happen to anyone who is unclear about how vital seat belts are to saving lives.

SENATOR HALSETH:

I want the record to reflect that I know what you people are going through. I come from a state with a primary-offense seat belt law. In a three-month period, I lost five friends to vehicle accidents, despite that law. I am sorry, but that type of law would not have saved your friends' lives. This bill has nothing to do with safety.

MAGGIE SAUNDERS:

For the last ten years, I have dedicated my career to traffic-safety issues. Based on my years of experience in that field, seat belt usage is clearly the most pressing safety issue faced by Nevadans. After watching the March 22, 2011, testimony online, I want to address the notion that seat belt usage is not a safety issue. Seat belt usage is nothing but a safety issue. Your choice to wear a belt keeps you inside the vehicle and safe from ejection. Your choice not to wear one allows you to be thrown, at which point, statistically speaking, you are four times more likely to die or sustain critical, life-altering and expensive injuries.

Nevada law requires seat belt use, and according to the Office of Traffic Safety, Department of Public Safety, and the National Highway Traffic Safety Administration (NHTSA), we have an impressive compliance rate. The issuance of federal transportation-safety grants is tied to that number, so every state makes the easiest equation possible to inflate it. The figures are based on belt usage by front-seat occupants observed during daytime.

I have not heard any testifiers report that 67 percent of vehicle fatalities and 75 percent of impaired-driving fatalities happen at night. According to testimony during the last Session, the Transportation Research Center at UNLV—at which I worked for five years—conducted a limited nighttime belt-usage survey. It was limited because it is difficult and expensive to conduct surveys. At certain Las Vegas locations, the observed rate was less than 30 percent. Do not be fooled by reports of Nevada's 97 percent usage rate. If that many Nevadans are always belted, how is it that more than 50 percent of our fatalities are consistently unrestrained? This equation does not make sense. Seven percent of the State's population is not expendable.

My tenure of working in traffic safety has rolled over into a passion for working with children and parents who have lost loved ones to crashes. Through Adam's Place, which supports grieving children, teens and other family members, I work with people whose lives have been shattered by someone's choice not to wear a seat belt. The people who come to our center have lost loved ones due to many causes, but none are more completely preventable than the deaths of unbelted crash victims.

As a taxpayer, I want to know who pays for the cost of individuals' decisions not to use belts. Who pays to close roads for four hours, for the emergency-response personnel and for the lost time of those vehicles stuck behind the closures? You and I pay.

A risk-taker is a risk-taker in most ways. People who choose to not wear seat belts also think that since they will never be in a crash, they do not need auto insurance. You and I also pay for that. Why are those people's rights more important than mine? I would like to see tax dollars keep our universities from closing and prevent 40-plus students from being commonplace in our school district classes.

Much of my traffic-safety work was done with school- and college-age students. Fatality rates begin to increase at ages 18 or 19, perhaps due to teens moving away from home or to impaired driving. Fewer teens are obtaining driver's licenses at ages 16 or 17, and the fatal-crash rate for that group is falling. Girls' fatality rate is catching up with that of boys.

Three mothers who had lost children to crashes testified on March 22, 2011, and even more grieving parents were there trying to prevent others from joining their ranks. This law needs to cover all ages. Losing a parent can be just as devastating as losing a child and is more disruptive to our businesses and communities. The time has come for Nevada truly to protect all of its citizens and taxpayers by passing the primary-offense seat belt law.

I have never expected such a law to cause officers to write a slew of \$25 tickets. I expect it will allow parents and safety professionals to protect our citizens better because some people need the education or threat of a ticket to remind them to do the right thing. I compare wearing a seat belt to driving on the right side of the road. That seems like a "no-brainer," yet up until 1908,

U.S. vehicles were not required to drive on that side. Laws were needed to keep order and protect public safety—so, too, is it with seat belts.

SENATOR SCHNEIDER:

Ms. Saunders's testimony sure blew a hole in the myth of the 97 percent-usage rate. If UNLV has conducted a study showing the actual rate is less than 30 percent, Nevada is on the verge of losing federal highway funding. It is unbelievable that we are debating this law in a state with numbers like this.

Over the years I have been in the Legislature, I have gotten to know law-enforcement officers. If they want to pull over someone, all they have to do is follow the driver for three blocks, and they will find a reason. No one is a perfect driver, and people will be pulled over regardless of the offense. It is utter nonsense to say that with a primary-offense law there will be a massive increase in pulling over people—including minorities.

We also always hear about how a primary-offense seat belt law will make Nevada a "nanny state." We already have laws that make us such a state. Your freedom of choice is taken away because you cannot drive down the wrong side of the road, have to obey stop signs, cannot drink and drive and cannot speed. If viewed in those terms, we are already a nanny state that has stripped its citizens of their freedom of choice in many areas. By limiting your freedom of choice, I am allowed the choice to live.

CHAIR BREEDEN:

Ms. Saunders, the fine for not wearing a seat belt should be more than \$25.

MS. SAUNDERS:

I totally agree.

COL. TONY ALMARAZ (Chief, Nevada Highway Patrol, Department of Public Safety):

As Chief of the Nevada Highway Patrol (NHP), I and my staff deal with nothing but public safety. Our job is to preserve lives using the "three Es": engineering, education and enforcement. Senate Bill 235 is about safety education. The one thing NHP brings to the discussion is the terrible events we have witnessed at accident scenes. In my 25 years as an NHP trooper, I and my colleagues have seen the tragedies, the effects of having to deal with families of victims, survivors at the scene who have begged me to try to save an ejected loved one

and the difficulty of knocking on family members' doors in the middle of the night to tell them of the fatalities. I have to explain the mechanics of the crashes and how seat belt use could have prevented ejection deaths.

This bill is not about harassing people; it is about saving lives. If there is a fiscal note, it will be for education. That is what we are here to do. I am proud of the intelligence level of the young Las Vegas testifiers, who instill confidence in me. You have heard the voice of our future leaders. We need to teach children to use their belts so we old-timers do not have to deal with the consequences.

LT. WILLIAM A. BANTER (Statewide Commercial Commander, Nevada Highway Patrol, Department of Public Safety):

I will share Nevada crash statistics compiled by NHP. In 2010, NHP investigated 129 fatal accidents involving 140 deaths. Of those deaths, 54 victims were not wearing seat belts. Statistics and studies clearly support our belief that many of these people would still be here if they had chosen to use their belts.

According to NHTSA, seat belt usage reduces the risk of fatal injuries to passenger-side occupants by 45 percent and their risk of moderate-to-critical injuries by 45 percent. The NHP's data does not indicate high belt-usage compliance. In 2010, NHP issued 13,315 seat belt citations, a number we wish to reduce. Individuals who choose not to wear belts and take safety first upon entering their vehicles would be motivated to buckle up if the law were a primary offense.

BRIAN O'CALLAGHAN (Government Liaison, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):

I am also representing the views of Capt. Tim Kuzanek of the Washoe County Sheriff's Office. You have heard all of the statistics and from doctors and victims' families and friends. The 93 percent seat belt-usage rate is incorrect.

Senator Halseth referenced probable-cause seat belt stops of vehicles with dark-tinted windows. We cannot stop someone with dark windows because we cannot see if belts are being used, especially in the back seat. There is also not enough probable cause to search a vehicle. Fines collected do not go to officers' agencies; they go to counties' general funds. Concerning A.B. No. 500 of the 71st Session, research will show different results than the information presented by Ms. Gasca.

RONALD P. DREHER (Government Affairs Director, Peace Officers Research Association of Nevada):

I was a motorcycle officer and accident investigator for the City of Reno. I never perpetrated racial profiling, and I take insult to that. However, profiling is what deputies do. We look for bad people, pull them over and put them in prison, if we can. That is part of our job of protecting the public.

Senate Bill 235 would enact a primary-offense seat belt law, but that does not mean that every person we pull over will get a ticket. When I was a motorcycle officer, my purpose in pulling over people for a violation was to educate them about what could happen if they commit it again. It is important to note that this law will not be misused. It will be like any other tool law enforcers have.

Senator Schneider was exactly correct. If I wanted to stop anyone in this room, I just have to follow them for three blocks. No one can go through a day without committing a misdemeanor or a traffic violation under Nevada law. We look for people doing serious offenses like running red lights.

DETECTIVE MICHELLE R. JOTZ (Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc.; Southern Nevada Conference of Police and Sheriffs):

We support S.B. 235 for the reasons already presented by my colleagues.

EMILY SERMAK (Nevada Legislative Affairs Committee; Citizens in Action):

I am a retired Los Angeles school bus supervisor and certified school bus driver trainer. Safety was a primary concern. I cannot see a difference between a primary- or secondary-offense seat belt law. Belt use is mandatory in this state. If irresponsible people do not wear seat belts, that has nothing to do with the classification of the offense. If people have problems with wearing seat belts, it is what they do today that affects the rest of their lives. If they are involved in an accident, this bill will not affect that. I agree with Senator Halseth that this bill has nothing to do with safety.

CHAIR BREEDEN:

We will close the hearing on S.B. 235 and open the hearing on S.B. 236.

SENATE BILL 236: Requires the Director of the Department of Transportation to adopt regulations governing the use of recycled aggregate for road and highway projects. (BDR 35-766)

KYLE DAVIS (Policy Director, Nevada Conservation League):

Senate Bill 236 requires the director of NDOT to adopt regulations to use recycled aggregate on public road projects. It also allows the director to create exemptions for projects in which the use of recycled aggregate is infeasible.

Aggregate is rock fragments and solid material used as a base to stabilize road projects. Virgin aggregate is directly mined sand, gravel and crushed stone that have never been used in construction. Recycled aggregate is crushed concrete and asphalt derived from demolished infrastructure. My handout ([Exhibit E](#)) outlines the benefits of using recycled aggregate.

Recycled aggregate has been used successfully in many places in Nevada: at the Las Vegas City Hall, Las Vegas City Center and in the new sections of McCarran International Airport. It has also been used in several road projects in Texas and California. Recycled aggregate is not used as widely as it could be. Virgin aggregate costs about \$5 per ton. Recycled, concrete-based aggregate costs about \$3 per ton, and it costs about \$1.50 per ton for asphalt-based aggregate.

The main reason we support S.B. 236 is cost savings. It is much cheaper to use recycled aggregate, saving taxpayers' money in several ways. The raw material is less expensive, and even more so if it is used on site as a road is torn up. If torn-up pavement is not reused on site, it must be transported to a landfill, entailing fuel and transportation costs. Most recycled aggregate is available in a much closer radius from projects. An average container of construction debris costs about \$400 to dump, while it only costs about \$80 to send the material to a recycled-aggregate dealer.

The Nevada Conservation League also supports S.B. 236 for environmental and sustainability reasons. By encouraging and requiring the use of recycled aggregate, there will be less dumping of construction debris in landfills. That debris is largely oil-based, so this bill could lessen the impact on the environment. The Las Vegas landfill has a good liner system to catch oil, but that is not true in most of the State. There are five spots just in the Las Vegas Valley with huge piles of illegally-dumped, leftover, ripped-up road. It costs a lot to clean up illegal dump sites, and they become breeding grounds for vermin.

Recycled aggregate does not require mining previously undisturbed land, which protects habitat, views and sensitive areas. It also means there is more

multiple-use land for recreation and habitat for wildlife. Less greenhouse gas is produced with decreased truck traffic going to pits to obtain virgin aggregate.

CHAIR BREEDEN:

How do the life spans of virgin and recycled aggregate compare?

MR. DAVIS:

I have not found a significant difference through my research. The composition of the aggregate should be set to a certain standard by the NDOT director. If the recycled asphalt meets that standard, the issue of its life span would be negated.

CHAIR BREEDEN:

Do other states use recycled aggregate?

MR. DAVIS:

California has used it for about 20 years. Texas has used it for some limited highway projects, including one in the early 1990s on Interstate Highway 10 through Houston.

RICHARD J. NELSON, P.E., F.A.S.C.E. (Assistant Director, Operations, Nevada Department of Transportation):

I signed in as neutral on S.B. 236, although we have a couple of concerns. We agree with Mr. Davis to a great extent. The NDOT has a long history of reincorporating recycled aggregate into its own highway projects or making it available for use by local governments and contractors. Recycled aggregate has a high market value and is sought after.

Historically, old asphalt pavements have been reincorporated into NDOT projects as embankments and in base materials. In January 2011, we collaborated with the construction industry to develop a set of specifications that allow recycled asphalt aggregates to be reincorporated into the pavement itself. Due to its cost advantage, that practice has been widely accepted by the contracting community.

We are concerned about language in section 2, subsection 1, paragraph (b) of the bill that would make it a requirement to incorporate recycled aggregate into projects. Not all of our contractors have access to recycled products, which means those that do have access would have a bidding advantage. If the

requirement becomes mandatory, there may be some inflation of construction costs, and NDOT could lose the cost advantage it currently has under a less-stringent provision.

We are also concerned about the bill's section 2, subsection 1, which states the NDOT director must adopt regulations prescribing the specifications for recycled aggregates. In doing so, it is difficult to identify all of the situations that will occur in each construction project. Things happen, and NDOT discovers unforeseen situations that force us to make modifications of our specifications. If those specifications were codified, it could be difficult to execute changes necessary to continue projects in a timely manner. The NDOT is already using a lot of recycled aggregate, so we would like to change the mandatory requirement to a "shall"-type provision. This would allow NDOT to continue its collaboration with the construction industry to keep the specifications current, as opposed to subjecting changes to a regulatory process.

CHAIR BREEDEN:

If NDOT is already using recycled concrete- and asphalt-based aggregate, does it not have specifications for their use?

MR. NELSON:

Yes, those specifications are part of our contracts. That is not part of developing specifications regulations; it is different from having them incorporated into contracts.

CHAIR BREEDEN:

Do you not want those specifications defined in regulations?

MR. NELSON:

That is correct. If it were, we would lose some necessary flexibility needed during projects to make adjustments as we encounter specific material conditions.

CHAIR BREEDEN:

Has anyone at NDOT worked with Mr. Davis on this bill?

MR. NELSON:

No, we have not. The introduction of S.B. 236 was something of a surprise to us.

CHAIR BREEDEN:

Can recycled rubber tires be used in roadbeds?

MR. NELSON:

Yes. We discussed that before this hearing. We allow rubber to be introduced into asphalt pavements. Several years ago in a Henderson project, rubberized asphalt was successfully applied over concrete pavement. We are working on a similar project in Las Vegas on U.S. Interstate Highway 15 from the Spaghetti Bowl on south.

CHAIR BREEDEN:

What percentage of NDOT's projects used asphalt pavement instead of concrete? How do the two materials' life spans and costs compare?

MR. NELSON:

I do not have those exact numbers. The bulk of our projects use asphalt pavement. The NDOT desires to use concrete in urban areas because it lasts longer between maintenance strategies. In areas of heavy traffic, the longer we can go without maintenance, the better off motorists will be.

The materials' life spans can be viewed in different ways. Concrete pavement costs more initially but lasts a lot longer. Initial costs will always give asphalt the advantage. However, over 30 years or 40 years, concrete becomes much more economically competitive. The lion's share of the costs depends on how many times we want to perform maintenance on asphalt pavement. That becomes the make-or-break point between use of the two materials.

TERRY K. GRAVES (Graves Communications):

I am representing a group of scrap metal processors who also handle scrap tires. In other states, recycled tire rubber is used in asphalt, and that has been tried in Nevada. We would like to see the use of rubber in asphalt, in addition to aggregate, included in the bill's specifications regulation clause.

P. MICHAEL MURPHY (Clark County):

I have a handout ([Exhibit F](#)) explaining why Clark County is neutral on S.B. 236.

We work closely with NDOT and others in the Las Vegas Valley to ensure that we use recycled products on our roads. Our concern is that in *Nevada Revised Statute* (NRS) 408.070, the definition of "highway" does not limit the term to state highways. Past practices in the State and county indicate the NRS definition is limited to highways owned and operated by the State.

We share most of NDOT's concerns with this bill. But since we create and maintain roads owned, operated and maintained by Clark County, to have NDOT decide which aggregate we should use may prove counterproductive. We are worried about having any law or language mandating how we must build a project when we are ultimately responsible for maintaining it. I have discussed this with Mr. Davis, with whom we will work.

STEVE K. WALKER (President, Walker & Associates, Inc.):

I am representing Lyon County. We sent the text of S.B. 236 to Gary Fried, the Lyon County road manager. I will read his evaluation of the bill from a document in my computer:

Local governments already address the use of recycled base in the standard specifications for public work construction. We do not cover it for use in asphalt-paving mix for the road that is considered during the design of the project. I feel this bill will hamper local government in determining what is the best approach in using asphalt recycled from materials that will both benefit the project and the taxpayer.

What Mr. Fried states is Lyon County uses recycled asphalt all the time, obtaining the mix from the NDOT yard. Its use is based on the projects' design and needs. The County is concerned about a mandate for its use from NDOT, preferring that to be a directive instead.

JEANETTE K. BELZ, M.B.A. (J.K. Belz & Associates; Nevada Chapter of The Associated General Contractors of America):

We oppose S.B. 236 as redundant. Road contractors and NDOT may already use recycled materials, so there is no need for a regulation mandating that they must.

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CHAIR BREEDEN:

Seeing no more business to come before the Senate Committee on Transportation, I adjourn this meeting at 4:45 p.m.

RESPECTFULLY SUBMITTED:

Patricia Devereux,
Committee Secretary

APPROVED BY:

Senator Shirley A. Breeden, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 235	C	Lynn Chapman	Written testimony by Janine Hansen
S.B. 235	D	Rebecca Gasca	Written testimony
S.B. 236	E	Kyle Davis	"Recycled Aggregates— Profitable Resource Conservation"
S.B. 236	F	P. Michael Murphy	Written testimony