

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

**Seventy-Seventh Session
May 7, 2013**

The Committee on Transportation was called to order by Chairman Richard Carrillo at 4:10 p.m. on Tuesday, May 7, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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 nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Richard Carrillo, Chairman
Assemblyman Joseph M. Hogan, Vice Chairman
Assemblyman David P. Bobzien
Assemblywoman Maggie Carlton
Assemblywoman Lucy Flores
Assemblyman John Hambrick
Assemblyman Crescent Hardy
Assemblyman James W. Healey
Assemblywoman Ellen B. Spiegel
Assemblyman Michael Sprinkle
Assemblywoman Heidi Swank
Assemblyman Jim Wheeler
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman Paul Anderson (excused)

GUEST LEGISLATORS PRESENT:

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2

Minutes ID: 1102



STAFF MEMBERS PRESENT:

Vance Hughey, Committee Policy Analyst
Sean McCoy, Committee Policy Analyst
Scott McKenna, Committee Counsel
James Fonda, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Lieutenant William A. Bainter, Statewide Commercial Commander,
Nevada Highway Patrol, Department of Public Safety
Robert L. Compan, representing Farmers Group, Inc.
Buzz Harris, representing Concours Body Shop; and
Medtech Services
Alfredo Alonso, representing the Alliance of Automobile Manufacturers
David Goldwater, representing Google, Inc.
John P. Sande III, representing Nevada Franchised Auto Dealers
Association
Wayne A. Frediani, Executive Director, Nevada Franchised Auto
Dealers Association

Chairman Carrillo:

[Roll was taken. Committee protocol and rules were explained.] We will open the hearing on Senate Bill 43.

Senate Bill 43: Revises provisions relating to the operation or movement of certain vehicles. (BDR 43-340)

**Lieutenant William A. Bainter, Statewide Commercial Commander,
Nevada Highway Patrol, Department of Public Safety:**

I am here in support of Senate Bill 43, which is a Department of Public Safety (DPS) sponsored bill that is proposing additional clarifying language to *Nevada Revised Statutes* (NRS) 484A.480. This statute defines when an emergency vehicle can use its emergency lights. As written, emergency lights may be activated and used when responding to an emergency call or a fire alarm, when escorting a funeral procession, and when in pursuit of an actual or suspected violator of the law. The Department is proposing additional language to the statute to include authorizing the use of emergency lights while escorting a vehicle with an oversized load for which a permit is required. Due to the frequency with which the Nevada Highway Patrol (NHP) is involved in escorting vehicles with oversized loads, the Department believes that it is prudent to clarify in statute that emergency equipment is authorized during these types

of operations. To put this in perspective, in calendar year 2012, the Elko area, which would be rural Nevada, alone conducted 128 of these escorts on loads that were anywhere from 20 to 28 feet wide. These loads were protruding anywhere from 8 to 13 feet into the adjacent or oncoming travel lane. When an escort of this nature is completed, oncoming traffic must pull over and come to a stop. This is completed by patrol units with the lights activated traveling in front of the wide load and directing drivers to pull over. In closing, because of the number of these escorts completed every year, and from a risk management perspective—in the event that something unexpected would happen such as a collision—the Department is recommending additional language be placed in statute regarding the authorization to use emergency lights during escorts of oversized loads.

Assemblyman Sprinkle:

I do not have an issue with this bill at all, but I am curious. Most of the time when I see oversized loads that are permitted, it is usually a private vehicle with identification that is escorting these. What would be a situation when the NHP would be involved in escorting an oversized load?

William Bainter:

If the load is wider than 12 feet, NRS requires a police escort.

Chairman Carrillo:

Where in the statute is that?

William Bainter:

That would be NRS 484A.480. [*Nevada Revised Statutes* 484A.480 designates authorized emergency vehicles, equipment, and limitations on use of warning devices.]

Assemblywoman Swank:

Section 4, subsection 1, paragraph (b), in the bill talks about allowing these vehicles in these situations to exceed the speed limit. It says that you can exceed the speed limit except if you are escorting a funeral procession. Do we really want oversized loads exceeding the speed limit?

William Bainter:

I think what you are referring to is the escort for the oversized load exceeding the speed limit. I think how this is written, and how I interpret it, it would allow the vehicle that is conducting the police escort with the lights on to speed ahead to direct traffic to pull over. Oftentimes when these escorts are done, there are up to two units in front of the wide load, and they have to speed up in

order to get the vehicle safely over to the side of the road where there is a wide enough shoulder.

Assemblywoman Spiegel:

During your testimony you mentioned that this would help avoid traffic accidents. How many traffic accidents have been related to oversized vehicles?

William Bainter:

I do not have any official numbers; however, I have been with the Department for 25 years. I cannot recall any incident in which there were injuries, but we have had accidents in which a vehicle has hit a mile marker as it is pulling over. One time a motorcycle had hit the brakes and pulled over quickly and dumped. I can think of another time in which an actual tractor-trailer pulled over too far onto the shoulder where it was soft, and part of its load fell off. So, they do happen, and those would be examples. From a risk management perspective, the Department would like clarification when we do these types of operations that we are within parameters of the law.

Assemblyman Hardy:

Is this something you are trying to update, because I travel central Nevada and the rural parts of Nevada quite often, and I have seen the troopers with their lights already active. I agree with this, and I think it is a necessity, so is this something you are just trying to get into statute?

William Bainter:

That would be correct. It is a situation where we have been doing this for years. To be frank, I did not know it was not in statute. But, I do see where it could be a potential issue. I believe that you could interpret this as a moving traffic control when we do it, but we felt from a risk management perspective, that it would be better if it were clarified in statute.

Assemblyman Hardy:

Being involved with this quite often, I believe this is good legislation to make sure that it is in statute. There is huge difference between just an amber light and that blue light, in the way people handle and react to that. So, I think that blue light is a big benefit. My question is, do you guys get paid for your service as troopers when you do these wide loads that are exceeding the regular width that needs the amber light?

William Bainter:

That is correct. These companies enter contract services with us, and our troopers are paid on overtime, time-and-a-half, plus wear and tear on

the vehicles. In the central command, which would be the Elko area that does the majority of the escorts to the mines, we were at \$532,000 last year.

Chairman Carrillo:

How often is NHP escorting oversized loads now?

William Bainter:

Agencies like Las Vegas Metropolitan Police Department will do escorts for large items coming into the events center for a display. When there are mining conventions, there is large equipment on display. There are also various types of events that occur.

Chairman Carrillo:

Would a roadblock be necessary for that? It also talks about roadblocks.

William Bainter:

On occasion there will be temporary roadblocks. We do them in narrow areas where there is absolutely no way for a vehicle to pull over safely for the wide load to get by. For example, we do them in Walker Lake area. We have to temporarily shut down that area of the roadway for the larger vehicle to get through.

Chairman Carrillo:

Would it be the same for hazardous materials as well? I am not sure how often hazardous materials are run on Nevada's roads at this point, but is the premise of the bill to also try to look at that as well?

William Bainter:

When it comes to the hazardous material escorts, especially with the type we are involved in, we generally do not have the emergency lights activated. It is just an escort, and it is done for security reasons. Normally, the hazardous material escorts are not accompanying vehicles exceeding the legal width of 102 inches.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]
Is there anyone wishing to testify in support of S.B. 43? [There was no one.]
Is there anyone wishing to testify in opposition to S.B. 43? [There was no one.]
Is there anyone wishing to testify in neutral to S.B. 43? [There was no one.]
We will close the hearing on S.B. 43. We will open the hearing on Senate Bill 170 (1st Reprint).

Senate Bill 170 (1st Reprint): Revises provisions governing the charges for storage of motor vehicles that are imposed by body shops. (BDR 43-582)

Robert L. Compan, representing Farmers Group, Inc.:

I am here to present Senate Bill 170 (1st Reprint). I have provided testimony to the Committee ([Exhibit C](#)). Over the past few years, our industry has seen body shops use the storage fees they charge when vehicles are towed to them as a profit center. In some cases we have noticed that tow truck drivers have been capping fees to pay what are best called spiffs to body shops to take vehicles into shops, again, using these as profit centers. Most of the shops that abuse this kind of privilege have no intention of repairing the vehicle at all. By the time the adjuster or the owner gets to look at the vehicle, with charges sometimes in excess of \$100 a day, we have seen cases when we go to pick up a vehicle there are charges of \$400 to \$500, before we can even look at the vehicle to assess the damage to it. Sometimes it precludes us from repairing the vehicle if the owner decided to have comprehensive and collision on the vehicle, because it may exceed the threshold of an economical cost to repair the vehicle.

We got together with the Nevada Collision Industry Association (NCIA) during the interim to address the issue. It is basically a black eye on their industry, because for the better part of the industry, they are very reputable and do not like to see these erroneous charges being charged to Nevada consumers. Without going into a full regulatory authority and setting up a whole bureaucracy regulating body shops, because we appreciate the fair market and free market system, we got together with the Legislative Counsel Bureau (LCB) to draft some language which you have in front of you.

Section 2, subsection 2, of the bill talks about prevailing rates and says that body shops cannot charge more than 1½ times the prevailing rate in a geographic area.

The Department of Motor Vehicles (DMV) does a survey of prevailing rates. I spoke with DMV today and confirmed that they include interior and exterior body shop storage in their survey. They also said it is not going to be a problem to publish the prevailing rates in a geographic area. For example, if the body shop prevailing rate is \$25 a day, rather than some shops charging \$100 a day, they can only charge 1½ times the prevailing rate [\$37.50], and they have to post what they are charging in their place of business. They also have to notify the consumer, based on language in the bill, of their intent to charge their rate. The bill does not say that they cannot charge more than 1½ times the prevailing rate, but if they do, they have to request an administrative hearing and meet with the DMV to establish the reason they want to set that charge. Somebody

may have a body shop in Incline Village where real estate is very expensive, or an area with higher taxes, or higher rents, and then the DMV would look at it.

During the first hearing in the Senate, Senator Patricia Spearman, representing Clark County Senatorial District No. 1, liked the language, but she thought that it did not go quite far enough. She wanted to clarify that you have to make attempts to notify the owner. In the original language, the notification had to be written and it had to be sent through certified mail, but it was too complicated. We added language to section 3, subsection 1, to say, "the body shop shall use all resources reasonably necessary" They have to provide evidence that they have tried to contact the owner of the vehicle, with written documentation on how they did so. This is important because sometimes people have an accident and their vehicle is towed from the scene to a body shop that they did not authorize. This is a capping issue, a tow operator issue, not an issue with drivers who are authorized by a tow company. It is about drivers who take a car to a shop on their own and get a capping fee or spiff for taking a vehicle there. We have seen this happen.

They cannot charge storage charges as provided in section 2, subsection 1, paragraph (c) which states, "For 24 hours after the person who authorized the repair of the motor vehicle has been notified that the repairs are completed." Then they can then start charging vehicle storage.

After Senator Spearman recommended the language regarding the 24 hours, we worked with Concours Body Shop and Buzz Harris to remove the language, "reviewed," from the bill ([Exhibit D](#)). I think that protects the body shops from a possibly unscrupulous insurance carrier that would say, "We are reviewing the estimate, so you cannot charge storage fees." We agreed with that and have agreed to remove the language.

Assemblyman Sprinkle:

Section 2, subsection 1, paragraph (d), of the bill talks about "the insurer," and if the insurance company is not responding to requests needed for processing the claim. If the vehicle stays longer than 24 hours, who is going to get charged for that? Is it going to be the insurer? Is it going to be the individual who owns the vehicle, even though his insurance company is not responding to the request?

Robert Compan:

It will be the insurer. The insurance company will be responsible for that under this statute.

Assemblywoman Spiegel:

I know that there is a lot of this bill that talks about payment, including the posting of the rights for consumers related to the payment for the storage. When the insurer pays the storage facility, are you directly invoiced? Are you paying by check or credit card? It struck me that there was no provision for giving a notice of payment policies such as, whether credit is being extended, what payment methods are accepted, and what the terms are? I was wondering if you thought that it might make sense to clarify that in here.

Robert Compan:

I think once you start putting in provisions like that you start regulating how the business operates.

Assemblywoman Spiegel:

I think you are misunderstanding my question. My question is not necessarily saying what they have to do, rather that it would be recommended that they post the information and let consumers and companies know what payment methods are available in advance.

Robert Compan:

I think that is excellent. This Nevada Automotive Repair Customer Bill of Rights was put together in 2007, and it was actually a product of then-Speaker Barbara E. Buckley. We also had some legislation with Assembly Bill No. 2 of the 74th Session that Assemblyman Bernie Anderson was sponsoring, and that is how the Nevada Automotive Repair Customer Bill of Rights came to be. It would be through the pleasure of the Committee to have something drafted into this. That may be something that the LCB staff could answer better than I could.

Assemblywoman Spiegel:

But, to the extent that it might also affect your business, it would probably be helpful?

Robert Compan:

To the extent it would not only help my business but also the consumer. That way they would know that their vehicle is going to a repair facility that is a cash-only business. I would agree that they should probably know that ahead of time.

Assemblywoman Swank:

I want to return to section 2, subsection 1, paragraph (d), of the bill regarding the question of the insurance company as the one who pays. I do not see that it is in the language that the insurer is the one who would pay the

storage charge. It seems kind of vague and open-ended as to who actually those charges are imposed on.

Robert Compan:

I would probably defer to the policy analyst or LCB, but if you go into *Nevada Revised Statutes* (NRS) Chapter 679A under definitions of "insurer" that would be the insurance company rather than the consumer.

Assemblywoman Swank:

Right, but I do not see that it actually says in here that the insurer is the one who does so. The bill says "a storage charge may be imposed." It just says that "if the delay is due to the failure of the insurer," but it does not say that this charge will be imposed upon the insurer.

Robert Compan:

You are correct. It does not say that.

Assemblywoman Swank:

It would be nice.

Robert Compan:

At the pleasure of the Chairman, would the LCB be able to do that? Or would that be something that we would look into? I am not sure how that would work?

Scott McKenna, Committee Counsel:

I believe what would actually be controlling in this instance would be the specific provisions of the contract between the insurer and the insured as far as who was obligated to pay. For that reason, I think it would be difficult to put into statute, because it would simply be governed by the underlying contractual agreement, which would apply whether the statute specifically recognized that or not.

Assemblywoman Swank:

I think my concern is that I am hesitant to hold the insured responsible financially for the insurer getting back to the body shop on time. I feel that is a burden we cannot place on the insured.

Robert Compan:

I believe Mr. McKenna said it correctly. It is a contract of adhesion that is between the insurer, us, and our clients. Our responsibility is in that contract set forth in statutory language that we are responsible for certain payments in due process. I believe what he is saying is true, that it would not be germane

to put in this chapter because I think it would already be spelled out in the policy contract language between us, the insurance company, and the insured. I can say with certainty, it would be our responsibility if we delayed that vehicle from being inspected. It would be our responsibility to pay for it.

Assemblywoman Swank:

That is my concern. If there are other insurance companies that do not have that contractual agreement, then if there is only 24 hours and then it is put on the insured, it just seems overburdensome.

Robert Compan:

All policies are contracts between the policy carrier and its insured. I can say with certainty that would be the case; we would be responsible if the delay was caused by us. If it was not taken care of by us then there would be an avenue for the insured to go through in which they would file a complaint with the Commissioner of Insurance to say that the delay was caused by the insurance company but they did not pay for it, and they are being charged and want the Commissioner's office to look into it.

Assemblyman Sprinkle:

There is also a requirement in here as far as posting all of this and about the signage within the body shops. That may also then allow the insured, the individual who owns the car, to know what is expected. He then could go back and talk with his insurance company if these things do not happen? Is that correct?

Robert Compan:

You are correct. Posting within the shop is being required by the Nevada Automotive Repair Customer Bill of Rights. Also, it is noted under section 9, subsection 3, that "In an estimate furnished pursuant to subsection 1, a body shop must include, if any, the rate of and circumstances under which the person requesting or authorizing the repair would incur a charge for storage that exceeds \$50."

Assemblyman Sprinkle:

So, they would have to be notified as well?

Robert Compan:

Yes.

Assemblyman Sprinkle:

That alleviates my concerns, thank you.

Buzz Harris, representing Concours Body Shop:

We have worked with Mr. Compan on this bill to come to a lot of different ideas. We have worked with both southern and northern Nevada body shops, and see this as very consumer-friendly bill, as well as an opportunity for the body shop industry to maintain its integrity.

Chairman Carrillo:

Are there any other questions from Committee members? [There were none.] Is there anyone wishing to testify in support of S.B. 170 (R1)? [There was no one.] Is there anyone wishing to testify in opposition of S.B. 170 (R1)? [There was no one.] Is there anyone wishing to testify in neutral to S.B. 170 (R1)? [There was no one.] We will close the hearing on S.B. 170 (R1). We will open the hearing on Senate Bill 313 (1st Reprint).

Senate Bill 313 (1st Reprint): Revises provisions relating to autonomous vehicles. (BDR 43-954)

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2:

I respectfully submit Senate Bill 313 (1st Reprint) for your consideration. Senate Bill 313 (R1) concerns the regulation of autonomous vehicles. An autonomous vehicle is a motor vehicle that drives without the active control or monitoring of a human operator. As some of you will remember, this body passed Assembly Bill No. 511 of the 76th Session, making Nevada the first state in the country to license autonomous vehicles. While Google and Audi were the first to become licensed in Nevada, other manufacturers have indicated that they have an interest in testing such vehicles in the state as well. It is also important to note that just about every auto maker is developing its own self-piloting model. Last year a BMW drove itself down the autobahn from Munich to Ingolstadt. Audi sent an autonomous vehicle up Pikes Peak, while Volkswagen, in a partnership with Stanford University, is in the process of testing a next generation autonomous vehicle. Recently at the Tokyo Motor Show, Toyota unveiled its Prius AVOS automatic vehicle operating system, which can be called by remote to the driver's location. Industry experts have predicted that self-driving cars will be on the road by decade's end. With that said, the intent of S.B. 313 (R1) is to strengthen our current statute and correct some of the definitional and safety concerns, while preserving the pioneering spirit of the original law.

Alfredo Alonso, representing the Alliance of Automobile Manufacturers:

I am here today on behalf of the Alliance of Automobile Manufacturers, which is all the domestic auto manufacturers in the country such as Toyota, BMW, Jaguar, et cetera. Before you today, as Senator Denis indicated, is an attempt to clarify some of the autonomous language that this body placed in statute

last session. Some of the issues that came up were primarily with the definition. As you know, many of the vehicles in place today have technology that has various driver-assist mechanisms, including electronic blind spot detection. Some vehicles actually parallel park themselves. Many of you have seen those. What we are trying to do is make sure that the autonomous vehicle definition does not include those types of technologies. If you look at the definition, it indicates that it has the capability to drive the motor vehicle without the active control or monitoring of a human operator, and then it removes many of those technologies from the definition. Obviously, this is sort of a moving target as this technology changes on a yearly basis.

Section 2.5 adds a \$5 million bond. The point of that is to make certain that a hobbyist is not testing these vehicles and is not buying a Toyota Prius, modifying it, and taking it on the road. We want testers to be folks that know what they are doing and have the public safety in mind. That is an important piece as well because it is also in place in California and Florida, which are the other two states that have done this.

The only other sections that have been of any consequence involve making certain that an individual is going to be seated and that there are monitoring devices that indicate when it is in an autonomous mode, so if anything happens, there is an ability to turn the system off quickly.

Section 5 is a liability provision that indicates that the modifier is in fact modifying the vehicle. We wrote this extremely narrowly. If there is a traffic accident or something happens as a result of that modification, you have modified it to be on the road, and the manufacturer, unless that defect existed before, would not be liable in this case. We have had discussions with Mr. Bradley and the trial lawyers. We continue to have those discussions and continue to work with them on this.

That is essentially the bill. You will probably see these vehicles sooner rather than later. The goal here is to make sure that, if they are in fact tested, the consumer is protected, the traveling public is protected, and that we are doing this right. This is consistent with what has been in California and Florida. I think it is an interesting subject that is going to evolve over the next few years. I hope to give you updates as that technology changes.

Assemblyman Hardy:

In section 2.5, subsection 1 and subsection 2 have to do with the bond for a manufacturer or somebody else doing testing, so they could have 50 cars out there being tested at one time. Is that bond for each car, or is that bond for all of those vehicles?

Alfredo Alonso:

The way we look at it and the way it was drafted, it is a \$5 million bond to test. Whether you had one vehicle, or two vehicles, or otherwise. These are often going to be done on closed tracks where that would not make a difference, but if they are going to be tested on a road and it is a live test, then that individual or that company would have to have a bond for it.

Assemblyman Hardy:

Just for clarification, per individual car that might be out in the public, would it have to have its own individual insurance?

Alfredo Alonso:

No, we look at it collectively. Again, you are not going to have more than a couple of these vehicles being tested at one time regardless.

Assemblyman Sprinkle:

Do the manufacturers have to agree to allow their vehicles to be converted for this testing phase? I am getting to the liability section.

Alfredo Alonso:

No. Oftentimes, we have seen many of the third parties that are looking at this type of technology simply purchase the vehicles. If you are purchasing a fleet of vehicles and they are being modified, that was obviously the concern. We want to make sure that if the manufacturer has a defect of any kind, they are still going to be liable for it, before and after, but if the modification itself causes that defect, than that is where the liability will shift.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.] Is there anyone wishing to testify in support of S.B. 313 (R1)? [There was no one.] Is there anyone wishing to testify in opposition of S.B. 313 (R1)? [There was no one.] Is there anyone wishing to testify in neutral to S.B. 313 (R1)?

David Goldwater, representing Google, Inc.:

During last session, it was in this Committee that the concept of autonomous vehicles was legislated for the first time. You were successful in casting Nevada as leader in autonomous vehicle public policy, and we now stand at the precipice of transportation innovation and potential economic diversification. I would like to thank Senator Denis for bringing Senate Bill 313 (R1). The bill codifies in statute many of the regulations we spent months crafting during the interim. It serves as a statement that Nevada continues to be the leader in transportation policy and economic diversity. During and through the regulatory

process, I would be remiss if I did not thank Troy Dillard and a number of people at the Department of Motor Vehicles who worked diligently with us through that. Many issues were fleshed out and compromised upon.

One very important concept is that we recognize in the law and in the regulation that there will be a time when an autonomous vehicle will operate on the road without a driver. We were careful during the regulatory process to assure that in both direct and indirect references, we do not reference a driver when it relates to autonomous vehicles. On the Nevada Electronic Legislative Information System (NELIS) there are two proposed amendments ([Exhibit E](#)). Both amendments deal with the indirect reference to the necessity of a "human operator."

The first proposed amendment is in section 8. This is the endorsement part of the bill. The amendment proposes to delete the added language "except in the case of emergency." It seems counterintuitive that we want to delete "except in case of emergency." However, it is not present in the regulation now, but it was added by the bill drafters. By adding it, it infers that a human must be present in case there is an emergency. That is contrary to the intent of the autonomous vehicle law and regulation. I elaborated further on that in the rationale that is attached to the amendment on NELIS ([Exhibit E](#)).

The second proposed amendment contains two options. Similar to the rationale in amendment 1, all the regulatory language contemplates no driver in the autonomous vehicle while operating. Of course, there must be a human in the vehicle at all times during the testing phase of an autonomous vehicle, but the language in section 4 can be read to require a human operator be present beyond the testing phase. In the rationale for the amendment, there is detail as to where in section 4, subsection 2, there are references to the necessity of a human operator. Both options deal with that irregularity in an inconsistency with the current regulation. I believe these amendments enhance the bill and will maintain Nevada's leadership in autonomous vehicle public policy. Thank you again to Senator Denis and his staff, specifically Todd Westergard, for accommodating these requests.

Assemblywoman Spiegel:

Did you speak with the bill sponsor about these amendments, and was he okay with them?

David Goldwater:

I did. I spoke with Todd Westergard, and the bill sponsor indirectly.

Assemblywoman Spiegel:

Are they friendly amendments?

David Goldwater:

Mr. Westergard indicated they were friendly amendments. They are all related to the same concept of a human necessarily operating in there.

Assemblyman Sprinkle:

Were these amendments proposed on the Senate side?

David Goldwater:

At the time we got the bill, the legal department for my client was not prepared to comment. By the time I received them, the bill had been moved from the Senate, and I did testify to that in the Senate.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.] We are under the assumption that you are going to work with the bill sponsor and discuss the other partial amendment that they do not seem to be receptive to. Is that correct?

David Goldwater:

Most definitely.

Chairman Carrillo:

We will close the hearing on S.B. 313 (R1). We will open the hearing on Senate Bill 317 (1st Reprint).

Senate Bill 317 (1st Reprint): Revises provisions relating to franchises for sales of motor vehicles. (BDR 43-942)

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2

Senate Bill 317 (1st Reprint) is a bill that seeks to clarify our vehicle franchise laws to ensure both dealers and manufacturers can work together with a mutual understanding of the laws of this state. In order to accomplish this goal, you will see that the bill before you proposes only modest changes to our current law. The purpose of the bill is to clarify that the provisions of Nevada's automobile franchise laws cannot be waived by the dealer. While I think this already is the intent of the current law, the issue has become somewhat flouted due to assertions to the contrary. Subsequently, S.B. 317 (R1) seeks to make it crystal clear that it is not an option for motor vehicle dealers to waive our state's automobile franchise laws because those laws include significant protections not only for dealers, but also for the general public. The bottom line

is that the issue is important enough to state clearly and emphatically in our statutes. I will have John Sande make comments on behalf of the Nevada Franchised Automobile Dealers Association.

John P. Sande III, representing the Nevada Franchised Auto Dealers Association:

We want to thank Senator Denis for supporting us on this. We have an agreement with the manufacturers so there is no opposition to this bill. All we are trying to do is clarify, and you will see on page 2 of the bill, lines 10 to 14, which says that it is an unfair trade practice for a manufacturer to, "Require a dealer to agree to a term or condition of a franchise agreement which violates or waives any provision of NRS 482.36311 to 482.36425" That protect the dealer. Unfortunately, there is litigation in Las Vegas over whether or not the manufacturer was requiring or just requesting the dealer to waive these rights. The second sentence makes it very clear that any waiver of those provisions of *Nevada Revised Statutes* (NRS) Chapter 482 is void and unenforceable, regardless of whether it was requested or required. Any waiver is totally unenforceable and void. That is basically what the bill does. Wayne Frediani, Executive Director for the Nevada Franchised Auto Dealers Association is here as well if there are any questions.

Assemblywoman Carlton:

I am sure we have had this discussion before. I am trying to remember the citations that you have here, what type of waivers we were talking about. I know we have discussed it before, and I want to make sure I understand what the issue really was when we had those discussions two sessions ago.

John Sande:

There are a number of provisions in the statute. For example, if a manufacturer tries to terminate a franchise and the dealer objects, they have to hold a hearing and the Department of Motor Vehicles (DMV) has a hearing officer determine whether or not it is reasonable to terminate the franchise. Was the dealer adequately taking care of his customers is a typical issue, so that is one of the waivers. In this particular case, there were two Chrysler dealers, Towbin Chrysler and Chapman Chrysler in southern Nevada. Under Nevada law we have a rule that says, if a manufacturer is going to bring a new dealership within a ten-mile radius of your dealership, you can contest. You can file with the DMV and have a hearing to see whether it is in the best interests of the residents of the area for that to happen. In this particular case, they were requested, or required, by the manufacturer, to waive their right to that. There was litigation, but finally they decided to do it legislatively and that is why we are here today. Those are the types of protections that you have. There are a lot of other protections in the franchise law. For example, if you want to turn over a dealership to a relative upon your death, the manufacturer

cannot absolutely prevent that type of thing. There are a lot of protections that we put into the Nevada franchise laws.

Assemblywoman Carlton:

How long ago did we deal with the ten-mile issue?

John Sande:

That was over 20 years ago, but we have made some changes. About every other session we have come in, and we are hoping now that we will not be back again before you. We have a good relationship with the Alliance of Automobile Manufacturers.

Assemblywoman Carlton:

I am trying to figure out how you can ask someone to agree to something that is illegal, because it is in statute. Then again, we will not rehash the protectionist portions of some of these franchise agreements. Thank you, I appreciate that.

Assemblywoman Spiegel:

Following on Assemblywoman Carlton's question, I have a question for Legal. Under NRS can somebody be contractually obligated to waive their legal rights?

Scott McKenna, Committee Counsel:

The answer to that is that it really varies. What I would point out with respect to the addition of the new language, is that it makes the wrongdoer the person who is requiring the dealer to agree to a term or condition of a franchise agreement that violates or waives any provision of that block of NRS sections. Without the addition of this language, it is at least conceivable that the person who would be on the hook for the violation would be the dealer. The addition of this language makes it clear that the wrongdoer is the person requiring them to waive their rights.

Chairman Carrillo:

Are there any questions from Committee members? [There were none.]
Is there anyone wishing to testify in support of S.B. 317 (R1)?

Buzz Harris, representing Medtech Services:

Today I am here on behalf of Medtech Services, a mobile equipment specialist. We are in support of the bill. We thank the sponsor of the bill, Senator Denis, as well as the Nevada Franchised Auto Dealers Association for allowing us to submit an amendment on this ([Exhibit F](#)). The amendment that we are asking for would allow for someone who is a mobile equipment specialist, a used car dealer who deals with people needing a vehicle that can be adapted for them,

such as with a wheelchair ramp or lift to allow them to become a passenger in or driver of the vehicle.

Currently, somebody who has a used car dealer license cannot sell a new car. Sometimes people who need to have a vehicle adapted with a ramp or something like that have to go out of state and bring a vehicle in. While used car dealers can already sell used vehicles with wheelchair ramps and lifts, what we are asking for in the proposed amendment is the ability for them to sell new cars and to be able to take care of those customers. I have Rick Graver here from Medtech Services, and he gets customers that come in occasionally that would like to have somebody who is knowledgeable about the capabilities of and how to adjust and make sure that these vehicles work properly. We are not talking about a significant number of vehicles, and it certainly is not to take anything away from any of the new car dealers. He has customers that come to him, and I am sure there have been quite a few of them over the years, that have said, "I would like to get this vehicle, but I need to have the wheelchair ramp." They reply, "We sell new cars, but they are not really adaptable for those kinds of things." That is what we are asking for in this amendment. Under NRS 482.350 there are exceptions under subsection 2, paragraph (a) [proposed] subparagraph 1, and we are looking at the language for the ability for a used car dealer to sell "substantially modified vehicles with auto adaptive equipment for the disabled."

Assemblywoman Carlton:

Mr. Harris, you lost me. Why are we redefining what a new car is? What is the problem? There is a problem we are trying to solve, but when we start redefining new car and used car, it impacts a whole lot of folks. I understand you are trying to get to the modification portion, but how does this fit in this bill?

Buzz Harris:

Where we see that this would fit into this bill is due to the abilities of manufacturers and dealers, and because the dealer part of this is where it would fit in defining whether it is new car dealer or used car dealer fits in to the germaneness of where this is.

Assemblywoman Carlton:

Germane has been a weird thing this session. Tell me the problem we are trying to solve.

Buzz Harris:

The challenge that we have here is with somebody who does adaptive vehicles. For example, somebody comes into Medtech Services who is disabled and

wants to purchase a new car. They have already been there to get their wheelchair, and then they say, "I want to get a new car. I have been to several of the dealers in town, and I want to get a Toyota Sienna with the door that opens, and the wheelchair ramp that comes out so I can be either the passenger or the driver." Because they are a used car dealer and not a new car or franchised dealer, they would not be able to do that.

They would not be able to sell them a new car without skirting the law. Say this Toyota Sienna which would be manufactured someplace else, is actually purchased from a manufacturer like Vantage Mobility International, which is in Arizona. They would purchase that vehicle from the Toyota dealer there. The vehicle changes title and goes to the manufacturer who then puts in the ramp. Then the vehicle could be purchased individually through somebody, but they would be purchasing a car sight unseen, and this is a major purchase. Or they could go through somebody like Medtech Services, and they could have this vehicle, explain what it is, and they could service it when it is here so it has the proper adjustments for getting in and out and any types of defects. It is having a local dealer so you could purchase it here. It is not necessarily a specialty vehicle or anything that needs to be rebranded, it is something that has been altered by an additional manufacturer.

Assemblywoman Carlton:

I think I am asking the question correctly, but maybe some other members will have some questions. I am not getting you, Mr. Harris. It might mean I need to read this a couple more times, but I just do not understand what the problem is that we are trying to fix.

Assemblyman Hambrick:

Can we have John Sande come up to the chair for the moment? A lot of what Mr. Harris is trying to do would be considered aftermarket. In many cases a new car dealership would do certain things to a vehicle, whether it is window tinting or something like that, and until the consumer takes possession, they will see that certain things are done, and this is considered aftermarket. Could not any new dealership contract with Mr. Harris's businesses and still be considered a new car, but aftermarket? I agree with Assemblywoman Carlton that we seem to be talking around the issue on this thing. It seems to be very confusing trying to get a simple answer. With what Mr. Harris wants to do, could that not, under contract law, be considered aftermarket, and still have the dealerships have whatever priority in your scheme?

John Sande:

I think the problem is under Nevada law, and it is set forth here, if you sell a car that has less than 2,500 miles on it, it is deemed to be a new car, and you have

to be a new car dealer to do that. What they are proposing here is that, if they modify a vehicle, and looking at the language they say, "a substantially modified vehicle with auto adaptive equipment for the disabled," and it is a substantial modification, then that is deemed to be not a new car, and therefore they do not have to be licensed as a new car dealer. I think his client is a used car dealer and they are going to modify a car for the disabled. We have no problem with that, and saying that is not a new car because it has been changed, even though the language in the statute says 2,500 miles. We are going to make an exception so this used car dealer can go and take care of the disabled.

Assemblywoman Carlton:

There is a difference in how the customer is treated when you have new car versus a used car. How does this impact the customer as far as their guarantees, warranties, and other things that are associated with the new car? In essence, it still is a new car as it has less than the 2,500 miles, but because of the adaptations it would be considered a used car. I would not want to see someone with a \$40,000 investment be treated like they have bought something for \$2,000, so I would have concerns there.

Wayne A. Frediani, Executive Director, Nevada Franchised Auto Dealers Association:

The warranty stays with the vehicle. Adapting it for a disabled person has nothing to do with the components of the vehicle and the warranty. That stays in effect as a factory warranty.

Assemblyman Wheeler:

Having been both in the aftermarket side and working in the franchise side, it looks to me like what Mr. Harris's amendment is trying to do is take away from the franchisee the ability to sell the new car with the modifications. The dealer that I worked for would send some cars to Medtech, get them done, bring them back, and sell them to the customer. I am wondering if this bill is trying to circumvent that, so they can sell direct instead of the franchisee selling it.

Buzz Harris:

It is certainly not the intention to do that. One of the challenges that Medtech has with this, is they have often referred customers, or they get customers that come to them and say, "I have tried to go to the following dealers to try and get a vehicle that is adapted for me." This is specialty type of work that is done. They take the chassis of a new vehicle, take out the floor, remove the seats, and do quite a few modifications; also the manufacturer doing the adaptive equipment puts that in their motors and those kinds of things, and their warranties go along with that. This is by no means to take anything away from

any of the new car dealers. This is to provide a service for a fairly small unique market.

Assemblyman Wheeler:

Currently can the customer not go over to Carson City Toyota and buy a new Sienna van, take or have it directed to Medtech, and have them do the entire conversion on it? That way it would actually keep its same warranty, because under federal law you cannot void a warranty unless the part actually causes the defect.

Buzz Harris:

Medtech would be acting as the dealer of these vehicles, not the manufacturer that would do the manufacturing alterations. They would service the warranty, and be able to instruct the customer as to where they would get this vehicle that would likely come from out of state. For example, there is a manufacturer in Arizona and another one in Indiana. Medtech itself, or other dealers in southern Nevada, would not actually be doing the alteration of the floor and installing the motors. They would be doing the servicing of those things, as well as ensuring that they could do the warranty work. If somebody were to purchase a vehicle from a new car dealer, and then take it over to Medtech, Medtech would not be able to do all of the work that a manufacturer does.

Assemblyman Wheeler:

What you are saying is that Medtech is actually buying an already modified vehicle?

Buzz Harris:

They would be purchasing a new vehicle that is modified, as well as retrofitting it to the customer's needs.

Assemblyman Wheeler:

That is what I thought. I was trying to figure out why they cannot buy the vehicle and have it done, as is, I believe the current practice in some cases.

Buzz Harris:

Medtech would be altering the vehicle only for adjustments once it arrives here, or other dealers would be doing this as well. And they do it for both new and used vehicles.

Assemblywoman Spiegel:

Mr. Harris, was this amendment proposed on the Senate side, and was there a hearing and what happened?

Buzz Harris:

This was not proposed on the Senate side. This was an issue that has come about and was brought to our attention. We have worked with those who have the actual bill to see if we could possibly have a friendly amendment.

[The Chairman turned the meeting over to the Vice Chairman.]

Vice Chairman Hogan:

Is there anyone wishing to testify in support of S.B. 317 (R1)? [There was no one.] Is there anyone wishing to testify in opposition of S.B. 317 (R1)? [There was no one.] Is there anyone wishing to testify in neutral to S.B. 317 (R1)?

Alfredo Alonso, representing the Alliance of Automobile Manufacturers:

We are neutral with respect to the waiver language in the original bill. We do not believe that you can actually waive, but this clarifies that, and so we are fine with it. As to the amendment, I believe what it says is that Medtech would act as the wholesaler, they would purchase the vehicles, sell them to a used car dealer, which we are fine with, if that is what they are doing. I think that is what they are doing.

Vice Chairman Hogan:

Are there any questions from Committee members? [There were none.] Thank you Mr. Alonso. Is there anyone else wishing to testify in neutral to S.B. 317 (R1)? [There was no one.] Senator Denis, would you like to rejoin us for a moment and say anything else regarding these questions?

Senator Denis:

I have no additional comments. I was approached about the amendment, and was okay with the concept for moving the bill forward. Other than that, I thought the waiver part was pretty clear.

Vice Chairman Hogan:

We will close the hearing on S.B. 317 (R1). Is there any public comment?
[There was none.]

The meeting is adjourned [at 5:32 p.m.].

RESPECTFULLY SUBMITTED:

James Fonda
Recording Secretary

Jacque Lethbridge
Transcribing Secretary

APPROVED BY:

Assemblyman Richard Carrillo, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: May 7, 2013

Time of Meeting: 4:10 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 170 (R1)	C	Robert L. Compan, representing Farmers Group, Inc.	Testimony
S.B. 170 (R1)	D	Robert L. Compan, representing Farmers Group, Inc.	Proposed Amendment
S.B. 313 (R1)	E	David Goldwater, representing Google, Inc.	Proposed Amendment
S.B. 317 (R1)	F	Buzz Harris, representing Medtech Services	Proposed Amendment