

**MINUTES OF THE  
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session  
March 20, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 8:05 a.m. on Wednesday, March 20, 2013, in Room 2135 of the Legislative Building, Carson City, 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 Mark A. Manendo, Chair  
Senator Kelvin Atkinson, Vice Chair  
Senator Pat Spearman  
Senator Joseph P. Hardy  
Senator Donald G. Gustavson

**GUEST LEGISLATORS PRESENT:**

Senator Greg Brower, Senatorial District No. 15  
Senator James A. Settelmeyer, Senatorial District No. 17  
Assemblyman Randy Kirner, Assembly District No. 26

**STAFF MEMBERS PRESENT:**

Jered McDonald, Policy Analyst  
Darcy Johnson, Counsel  
Jennie L. Bear, Committee Secretary

**OTHERS PRESENT:**

Caleb S. Cage, Captain, U.S. Army; Executive Director, Office of Veterans' Services  
Terri L. Carter, Administrator, Management Services and Programs Division, Department of Motor Vehicles  
Paul J. Enos, CEO, Nevada Trucking Association  
David R. Parker, Senior Legal Counsel, Great West Casualty Company  
Ed Meyer, President, NEVCAL Trucking  
Ryan M. Venci, Las Vegas Defense Lawyers

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Peter D. Krueger, Nevada Petroleum Marketers & Convenience Store  
Association  
John P. Sande III, Western States Petroleum Association

**Chair Manendo:**

We will begin with a hearing on Senate Bill (S.B.) 244.

**SENATE BILL 244**: Authorizes the indication of veteran status on instruction permits, drivers' licenses and identification cards. (BDR 43-80)

**Senator Greg Brower (Senatorial District No. 15):**

I join Assemblyman Kirner to present this bill on behalf of all fellow veterans in Nevada. Senate Bill 244 would allow Nevada's veterans to have their veteran status displayed on their driver's licenses if they wish. At least 14 other states have passed a similar law. Anecdotal evidence suggests such legislation has created numerous benefits for veterans and veterans' services agencies in the states. The benefits for veterans include easy identification as veterans for a variety of benefits ranging from discounts at retail establishments and restaurants to ready proof of veterans' status to agencies requiring it. The idea is very popular nationwide. Veterans' groups, like those represented in the audience here, have supported this kind of legislation across the Country. We are pleased to have the support of veterans in Nevada for this bill. The Office of Veterans' Services (NOVS) and the Department of Motor Vehicles (DMV) have worked with us on it.

**Assemblyman Randy Kirner (Assembly District No. 26):**

On page 3 of the bill, a reference is made to a DD Form 214, "Certificate of Release or Discharge from Active Duty." When veterans are discharged from service, each one receives this form documenting the details of his or her discharge. Most veterans do not carry their forms with them because they are important documents to be safeguarded, as noted at the top of the form. Many of us place ours in safes. Veterans have opportunities that will be enhanced by having this designation on their driver's licenses. Other aspects of this distinction provide value to the State.

**Senator Brower:**

I want to thank Senator Spearman for agreeing to cosponsor the bill. While we were unable to obtain more cosponsors due to time limitations, we did get each member of what I might call the informal veterans' caucus within the Legislature

to sign on. The cosponsors comprise a bipartisan and bicameral group. I want to thank all the cosponsors today for their assistance.

**Senator Gustavson:**

I support this bill. I was considering introducing such a bill.

**Chair Manendo:**

You mentioned an amendment. Do you want to discuss it briefly? We do not have a copy of it.

**Senator Spearman:**

I was eager and honored to sign on to this bill. I happen to be one of the people who remember what we did not do for those returning from Vietnam. I am glad to see we are making a difference for them today and for the veterans who served in the Global War on Terrorism.

**Senator Brower:**

For the record,

I should acknowledge the Chair's efforts on behalf of veterans over the years too. I know that, Mr. Chairman, you've been involved and continue to be involved in a variety of efforts—Legislative efforts—in support of veterans' issues and causes. And that does not go unnoticed. We all appreciate that.

**Caleb S. Cage (Captain, U.S. Army; Executive Director, Office of Veterans' Services):**

Section 6, subsection 5 of S.B. 244 states that the DMV collects aggregate data on customers who declare they are veterans. These data are sent to agency, the NOVS, for statistical purposes. We have been able to track between one-third to one-half of veterans in Nevada by county and other demographics. This has helped us direct our resources to the parts of the State with the largest concentrations of veterans.

We have discussed an amendment to this part of the bill with Senator Brower; Troy Dillard, Interim Director of the DMV; and others. It will allow the DMV to provide NOVS with more specific data—the names and contact information of veterans who agree to release their information. We plan to store this information in a data warehouse funded through a grant from the Office of Rural

Health, Veterans Health Administration, United States Department of Veterans Affairs. The Division of Enterprise Information Technology Services, Department of Administration has been working with us on the project. With this amendment, the Office of Veterans' Services will be able to inform self-identified veterans through email and other ways about services such as resource fairs. Instead of aggregate data, we will have contact data to help us pinpoint locations of veterans who need our services.

**Senator Brower:**

We will have the amendment drafted and sent to the Committee as soon as possible so the Committee quickly can process the bill.

**Senator Spearman:**

You are working with the DMV. Another way to pinpoint where veterans are located might be to track them through the yearly DMV postcards informing veterans of our tax exemptions. I have another bill coming up later in the Session dealing with veterans of the Global War on Terrorism. This might be another way to address the location of veterans.

**Senator Gustavson:**

If we consider an amendment, and it looks like we will, I want to attach my name to the bill as a cosponsor.

**Senator Brower:**

Of course, anyone in either house is welcome to do this. I will ask Assemblyman Kirner to get more cosponsors in the Assembly, and I will do the same in the Senate.

You have been given a driver's license mock-up ([Exhibit C](#)) from the DMV of how the veterans' designation might look. The states that have adopted a similar law have reflected the designation in various ways. For a number of reasons, the DMV has chosen this appearance in its preliminary design.

**Chair Manendo:**

It is helpful to see what the DMV has in mind.

**Senator Brower:**

Some states simply have put a "V" on the license. Others spell out the word "Veteran." The DMV likes this particular way of showing the designation, and it makes sense to me.

**Chair Manendo:**

Let the record show that we have a room full of our distinguished veterans, and I know they are here in support of the bill.

**Senator Brower:**

I thank the veterans for their service and for being here today and supporting the bill. The bill has broad support among the veterans' groups in Nevada.

**Senator Spearman:**

Section 7, subsection 1 of S.B. 244 reads, in part, " ... Except as otherwise provided in subsection 2, it is a misdemeanor for any person (a) to display or cause or permit to be displayed or possess any cancelled, revoked ... ." In essence, this covers anyone who alters a driver's license. I know S.B. 365 concerns stolen valor. Is there a way to tie S.B. 244, including the proposed amendment, to that bill?

[SENATE BILL 365](#): Establishes the crime of stolen valor. (BDR 15-155)

**Senator Brower:**

The stolen valor bill, S.B. 365, is another one I am sponsoring. Your suggestion, Senator Spearman, is good, and I will look into it.

**Senator Hardy:**

It might behoove us to have the people in the room who support the bill stand. Could we ask them to stand up, since they have stood up for our Country for a long time?

**Chair Manendo:**

All of the veterans in the room have stood in support of S.B. 244.

**Senator Hardy:**

The fiscal note document ([Exhibit D](#)) that has been handed to us mentions a one-time \$55,000 fee. We have put designations on driver's licenses before. Medical information is one concept we have discussed. Will something else be

added to the license so that costs can be shared? Is this \$55,000 cost a shared cost or a one-time cost?

**Terri L. Carter (Administrator, Management Services and Programs Division, Department of Motor Vehicles):**

The vendor that processes the driver's license cards for the DMV typically charges a separate card redesign fee for each feature we add to a license. We could wait until the end of Session to see how many approved proposals will require a change to the licenses—a number of initiatives are being discussed at this point. We could ask the vendor to work with us on these costs. In this case, I defer discussion of the cost to Mr. Cage.

**Mr. Cage:**

I administer the Gift Account for Veterans within the State's General Fund under *Nevada Revised Statute* (NRS) 417.145. Funds are to be used for outreach or services to veterans and their families at my discretion. After last Session ended, Senator Greg Brower said he wanted to sponsor this bill. We met with the DMV and learned there would be a \$55,000 fiscal note. I agreed to pay that through the Gift Account because this is both an outreach mechanism and a service to veterans. It is an appropriate use of these funds.

**Chair Manendo:**

I will close the hearing on S.B. 244. We await the proposed amendment and will discuss the bill and the amendment further in a work session. Now I will open the hearing on S.B. 158.

**SENATE BILL 158**: Revises provisions relating to motor carriers. (BDR 58-466)

**Senator James A. Settelmeyer (Senatorial District No. 17):**

When approached about S.B. 158 originally, I was a bit concerned because it seeks to alter contractual negotiations. Traditionally, alteration of contractual negotiations is not done unless there are reasons under certain circumstances. These include ambiguity, mistake, illegality, lack of consideration, duress and oral condition precedents. This bill deals with illegality. The Committee is being asked to make a contractual clause unenforceable or illegal because it should be void as against public policy. I sent the Committee a list of agreements contrary to public policy (Exhibit E) from *Handbook of The Law of Contracts* by William L. Clark, Jr. Agreements exempting a person or corporation from liability for negligence are excluded from contracts, as noted in Exhibit E. This is the

subject of the discussion on S.B. 158. We are asking you to deem these contracts or clauses to be void as against public policy.

Unfair clauses in trucking contracts are written to protect shippers or hold them harmless from anything that happens with a shipment. I will give you an example. A trucker hauls a load to Acme Corporation and backs the truck up to the loading platform where an employee from the corporation unloads the material with a forklift. In the process, the forklift operator falls off the platform. Under one of these unfair clauses, the trucker must pay Acme Corporation for any damage to its employee, the forklift and the goods even though he had no way to prevent the accident. It was due to the forklift driver's negligence. Senate Bill 158 addresses such an example.

Thirty-seven states have passed bills similar to S.B. 158. Montana and Idaho recently passed comparable bills, and their governors are expected to sign them, bringing to 39 the number of states with such laws. Throwing out these clauses and contracts will not change anyone's ability to collect for damage of goods. It will hold the responsible party liable. That is all we seek to do with this bill.

When I first started to introduce this bill, one person told me that he and the organization he represents do not agree with the bill's provisions. Since then, no one has come to my office to talk about opposition to this issue.

I have created a breakdown of the bill ([Exhibit F](#)) explaining which sections of Nevada law, NRS 706, need to be changed and why.

**Chair Manendo:**

It is fine to walk through the bill now.

**Senator Settelmeyer:**

Senate Bill 158 proposes to add a new first section. This new section 1 contains three subsections. Subsection 1 deems indemnification clauses in contracts void as against the public good. These are contracts between a motor carrier or trucking company and a promisee or shipper. Indemnification is to compensate for damages or loss sustained, expenses incurred, etc. Section 1, subsection 2 of S.B. 158 states that section 1 does not apply to agreements providing for the interchange, use or possession of intermodal chassis or other intermodal equipment. Subsection 3 of section 1 contains the definitions of "contract" and "service incidental." Sections 2, 3, 4 and 5 reference section 1.

**Chair Manendo:**

Is [Exhibit F](#) a breakdown of the bill, or is it an amendment?

**Senator Settlemeyer:**

No, it is only a walk-through, or explanation, of S.B. 158. I do not know of any amendments yet.

Section 6 of S.B. 158 contains the last proposed change to NRS 706. It concerns prospective contracts. We are not trying to affect existing contracts. That would be wrong and would violate the contracts. Retroactive implementation would be illegal. The bill only covers contracts going forward.

**Senator Spearman:**

Do you have an estimate of how much it might cost trucking companies and individual truckers to become the shippers' insurers? Is there an aggregate cost?

**Senator Settlemeyer:**

I do not believe this can be calculated as an aggregate cost without testimony on specifics. When a death occurs due to negligence, the cost of such a tragedy can be in the millions. Truckers could be responsible for the negligence of an individual. To me, this does not seem fair. It is wrong.

**Paul J. Enos (CEO, Nevada Trucking Association):**

The Nevada Trucking Association (NTA) supports S.B. 158. I have provided a handout ([Exhibit G](#)) with more background on our stance. The bill seeks to right a wrong. Indemnification agreements can be good things if they are two-sided because each party agrees to pay expenses occurred from its own negligence or omissions leading to losses and damages. Historically, each party has been responsible for its negligence. Railroads began including one-sided indemnification agreements in the 1960s. In the 1970s and 1980s, big oil companies joined the trend. A proliferation of such one-sided indemnification agreements occurred after the 9/11 terrorist attack when shippers wanted to limit their liability and insurance costs.

It was easy for them to include such clauses in contracts, particularly with small carriers. In Nevada, most of our trucking companies are small. Our largest trucking company has about 170 trucks. Shippers have influence by saying they will not use a trucking firm unless it agrees to sign the agreement and accept the shipper's liability. We see this as an overreach by corporate lawyers who, in



essence, are telling the little guys they must take on the shippers' liability if they want the business. This costs the trucking industry money and puts safety at risk. If a shipper can place liability on others, safety no longer is taken as seriously.

Not many trucking company representatives will testify in favor of the bill because they are afraid. They do not want to upset their customers, the shippers. Without them, trucking companies cannot survive economically. One NTA member is brave enough to be here today. Another member is dealing with an indemnification incident. While one of his truck drivers was on top of a tanker, an employee of the shipper moved a piece of equipment, knocking the driver off the tanker. The result is a six-figure worker's compensation insurance claim that the trucking company must pay. The driver sued the shipper for its negligence. The shipper denied responsibility for the judgment since the trucking company had signed the contract in which an indemnification clause existed.

Indemnification lawsuits do not consider the facts, such as who moved the equipment, who was negligent, how the trailer was loaded, how long the skid marks were or where the broken glass was located. These indemnification agreements ignore the facts. Shippers say it is not the facts that determine who pays for the damages. What is in the signed agreement is the only consideration.

The NTA supports changing this unfair public policy. The bill does not make the shipper responsible for the trucking company's negligence. It reverts to the historical precedent in which a trucking company is responsible for any damages it creates, and the shipper is responsible for any damages it creates. This bill will level the playing field. It is an interesting piece of public policy because rarely do we see defense and trial lawyers on the same side of an issue. Both of these groups are in favor of S.B. 158.

Another point is that indemnification is not an issue for the large national carriers. They have corporate lawyers who negotiate with shippers' lawyers to avoid indemnification agreements. It is significant for small trucking companies, such as those in Nevada. Shippers have influence over small companies who need the business. Furthermore, shippers approach drivers to sign agreements before shipments are picked up or dropped off. In these cases, drivers obligate their companies to indemnify the shippers.

We believe this should be void as against public policy. Nevada is not a leader in this matter. By passing this bill, our State will be in line with other states in our area. I have provided a timeline ([Exhibit H](#)) showing effective dates of other state's anti-indemnification legislation. California passed such legislation in 1967. Texas passed it in 1997. After 2004, many states did the same as shippers aggressively began using indemnification agreements.

**David R. Parker (Senior Legal Counsel, Great West Casualty Company):**

Great West Casualty Company is the largest insurer of trucking firms in North America. I have provided written testimony ([Exhibit I](#)) in support of S.B. 158. My perspective on this matter comes from over 40 years' experience in all aspects of the trucking industry. As an attorney, I represented shippers and truckers, particularly small trucking firms. I also owned a trucking company in Minnesota and often signed contracts with indemnity agreements. In the past 8 years, I have worked with all 50 states in my current position.

In the 1960s and early 1970s, drafting contracts was simple. Each party indemnified each other for his or her own errors. Now, instead of a considering a contract as risk management, it is seen as risk assignment. Furthermore, we are not concerned with a company with 1,000 or 10,000 trucks. These large firms have the economic resources to negotiate anti-indemnity clauses. Smaller firms are not in this position. Those opposing the legislation in Kansas, Wyoming, the South and elsewhere explain their positions this way: they are negotiating in advance to avoid hiring lawyers and involving judges. They say truck insurance already covers indemnity through higher premiums. This is a misunderstanding or misrepresentation and is disingenuous because it is not correct. First, the rates are not much higher. Second, we insure companies, large and small, based on knowing their procedures, numbers of trucks, employees, equipment maintenance, compliance with laws, etc. We know what our risk is. However, we cannot anticipate all the risks involved with indemnity provisions in contracts that firms make once they are insured.

Senator Spearman asked an interesting question about trucking companies becoming the insurers for shippers. Most small companies have \$1 million policies. Once a firm assigns the \$1 million to a shipper through an indemnity agreement, more expenses can be incurred. The trucking company can be held liable in excess of \$1 million and will not have enough insurance to cover it. My company has no idea who the shipper is, whom the shipper hired and what

safety programs the shipper had in place. Responsibility is an incentive to run a safe operation.

As you see on the national map ([Exhibit J](#)) of the status of anti-indemnity legislation in the states, Nevada is not behind. It takes time and must be accomplished state by state due to the nature of our judicial system. Montana and Idaho passed the legislation recently, so Nevada is in line with its neighbors. All the other states are working on their bills. By the end of 2013, we will have fewer than ten states without the legislation. This is the only bill I have advocated in all my years in the trucking industry in which all attorneys agree. The reason is that it is good public policy. Nobody wants to be a copycat. Our peers nationwide will follow once the public policy value is explained regardless of political party.

**Senator Hardy:**

The map shows that Colorado, where you live, does not have an anti-indemnification statute. Please explain why.

**Mr. Parker:**

We have attempted several times to establish this legislation in Colorado. Early on, the counterpart to Mr. Enos in Colorado took a different approach. In a state like that with significant amounts of oil, gas, mining, railroads and so on, large influential lobbyist firms are present. Initially, the railroads opposed it. We spoke with that industry's representatives about the Uniform Intermodal Interchange and Facilities Access Agreement, administered by the Intermodal Association of North America, which allows contracts to be negotiated by organizations rather than between big and small companies. The same railroads that supported it in Nebraska and Kansas opposed the change in Colorado. Other large corporations, including the Chamber of Commerce, opposed it there but not in other states. We discovered a common lobbyist firm represented all these groups opposing the bill. Additionally, big oil companies were part of the opposition. The forces were joined against us. Because the trucking industry does not have the influence, stature or reputation there as it does in states such as Nevada or Wyoming, it could not overcome the opposition in Colorado. The legislature there is not as opposed to the concept, but is responsive to the lobbying forces and big money interests.

**Ed Meyer (President, NEVCAL Trucking):**

An example of this happened to NEVCAL Trucking when one of our drivers was at the Port of Oakland, California. A lift operator was placing a container on a chassis. He missed the chassis and placed the container on top of our truck. His company refused to pay for the damage to our truck. We were liable for his negligence and had to pay the claim.

**Ryan M. Venci (Las Vegas Defense Lawyers):**

We recently handled a case that demonstrates the need for this bill. It concerned a tractor-trailer hit by a passenger vehicle at a turnaround in the middle of a highway. The turnaround was used by truckers working on a highway project to return for more loads of dirt. My client supplied one of the trailers attached to a tractor driven by a driver from a different company. The main point of the case was whether it was safe to have the turnaround at this particular location, an issue in which my client had no influence. He just provided a trailer used to haul dirt.

He had a contract with an indemnity provision. The plaintiff filed a lawsuit naming the contractor, the trucking company and my client. After rudimentary discovery, we showed the plaintiff that my client had no liability in the case. The only issue was whether the reflective tape on the back of my client's trailer was visible to the plaintiff. At that point, the plaintiff was willing to dismiss the suit against my client. Because of the contract, however, we needed the contractor's permission to dismiss his cross-claim. Otherwise, we still potentially faced liability. The contractor refused. His position was that my client was responsible for anything happening on that job site that involved my client, as stated in the indemnification clause of the contract. Litigation lasted more than 2 years. We brought motions for summary judgment. Ultimately, there was a mandatory settlement conference. The judge listened to our position and convinced the contractor that our client had done nothing wrong and was not liable.

If S.B. 158 had been the law when the plaintiff agreed to dismiss the case against my client, the contractor would not have had a cross-claim. This is an example of why this bill is necessary. My client could have saved much time, money and worry. He thought he might have had to pay personally for the plaintiff's damages.

**Peter D. Krueger (Nevada Petroleum Marketers & Convenience Store Association):**

The Nevada Petroleum Marketers and Convenience Store Association is a statewide trade association representing members who operate trucks. At times, they use indemnification clauses. There is more to S.B. 158 than has been presented. We view this as a deep pockets issue. I find it interesting that the trial attorneys are complaining about delays, which is what they usually cause us. When used, these clauses prevent a third party from suing a large corporation with more money and assets than the other two parties in the complaint.

The law is clear. If you are responsible for causing an accident or injury, you are liable. There is no question. When indemnification is used, it prevents someone from suing a third party who, as an example, happens to provide fuel for the truck. Why should one of my members who loaded fuel for a truck that was later in an accident be sued? We know anyone involved will be sued. We believe indemnification clauses are effective and identify the responsible party.

As far as the examples heard earlier, the Port of Oakland is a quasi-public agency. While I am not sure about California law, I am amazed at the situation told to us. In the other example, a driver was on top of a tanker truck. This is a violation of Occupational Safety and Health Administration, U.S. Department of Labor, policy. I am not sure how that circumstance happened. The last point is that it is not surprising trial lawyers support the bill. They will support anything that takes away the right of contractual relationships. I represent small companies, not major oil companies. We find this is about the contractual relationship between two parties. Both parties can ask for changes to contracts without corporate lawyers being involved.

State statute on this subject works well. I could find only one instance among my members for which an indemnification clause was used in the past 2 years. If the situation with such clauses is truly as bad as was described by the bill's proponents, then we should discuss all indemnification clauses. Every indemnification clause in Nevada should be incorporated into the bill, not just those connected to a narrow area.

**Senator Hardy:**

You alluded to the person fueling a truck being held responsible for that truck's accident later down the road. I see similarities with the forklift operator accident

while unloading a truck. The case of the trucker being held responsible for what happened in the warehouse is similar to why the fueler should be responsible for a subsequent truck accident. If you want to expand the language of the bill ... there is a fairness issue. What is the dissimilarity?

**Mr. Krueger:**

From my research and discussion with my members, I do not see your example as a third-party situation.

**Senator Hardy:**

The fuel sloshed around in the tanker, causing it to overturn. Therefore, the fueler caused the problem. Is that the point?

**Mr. Krueger:**

That could be alleged. Why should the person who used to own the fuel be cast under a huge net for liability when truckers do not load trucks properly, trucks are overweight or procedures are not followed? The fuel or boxes in a truck are not the causation of an accident or problem.

**Senator Hardy:**

I still am struggling with the examples.

**Senator Gustavson:**

Why have so many other states passed this type of legislation? They do not seem to have a problem with it.

**Mr. Krueger:**

Nevada is unique and does not follow the herd. The fact that 30 or more states have done so is not justification to pass legislation.

**Senator Gustavson:**

I do not see it as the main reason, but I am curious about why the other states have done it. Why should we not pass this legislation? The other states apparently have not seen a problem with it, so I wonder why we would have a problem with it here.

**Mr. Krueger:**

This is a model piece of legislation coming from the American Trucking Association (ATA). Mr. Enos with the NTA is a member of the ATA. He has

taken on the mantle to pass S.B. 158 on behalf of his members. It is a worthy goal for his association but not for mine.

**Senator Spearman:**

You said you represent small trucking companies, but you also mentioned deep pockets. Those terms seem antithetical to me. Someone aiming for deep pockets would not target a small company. Which one is it?

**Mr. Krueger:**

In the experience of my association involving the transportation of fuels, it is both. Many of my members run two to five trucks. Their firms are not large. Some are also members of the NTA. When I mention deep pockets, I refer to a third party—a large corporation that owns the fuel. One of my members may haul fuel for a large terminal operator, for example. The fuel in the truck is owned by someone else with many more assets than my member has with only three or four trucks.

**Senator Spearman:**

I want to understand the supply chain. Your members have trucks. What is the approximate value of each load?

**Mr. Krueger:**

For 10,000 gallons, the cost of a load of fuel is about \$30,000. Equipment costs are additional.

**Senator Spearman:**

I recall a television commercial for a car insurance company in which a man is washing his car as his neighbor is trimming his tree right next to the car. A branch falls onto the car, damaging it. In this scenario, the man washing his car would be liable for the damage under current law.

**Mr. Krueger:**

The difference is between commercial and residential insurance. Using your example, if the man cutting the tree had sought indemnification according to Nevada law, he would not be liable for the damage to the car. The issue for my association is about asset protection for the larger entity.

**Senator Gustavson:**

I have been a truck driver. With tanker trucks, is fuel pumped into the tank from the top through a hatch that must be opened and closed manually? If so, then is that why the man in the earlier example was on top of the tanker?

**Mr. Krueger:**

It used to be that way. Now it is pumped in from the bottom of the truck for safety.

**Senator Atkinson:**

I agree with what you have said and understand the liability concern. I wonder about passing the bill because other states are doing it.

**Senator Gustavson:**

Perhaps it is good public policy.

**John P. Sande III (Western States Petroleum Association):**

I represent the Western States Petroleum Association (WSPA), a nonprofit trade association of companies accounting for the bulk of petroleum exploration, production, refining, transporting and marketing in Arizona, California, Hawaii, Nevada, Oregon and Washington. We are opposed to S.B. 158 because private industry should have freedom to contract. If we had this indemnification provision in a contract, the petroleum company could tender its defense to the motor carrier without defending the action. The oil companies always are sued because they have large assets. In this case, the motor carrier would defend the action and save substantial amounts of money for the petroleum company. That is why they include indemnification provisions.

Nevada law allows indemnification elsewhere, including as a means to attract corporations to our State. A director of a corporation cannot be sued for negligence. The director can only be sued for bad faith. Other circumstances of limited liability exist. An investment advisor from New York, with whom one of my trust clients worked, stated the investment firm would only be liable for gross negligence in its investment decisions. Someone considering this investment advisor must decide if it makes sense to use this advisor or to look for another. The WSPA believes this is a freedom to contract matter and opposes S.B. 158.



When I first started to practice law, Nevada was the only state with gaming. Other states thought it was no good. None of the banks would make gaming loans then. Eventually all the big banks made gaming loans to the public companies that came to our State. We have a good law on the books that allows indemnification, and we should not change it for one industry.

**Senator Hardy:**

Do you want to change the law for all industries and not limit it to the trucking industry?

**Mr. Sande:**

No, I am opposed to changing it for any industry. We ought to allow freedom to contract. Indemnification provisions are a matter of negotiation. Why single out one industry? We allow indemnification in virtually every other situation in Nevada. Each party must decide if it will sign a contract containing such a provision.

**Senator Spearman:**

I hear the argument that this is a business decision and should be free of legislation or regulations. I have listened to the testimony from both sides. In good faith, I ask, absent any litigious assertions, what are the moral obligations of the primary perpetrator of these types of calamities?

**Mr. Sande:**

This does not stop someone from suing my client if he or she believes negligence is involved. If someone is injured, a lawsuit can be pursued. This is a question of who defends the action. In this case, my client has the shipper defend the action because the shipper was more closely involved and has more information. A third party still can try to recover damages against an oil company. The question is whether it makes sense for a company to pursue this action. Yes, it does. It is a contractual matter.

**Senator Spearman:**

I am asking about the moral obligation.

**Mr. Sande:**

Negligence often is difficult to determine. This is not about intentional crimes but about negligence. Contracts in Nevada allow people to agree to indemnify their work for negligence, sometimes for gross negligence, but not for

intentional damage. It is all a matter of what is included in a contract. For example, the reason many corporations come to Nevada is that we protect their directors for negligent decisions. If they intentionally make poor decisions, the directors can be sued. Without this allowance in Nevada law, corporations could decide to move to Delaware where such allowance is made. I do not believe that negligence is bad. That can happen all the time. There is some moral obligation, however, with gross negligence.

**Senator Hardy:**

You said the bill does not stop anyone from suing. Now I understand how attorneys on both sides of the issue can like this bill.

**Senator Settelmeyer:**

The public policy fundamentally comes down to one simple question: Should you be responsible for my negligence?

**Mr. Enos:**

Mr. Krueger mentioned his members. Some of them also are members of the NTA. Those with trucks have contacted me and several other customers, saying they favor this bill. They stated they are afraid to testify in front of a legislative committee because of what could happen to them with their shippers. This influence is the hammer that shippers hold over the heads of small trucking companies. It is difficult to get these members to testify because they are worried about losing business. Their customers, the shippers, might find other trucking companies to transport their goods. The bill is supported by the ATA. The concept of our bill has been established across the United States. That is a good reason to support S.B. 158. I agree with Senator Gustavson that we support bills not because of what other states support but because it is good public policy.

Mr. Parker will address the legal aspects that have been raised. I ask along with Senator Spearman—where is the moral obligation? We are not asking a shipper to take on the negligence of trucking companies. We are not asking a shipper to be responsible for what one of our drivers does or what one of our employees does. We will take full responsibility for any negligence by the trucking company. However, we think the same accountability should exist among shippers. We are asking for a level playing field. We are not asking for special treatment.

There has been talk of including other industries. We have kept the focus narrow because it is an issue within the trucking industry. In other industries, disagreements exist. Contractors and subcontractors do not always agree on indemnification matters. Legislators will decide whether to expand the coverage, but I represent the trucking industry. My members, the small trucking companies, asked the NTA to speak in favor of this bill. They have seen their insurance premiums skyrocket because of indemnification agreements in which shippers disregard the facts.

**Mr. Parker:**

I have heard several statements that need to be clarified. The first is that S.B. 158 only addresses negligence because a person is accountable for intentional actions. This statute specifically involves indemnification for damage resulting from negligent or intentional acts or omissions. The second clarification is that this is not an initiative begun years ago by the ATA. It was started by a group of small truckers in the bulk area of the industry. My company insures many bulk carriers. They talked with us about what they were facing in a few states. Oil interests told them insurance already covered them. They asked Great West Casualty Company to explain to state legislatures that this is not covered by insurance and the ramifications of indemnity clauses for truckers. I was recruited in the company because I have trucking experience. Ultimately, I got the ATA involved for minor support such as printing maps. The industry itself has worked with the state trucking associations, which is the logical way to pass state laws. To clarify, this effort is from the NTA, not the ATA. Lastly, precedent exists when one party does not have the economic wherewithal and the sophistication to defend itself in areas including usury, antitrust and consumer protection.

**Senator Atkinson:**

Mr. Krueger, Mr. Enos mentioned that truck drivers have come to him in favor of the bill because they have experienced pressure from shippers. Have you heard this from your members and not told us? Are you representing your members?

**Mr. Krueger:**

I would never withhold anything from this Committee or any member of the Legislature. It is news to me that some of my members contacted Mr. Enos. I do not know how many people are involved. They did not tell me they support removal of this provision.

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**Senator Atkinson:**

Would you please survey your membership on this topic and let the Committee know the outcome?

**Mr. Krueger:**

You have my commitment, and that of Mr. Enos, that we will resolve this and report to the Committee.

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**Chair Manendo:**

The hearing on S.B. 158 is closed. No further business is before the Committee, so I adjourn the meeting at 9:30 a.m.

RESPECTFULLY SUBMITTED:

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Jennie F. Bear,  
Committee Secretary

APPROVED BY:

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Senator Mark A. Manendo, Chair

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

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	2		Attendance Roster
S.B. 244	C	1	Senator Greg Brower	Mock-up from Department of Motor Vehicles
S.B. 244	D	1	Terri L. Carter	Executive Agency Fiscal Note
S.B. 158	E	1	Senator James A. Settlemeyer	Agreements Contrary to Public Policy
S.B. 158	F	3	Senator James A. Settlemeyer	Senate Bill 158 Indemnity
S.B. 158	G	2	Paul J. Enos	Trucking Indemnification Legislation
S.B. 158	H	2	Paul J. Enos	State Anti-Indemnification Legislation Timeline
S.B. 158	I	3	David R. Parker	Written testimony
S.B. 158	J	1	David R. Parker	Map, Status of Anti-Indemnification Legislation