

**MINUTES OF THE  
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session  
March 29, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 8:04 a.m. on Friday, March 29, 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  
Assemblyman Randy Kirner, Assembly District No. 26

**STAFF MEMBERS PRESENT:**

Jered McDonald, Policy Analyst  
Darcy Johnson, Counsel  
Melodie Swan-Fisher, Committee Secretary

**OTHERS PRESENT:**

Paula Penrod  
Andrew J. MacKay, Chair, Nevada Transportation Authority  
Paul J. Enos, Chief Executive Officer, Nevada Trucking Association  
Emily Sermak  
Robert L. Compan, Farmers Group, Inc.  
David Goodheart, American Insurance Association  
Terri L. Carter, Administrator, Management Services and Programs Division,  
Department of Motor Vehicles  
Gil Grieve, Concours Body Shop

Senate Committee on Transportation  
March 29, 2013  
Page 2

Tim Waldren, Paramount Auto Body, Inc.  
Brent Holman, Diamond Auto Body  
Caleb S. Cage, Executive Director, Office of the Executive Director for Veterans'  
Services, Office of Veterans Services

**Chair Manendo:**

We will open the hearing with Senate Bill (S.B.) 302.

**SENATE BILL 302**: Requires taxicab motor carriers in certain counties to maintain and provide to the Nevada Transportation Authority and other taxicab motor carriers certain information. (BDR 58-846)

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

Senate Bill 302 is a public safety measure aimed at filling a loophole in laws regulating the taxicab industry. The bill will not apply to Clark County. Taxicab businesses in Clark County are governed by a different regulatory agency than those governed in the remainder of the State. The Nevada Transportation Authority (NTA) governs taxicab businesses in all counties except Clark County.

Taxicab companies are required to administer tests to their drivers for alcohol or controlled substances. The tests are done for preemployment, when reasonable suspicion exists and at random. Senate Bill 302 would require cab companies to maintain records of the results of such tests, provide the results to the NTA and release the results to other companies upon request. The goal is to prevent prospective or current employees from seeking employment at other taxicab companies after they have tested positive at their current or former employers. There is no system that would alert subsequent employers to drivers' test results obtained by other taxicab companies. The bill anticipates the NTA would adopt regulations to determine how the details of the arrangement would be implemented. This is a public safety measure. It is intended to protect passengers and the public. Its intent is also to protect cab companies that would benefit from enhanced knowledge about results from prior drug tests of prospective employees. Mr. Chair, I know you have championed issues relating to driving while impaired. Senate Bill 302 is another measure that will help make our roads safer.

**Paula Penrod:**

I will read my written testimony ([Exhibit C](#)).

**Senator Gustavson:**

Mr. MacKay, how would officials from taxicab companies access records of drivers who have tested positive on drug tests? Would a list be accessible online? Would the officials be able to access the information by logging on to a Website and entering a password?

**Andrew J. MacKay (Chair, Nevada Transportation Authority):**

We are exploring multiple ways to make the information accessible. If a driver is cited numerous times for certain offenses or fails to appear on the offense as ordered by the authority who cited him or her, the driver is placed on a do-not-hire list. The do-not-hire list is accessible via the Internet.

The language in section 1, subsection 2 of S.B. 302 indicates we have options regarding who can access the list of drivers who have tested positive on drug tests. It states: "The Authority may adopt regulations to carry out its duties pursuant to this section." If the Committee would like us to make available online the list of drivers who have tested positive, we can add that to the bill's language. After the 77th Legislative Session adjourns, we will be determining rules for the notification process. Another option would be for the NTA to maintain and oversee the list for internal use only. The carriers would have to contact us for information about drivers. The NTA is open to the Committee's determinations on all the specifics. At present, if there is a concern about the reason an individual is listed on the do-not-hire list, no information is divulged.

I have been working on this bill with Ms. Penrod and Senator Brower for nearly a year. It is horrible events like the one that happened to Ms. Penrod's son that make us realize there may be a problem with the system. George Assad, Commissioner of the NTA, summarized it best when he said any measure that improves public safety should get our endorsement and help. This bill will save someone's life. The individual who killed Ms. Penrod's son was terminated from employment immediately after he tested positive. The NTA cited him. However, that individual could have gone to another taxicab company and been employed. I think S.B. 302 fixes a loophole we discovered via this horrible event. I wholeheartedly support S.B. 302. The NTA can implement it with no effort.

**Senator Gustavson:**

I support the bill. I would like to suggest, however, that we put on a Website the list of those who have tested positive. The information should be available only to taxicab business employers.

**Mr. MacKay:**

I do not think we have the technology in place to allow only taxicab carriers to access the information. Making the information available online would be simple, though.

**Senator Brower:**

I am confident these issues could be worked out. The key idea behind S.B. 302 is to provide cab companies with more information on prospective employees. They should know whether prospective employees were terminated from employment or tested positive while working for another company. They would be able to make hiring decisions more confidently.

**Senator Gustavson:**

I did not want to indicate the list process should be limited to taxicab companies. The NTA oversees other transportation trades as well. It seems any businesses the NTA oversees should have access to the information the list would provide.

**Mr. MacKay:**

Persons placed on the list would not be able to get jobs in the transportation industry. Cab drivers who test positive and, for example, try to gain employment with a limousine company would be unable to pass the screening process.

Senator Gustavson hit on a key point regarding this bill—making the list available to all taxicab companies provides prospective employers with valuable screening information. The company at which a given driver tests positive has an obligation to provide the information to its competitors. Limousine companies have always wanted to share information about problematic drivers with other carriers. It is frustrating to them when other cab companies inadvertently hire their former employees who have been troublesome.

**Senator Spearman:**

Ms. Penrod, I am sorry for your loss of Ryan.

I do not know how we report drug offenses at present under DUI laws. Of course, we are concerned by the dangers posed by drivers of vehicles with four wheels. Similar to Senator Gustavson's concerns, I am concerned about the dangers posed by drivers of vehicles with eight or sixteen wheels. Have you

considered requiring random drug testing as part of the process? I do not think you should do away with the notification list. When I worked at the Pentagon, someone would come around at odd times of the day and place cups on employees' desks. Employees knew it meant they were being asked to do a random drug test.

**Senator Brower:**

I, too, recall the same experience from my time working at the Pentagon. Random drug testing in the U.S. Armed Forces is a part of life. The process works well. A random testing process is in place in the taxicab industry. The problem is the results of random tests are not communicated to would-be employers.

**Mr. MacKay:**

Random testing is required of all motor carriers who work in the State. The requirement is pursuant to adoption of federal regulations through *Nevada Administrative Code* (NAC) 706.247. Before prospective employees are hired, they are subject to preemployment drug tests. The NTA oversees 11 motor carriers. Once hired, employees are subject to random drug testing. Carriers often enter into an agreement with a third-party administrator to execute the testing of their employees. Drivers are tested at random. They do not know when they will be tested. When they are notified, they are told to drive to Concentra Urgent Care in Reno or Sparks, or a similar clinic, to get a urinary or blood test. Positive test results are forwarded to the carrier, and the carrier terminates the driver immediately. This bill attempts to fix the problem of drivers who have tested positive who then become employed with other companies. Prospective employers would be notified of drivers who tested positive either on random tests or as a result of an accident. Drivers involved in accidents are tested afterward.

**Senator Spearman:**

Could the information the clinic transmits to the employer be just as easily transmitted to the NTA, who could then pass it along to all the motor carriers under their purview?

**Mr. MacKay:**

Yes, I think it would be possible for the NTA to pass along information to the motor carriers.

**Senator Brower:**

These questions point to the need for regulations to be drafted, should S.B. 302 become statute. There is enough room for the NTA to exercise discretion regarding regulations. The matter of how and with whom to share the information on the list could be addressed in a regulation.

**Senator Spearman:**

That was my point. When law enforcement officers do vehicle stops, they contact the dispatch center to have them run 10-28s, a check on the vehicles' registration, or a 10-29, a check for wants and warrants on the drivers. Whatever is on drivers' records is relayed to the requesting officer. Maybe there is a way to replicate this protocol. We are trying to find a way to provide the information to those who need it, but we want to abide by the privacy protection laws.

**Senator Hardy:**

I assume the 11 motor carriers the NTA oversees include other carriers besides taxicabs. The release of records, as detailed in section 1, subsection 1, paragraph (c) should be reconsidered. The way it is written, someone other than the taxicab carrier who has requested the tests on employees must request results of those tests. If we leave the passage in section 1, subsection 1, paragraph (c) it as it stands, regulations regarding how the testing results are shared will be limited. I am in favor of making the list of the testing results available to all motor carriers under the NTA's authority. I am concerned about Concentra and how the Health Insurance Portability and Accountability Act of 1996 (HIPAA) affects the release of drug testing information. This needs to be addressed. We want to protect those on our highways and roads.

**Ms. Penrod:**

I can address the HIPAA issue. I manage a medical practice, and I have worked in medical settings for over 30 years. Concentra is governed by HIPAA limitations, as is any drug testing facility. The law states the information can be released to, in this case, the NTA. The information is kept in confidence; therefore, it is allowed. Employees at any facility where information is covered under HIPAA are not allowed to discuss patients' confidential medical records except with others in the same medical office or with law enforcement. If our office is contacted by the Reno Police Department or any other law enforcement office, we are allowed by law to discuss certain medical information as it pertains to or affects that agency's business. State law and HIPAA regulations

make provisions for sharing medical information. I am very proud to see the Committee recognizes that the sharing of drug testing results should extend to other motor carriers besides taxicab businesses. The individual who killed my son had failed a drug test with a Nevada Department of Transportation (NDOT) carrier a couple of years prior to killing my son. If that information had been shared with other carriers, my son might be alive today.

**Senator Spearman:**

This is a rhetorical question. Do taxicab drivers have to have a commercial driver's license (CDL)?

**Ms. Penrod:**

No, they do not have to have a CDL.

**Senator Spearman:**

Senator Brower, I would suggest we consider requiring taxicab drivers to possess CDLs. Doing so might close some of the loopholes we have discussed.

**Senator Brower:**

Mr. MacKay and I have discussed requiring taxicab drivers to have CDLs. He can explain why taxicab drivers are not required to hold CDLs now and whether it makes sense to change the requirement.

**Senator Spearman:**

I understand CDL to stand for commercial driver's license. If a driver is receiving money for the services of driving, it seems obvious it is a commercial endeavor. Drivers of cars, vans and pickups need Class C driver's licenses. Am I not understanding something?

**Mr. MacKay:**

Senator Gustavson, a former truck driver, is the Committee's resident expert, and Paul J. Enos, Chief Executive Officer, Nevada Trucking Association, is in the audience, so they can correct me if I am wrong. Federal regulations that states have chosen to adopt determine driver's license requirements. Specifically, regulations on requirements for driving given vehicles are based on the size of the vehicle. A CDL is required for drivers operating vehicles that weigh 10,001 pounds or more. Changing who is required to hold a CDL to include taxicab drivers could close some of the loopholes. I would defer to the experts for more information, however. I do not know much about CDL laws.

**Senator Spearman:**

As I said, my question was rhetorical. I am just thinking out loud.

**Senator Atkinson:**

I am familiar with some of the requirements for CDLs. I think the requirements relate to the size and weight of vehicles. They are dictated by federal regulations. Paul Enos, in the audience, is shaking his head "yes." I do not think taxicabs fit the minimum criteria for size and weight.

**Senator Brower:**

That is my understanding. The requirement for holding a CDL is related to the size of the vehicle and not so much that the vehicle is for hire. I understand it to mean that because a taxicab is a car, only an ordinary Class C driver's license is required. I am not taking a position on whether that makes sense, but that has been the policy.

**Senator Gustavson:**

That is correct, the CDL requirement is based on the size and weight of vehicles, not just the size. Drivers are required to hold a CDL to drive vehicles weighing over 26,000 pounds because special training and testing is required to operate heavy vehicles. A CDL is required to operate larger, heavier vehicles because of air brakes and other considerations.

**Paul J. Enos (Chief Executive Officer, Nevada Trucking Association):**

We in the trucking industry have long since recognized the need for sharing information about drivers' drug testing. The Moving Ahead for Progress in the 21st Century Act (MAP-21 Act) was passed in the summer of 2012. The MAP-21 Act, Subtitle D, established a clearinghouse for information on CDL holders' use of drugs and alcohol.

By federal definition, commercial motor drivers are those who drive vehicles weighing 10,000 pounds or more for purposes of interstate commerce. In Nevada, drivers who operate vehicles that weigh 26,000 pounds or more are considered commercial motor drivers. There is a difference between intrastate and interstate driving. We are in favor of the clearinghouse idea. My carriers have said they have trouble determining whether drivers have failed drug tests at other companies. The Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation, is in the process of making rules for a clearinghouse for information on drug and alcohol tests done on drivers. Every



service provider who conducts drug and alcohol tests on commercial drivers would be required to submit the results to FMCSA. Carriers would be assigned personal identification numbers to enable them to look up individuals to determine if they have failed drug and alcohol tests. The trucking industry has been supportive of this idea because it would improve safety. All carriers regulated by the NTA would be listed in such a clearinghouse.

**Senator Brower:**

We have drafted S.B. 302 because taxicab drivers are not regulated under any clearinghouse for drug and alcohol tests.

**Senator Hardy:**

Ms. Penrod, you are probably aware of how drug and alcohol tests are done. Senate Bill 302 mentions blood, breath and urine tests. Which method is used for the random or even the preemployment test?

**Ms. Penrod:**

I have learned over the last 2 years that a random test is one in which individuals are chosen at random and told to have a urine test done. The individual who killed my son had a test done when he was hired. During the ensuing 8 months, he did not have a random test. He also did not have a test based on reasonable suspicion, though, as he later testified, he had used drugs while on the job. A consortium oversees testing for taxicab drivers. Essentially, the operation is done by computer. The computer randomly pulls names of individuals to be tested. With this method, there is no guarantee that all employees will be tested on a regular basis. Employees can go months, or even years, without being tested.

**Senator Hardy:**

Are the random tests urine tests?

**Ms. Penrod:**

Yes, they use urine tests. I do not mean to be crass, but there are ways of passing the urine test through fraudulent means. "Head shops," stores that sell drug paraphernalia, sell substances that clear drugs from a person's urine. I know of devices that can be attached to the penis. The devices have reservoirs of drug-free urine in them, and users can pretend to give their own urine samples by squeezing the devices into the urine sample cups given them. This can be done easily because persons witnessing test takers do not have

a full view of the test takers' genitals. There are similar devices that can be strapped to women's vaginal areas. Because the test takers have the reserved urine against their bodies, it is warm. The urine is clear of alcohol and drugs, and these test takers pass their tests.

**Senator Hardy:**

Mr. Chair, I must confess that I led the witness, as it were. I know of the process Ms. Penrod has described. I know of instances in which medical exams have been done on CDL drivers who are reluctant to have their hernias checked. A hernia exam includes a scrotal exam. The patients' reluctance can often be attributed to their desire to conceal one of the devices described by Ms. Penrod. Using these methods, employees who have to submit a urine sample to Concentra can pass their tests. I am concerned that random tests will not uncover drugs and alcohol in individuals who are clever enough to get around them.

**Ms. Penrod:**

Senator Hardy, you did not lead me. I would have said what I said even without prompting. Also, I am sorry if my descriptions offended anyone.

**Senator Brower:**

Those of us who have been drafting S.B. 302 have discussed at length considerations such as the one Ms. Penrod has raised. We acknowledge the problem of persons' falsifying urine tests. The bill addresses the loophole caused when persons who test positive escape consequences by simply gaining employment through another taxicab company.

**Chair Manendo:**

Kimberly Maxson Rushton is listening to this hearing. She says "the lack of a State requirement for taxi and limo drivers to have a CDL is the basis for S.B. 210."

**SENATE BILL 210:** Revises provisions governing certain motor carriers.  
(BDR 58-949)

**Senator Spearman:**

Considering the discussion regarding falsifying urine tests, will you consider an amendment to address this practice?

**Senator Brower:**

We are open to any amendments in which the Committee may be interested. We think the bill captures the intent, but we want to address all concerns.

**Ms. Penrod:**

I am available to help in any way I can to pass S.B. 302.

**Emily Sermak:**

I was a school bus driver. I did not have a CDL. The only time I was tested for drugs or alcohol was when I began my job. I drove for 20 years. Random testing does not always work. The bus I drove carried 79 passengers. There were a lot of students on the bus.

**Chair Manendo:**

I close the hearing on S.B. 302 and will bring it back to Committee. We will now hear S.B. 170. I would like to give full disclosure by saying that I am employed by Collision Authority, a collision repair facility that is regulated under *Nevada Revised Statutes* (NRS) as a body shop. Any benefit my employer may gain as a result of the passage S.B. 170 is not greater than what would occur for any other body shop in the State. Therefore, the independence of judgment of a reasonable person in my position would not be affected materially by my interests. Thus, under Senate Standing Rule No. 23, I am not required to make this disclosure. I am doing so in the interest of caution. I will be voting on S.B. 170.

**SENATE BILL 170**: Revises provisions governing the charges for storage of motor vehicles that are imposed by body shops. (BDR 43-582)

**Robert L. Compan (Farmers Group, Inc.):**

Over the past few years, we in the insurance business have seen storage charges from body shops become large, erroneous and even as a means of profit. Some shops do not even have the intent to repair vehicles.

Many vehicles end up in shops after accidents. They are directed there by tow operators at the scenes of the accidents. Sometimes tow truck drivers will use the practice of capping. This is the practice of towing the damaged vehicle to a shop that either has no intention of repairing the vehicle or is inadequately equipped or staffed to do the repairs. These shops may be licensed, but they are not the shops of choice for the insured owner of the vehicle. We see this

practice in the auto repair industry in general. By towing cars to certain body shops, tow truck drivers can earn sales performance incentive funds. Towing vehicles safely to body shops requires expertise and special equipment. I have submitted copies of tow invoices to show examples of storage charges ([Exhibit D](#)). We are aware of shops that charge as much as \$100 per day for storage fees. We have also experienced instances in which we have visited shops and deemed cars total losses. In these instances, we have asked shops to do what is called "teardowns." For teardowns, we ask the shops to remove and reinstall the vehicles' bumpers or just remove the bumpers so we can look inside the vehicles to do a proper examination of the damage to determine whether they can be driven again. We then write estimates of repair costs. During this process, we have found shops have written erroneous charges for the vehicles' storage. The vehicles will have been at the shops, and we will have submitted payment for the labor. I accept that storage fees will be charged on cars left at shops for a long time. We should pay those charges. It is our responsibility to remove vehicles in a timely manner. As shown on some of the invoices in [Exhibit D](#), charges can be exorbitant. One shows 6 days' charges at \$100 per day. They also charged \$150 in administrative fees. I do not know what that shop did to justify charging \$150. Body shops seem to think they are entitled to the full totals on these bills. I will not go into depth dissecting the charges on these invoices.

I contacted the Nevada Collision Industry Association (NCIA) and the Department of Motor Vehicles (DMV). I am also a member of the Nevada Advisory Board on Automotive Affairs. Others who are members are here, and they probably do not like me right now. Those of us who have drafted S.B. 170 have tried to be fair to all those in the industry who could be affected. We had meetings with industry members, and I brought up the tenets of the bill with members of the DMV and the Nevada Advisory Board on Automotive Affairs. The intent of the bill is not to regulate body shops but to set standards for fair and reasonable charges. We thought fair and reasonable charges would be those within prevailing rates. Body shops are required to do surveys every year to determine and report labor rates. If storage rates are, for example, \$25 per day for storing vehicles inside, and \$35 per day for storing vehicles outside, shops must impose those charges. What is happening, however, is that shops are deviating from their usual rates and charging exorbitant amounts, as much as \$100 a day. Many people do not have collision or comprehensive auto insurance. They have to take their cars to body shops and are forced to pay the excessive fees. Typical scenarios would find tow companies removing vehicles

to the tow companies' lots. The vehicles' owners can be forced to pay as much as \$200 to \$300 just for storage and removal to body shops. After the vehicles are stored at the body shops, the body shops will charge for storage, again, sometimes in excess of \$100 per day. These charges are incurred before the vehicles are even deemed repairable or total losses. We have seen cases in which body shops have estimated it will be just a few hours to remove the cars' bumpers. They charge the prevailing labor rates. The insurance company authorizes the shops to do the repairs, but afterward may determine the vehicles are total losses. We remove the vehicles from the body shops in order to settle with the insured owners only to find that the shop has charged, for example, a \$600 storage bill for storage charges accrued while the vehicles were being examined or worked on. In these cases, we will have already paid for labor charges. That is wrong.

I met with members of the Association to come up with ways to make this process fair. I also met with members of the Legislative Counsel Bureau (LCB) to draft the bill. In these meetings, I said body shops should charge the prevailing rate. Members of the LCB speculated that such a requirement could be considered price steering or price fixing, and suggested putting limitations on the rate. The bill states that body shops cannot charge more than 1.5 percent more than the prevailing rate. The bill also prohibits body shops from moving vehicles to their shops without notifying and obtaining permission from vehicles' owners. It is unthinkable that cars could be at shops without the owners' knowledge, but this is being done, especially in conjunction with capping. The tow truck drivers are getting paid to tow vehicles to designated shops. By the time the insurance business finds out about these instances, the cars could have been in the body shops' storage lots for several days, and there is, for example, a \$600 storage charge, a \$150 service charge plus a charge for towing. For a 1996 Cadillac, for example, such charges could result in the car's being deemed a total loss. The aim of S.B. 170 is not to protect just insurance companies. Its aim is to protect consumers as well. The bill proposes requirements for body shops. The prevailing rate for storage charges is based on the rates reported to the DMV.

The DMV does a survey of body shops licensed by the DMV. The DMV regulates rates that body shops can charge. I am not involved in any way with that process. Insurance company officials look at the survey and determine what our companies are willing to pay based on prevailing rates in a given geographic area. There are body shop owners here today who will say they do

not overcharge. They say they charge only for the work they do on the vehicles. The auto insurance companies are not disputing fair charges. Our employees tell insured owners that they can have their vehicles repaired at shops of their choice. They can pay more than the prevailing rate if they choose.

This morning, I received the letter from Paramount Auto Body. The letter asks who will pay for signs that notify customers of body shops' storage fees. Producing signs could be as simple as fashioning one with a magic marker and piece of paper. The signs could say the following, "storage—inside, \$25," or "storage—outside ... ." These and other things are the silly considerations body shops are raising.

I think the issues body shops have are not with the DMV but with insurance companies. They do not want to work with us. They say insurance companies want to use only the insurance portion of the DMV survey. That is ludicrous. We do not do that. Insurance companies use the survey as a guideline. Before we had the DMV survey, we did our own surveys. We sent letters to body shops, and body shops would respond with information about their labor rates. Prevailing rates would be determined from the information they provided. I am not saying the DMV's survey rates are accurate, but I think they are the best reference point we have.

My name was mentioned several times in the letter I received from Paramount Auto Body. The letter asked that I show documentation and other proof to demonstrate how the problem of overcharging for storage fees is widespread.

I have provided a lot of documentation, and I have access to hundreds of pages' worth of documentation showing that body shops have participated in this practice. I can provide the information if the Committee so desires. I wanted to bring more documentation but had trouble copying it and keeping the body shops' names obscured. The opponents of this bill assert that insurance companies allow cars to be left at shops to occupy stalls at the shops as retaliation for the shops' not doing work on the cars in a timely manner. If cars are going to be kept at the shops for, say, a week, the shops should take them outside, charge a prevailing labor rate on them and notify us to pick them up. If we do not retrieve the car in a timely manner, shame on us.

The opponents also say that insurance companies do not negotiate or pay attention to the State survey. That is ludicrous. That is not true. Insurance companies will enter into agreements with preferred shops. These agreements are for lifetime repair on cars, and agreements are usually with shops that are known as "A + " shops, and they are some of the best shops in the State. The shops represented in [Exhibit D](#) are welcome to work with us, but they choose not to do so. The writer of the letter I received from Paramount Auto Body also says he serves on the board of the NCIA. I have been in constant contact with persons at the Association. They have seen S.B. 170, and have vetted and accepted it. Senate Bill 170 will affect the unscrupulous body shops, those whose desire is to use the storage of damaged vehicles as a means for profit. It will affect those who charge Nevada consumers, through insurance companies, erroneous and excessive charges.

I am in favor of S.B. 170.

**Chair Manendo:**

If a given body shop has an agreement for direct repair with, let us say, Farmers Insurance Group, can Farmers obtain free storage for vehicles they direct to that shop?

**Mr. Compan:**

It depends on the shops with which any insurance company negotiates. When Farmers enters into agreements for direct repair with body shops, the shops agree to waive storage charges for vehicles stored up to a certain amount of time, for example, 4 or 5 days. They are allowed to charge daily rates they have posted on the DMV Website for vehicles not picked up after the pre-specified time. It is the insurance companies' fault for not having the cars picked up within the agreed time.

**Chair Manendo:**

Are you saying insurance companies are not charged for storage as long as they have entered into direct-repair agreements with body shops? Are you saying fees can be charged when insurance companies deem vehicles total losses, for example, and then do not have the vehicles picked up by a prespecified amount of time?

**Mr. Compan:**

Yes, that is correct.

**David Goodheart (American Insurance Association):**

Mr. Compan said everything we would say. We are in support of S.B. 170.

**Senator Hardy:**

When I was helping to adopt certain Nevada Supreme Court rules, the attorney I was working with responded regarding one component I proposed by saying, "We already do that." I asked him what objection, then, he had for setting rules requiring everyone to abide by the practice. He said he saw my point. I am using this illustration to make the point that people in the body shop business who say they already abide by good-faith practices should not be adverse to those practices being mandated. However, I remain open-minded.

**Mr. Compan:**

You are correct. We are not saying body shops should not be allowed to charge whatever labor rate they want. The statute states they cannot charge more than 1.5 times the prevailing labor rate. It also says the body shops will need to post signs in their shops that indicate the labor rate and notify customers if their cars have shown up there. Customers may not have been notified of the charges. They may want to remove their cars from those shops right away. The problem is not an isolated issue. It is growing. These businesses have no intention of repairing the cars. I met with the NCIA leadership, and they agreed with me. They support S.B. 170. It would give body shops flexibility to submit their rates and to post them through the DMV's Website. They would have to notify customers in writing. It could be in the Consumer's Bill of Rights portion of the invoice.

**Senator Hardy:**

After people have just been in accidents, they are upset. They may not function as well as normal. Are you suggesting that people who have questions about the storage of their vehicles can ask the body shops or tow companies about the prevailing rates? They may not know that. Are you saying if they know the charge, their best option would be to call their insurance agents for information on getting their cars transferred to someone else? How can vehicle owners avoid being charged exorbitant amounts if they do not even know the prevailing rate?



**Mr. Compan:**

Insured drivers whose vehicles are moved to body shops can find out from tow operators where their cars have been taken. They can call the shops and find out their rates. Their insurance companies will know the prevailing rates. Uninsured drivers, or those who carry minimum liability, however, have a more difficult time finding where their cars end up. They can contact the enforcement division of the DMV for information on the prevailing labor rates. At that time, uninsured drivers can decide whether they want their vehicles repaired at the body shops storing their vehicles.

**Senator Hardy:**

Does S.B. 170 include information about requiring body shops to notify the customer and whom to call for this information?

**Mr. Compan:**

Yes. Regarding repairs costing over \$50, section 9, subsection 3 of S.B. 170 states the following: "In an estimate furnished ... a body shop must include ... the rate and circumstances under which the person requesting or authorizing the repair would incur for storage that exceeds \$50."

I am addressing storage charges only. If the Committee is compelled to address full regulation of body shops, we would be happy to work with you. The intent of the NCIA is not to regulate body shops. Several states do have that arrangement, however.

**Senator Hardy:**

More specifically, is there a phone number the drivers can call to find out where their vehicles have been sent? Is there a Website listed on the estimate?

**Mr. Compan:**

No, there is not. If the Committee desires, I would be happy to include the requirement that body shops provide in their Consumer's Bill of Rights the phone number of the enforcement division of the DMV.

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

The body shops' surveys are posted on the DMV's Website and are for anyone to see.

**Chair Manendo:**

Are the prevailing rates done through the survey? Is that how the DMV determines the rate?

**Ms. Carter:**

Yes, that is correct. The body shops submit that information to us on an annual basis, and then it is posted on the DMV's Website.

**Chair Manendo:**

What is the current rate?

**Ms. Carter:**

I do not know the average current rate.

**Mr. Compan:**

Prevailing rates are based on geographic area. Rates for Washoe County, for example, would be different from Elko, Douglas or Clark Counties.

**Chair Manendo:**

Let us look at Clark County's rate as an example. Do you know the rate for Clark County?

**Mr. Compan:**

No, I do not.

**Chair Manendo:**

Does anyone here know the rate in Washoe County? Someone in the audience said it is \$59. Does this mean anyone could go online and see this rate?

**Ms. Carter:**

I believe the rates are listed by body shop.

**Chair Manendo:**

I see people in the audience shaking their heads no. Is that the rate insurance companies will pay?

**Mr. Compan:**

We pay the prevailing rate.

**Chair Manendo:**

Are you saying that if the rate is \$59, the insurance companies pay that amount?

**Mr. Compan:**

Yes. If drivers want to go to a body shop that charges more, if they want to take their cars to shops that they believe do a better job, for example, that is their prerogative. We explain to our clients that we will pay only the authorized rate. The client will be responsible to pay the difference. The prevailing rate is not an end-all in these scenarios. I have spoken to people in body shops who think the prevailing rate and the DMV process are flawed. Through no fault of the DMV, some shops try to influence the rate by lowering or raising their own rates. That practice is illegal; it is price fixing. That is why we are asking the body shops to state their labor rates in their Consumer's Bill of Rights. That way, customers who walk into the body shops will know what to expect.

**Senator Hardy:**

Are you saying the phone number for the DMV, along with the prevailing rate, is posted in body shops?

**Ms. Carter:**

I can get that information back to you. I would like to verify it before I say anything definitively.

**Gil Grieve (Concours Body Shop):**

I am in favor of the bill. I have owned my shop for 28 years, and I employ 35 people. I am a member of the Advisory Board on Automotive Affairs. I do not represent the Board, but I serve on it. Bob Compan and I have worked on this bill together to find equitable solutions to the concerns of the insurance industry. Senate Bill 170 proposes good solutions. I have business relations with those in the insurance industry. This bill protects consumers from charges they are often not aware of until presented with a bill for services or until they take delivery of their vehicles. This bill allows those in my industry the flexibility to make market adjustments without regulation or legislation and the option to adjust pricing, if deemed necessary by any of the licensed repair facilities. The guidelines benefit the consumer because they allow insurance companies the ability to anticipate and negotiate fair and reasonable storage fees. This is the crux of what S.B. 170 will accomplish. The relationship between body shops

and insurance companies has always been adversarial. This bill addresses the matter of rates for the storage of vehicles.

**Tim Waldren (Paramount Auto Body, Inc.):**

I present my written testimony ([Exhibit E](#)). The rates shown in Mr. Compan's handout, [Exhibit D](#), are in line with the regulated towing industry. One of the rates from a tower is \$71 per day. This is a regulated rate.

Some shops do not charge for storage. Stipulations of contracts by which they are bound prohibit it. In these cases, the DMV survey instructs body shops to place a zero in the blank intended for the storage component. The zeros are inserted, after which an average is calculated. An amendment would need to be drafted to address how the survey is taken, and the zeros would need to be removed. "Zero" is not a rate. An average cannot be calculated using zero. The average labor rate in Washoe County is \$59. No insurance company pays me that rate.

**Chair Manendo:**

What do insurance companies pay you?

**Mr. Waldren:**

They pay us what they want to pay.

**Chair Manendo:**

Do they not take the recommendations of the DMV survey?

**Mr. Waldren:**

No, they do not. They completely ignore all of it, as does the Division of Insurance, Department of Business and Industry.

In addition to my written remarks, I need to discuss two more points. My shop was a direct repair shop for Farmers for 15 years. During that time, there was no provision for additional days of storage. It was written into the contract that no storage existed. This is typical of most contracts between insurance companies and direct repair shops. In the 15 years my shop was a direct repair shop for Farmers, I did not receive payment for storage.

Finally, when I attended a hearing of the Advisory Board on Automotive Affairs, the chair of the Board stated these practices were attempts to interfere with free market enterprise. The Board did not stand behind the bill at that time.

**Brent Holman (Diamond Auto Body):**

I am opposed to S.B. 170. I own Diamond Auto Body in Reno. I concur with everything Tim Waldren has said. He speaks for my shop and for other local body shops. I am surprised at the proponent's testimony.

As written, S.B. 170 does not fix the problems. I agree there are tow drivers in our area who direct vehicles involved in accidents to unscrupulous body shops. Such tow drivers probably do so because they receive sales incentives. If certain body shops are charging exorbitant prices, why not address those problems with the tow industry? We would support such regulations. Tow drivers should not be permitted to tow vehicles to body shops without the consent of the vehicles' owners. Vehicles involved in accidents should go where drivers want them to go, or to the tow companies' impound yards. Limiting the acceptable practice in this way would address the issue of unscrupulous body shops charging exorbitant prices and catching consumers by surprise.

The cost to enforce S.B. 170 would be passed along to consumers. If S.B. 170 passes, my body shop will incur costs brought on by procedures for which we are not prepared. The State would incur costs to regulate the requirements, and business owners would incur costs to enforce them.

The proponent testified tow drivers are taking the vehicles of uninsured or underinsured motorists to body shops that charge exorbitant rates. In the 27 years I have owned Diamond Auto Body, I cannot remember a time we have charged storage fees for a vehicle whose owner is uninsured or underinsured. We have always waived the storage fee in such instances. We give time and leniency to consumers whose vehicles are either total losses or for which the consumer cannot afford the repair costs. The proponent of this bill says the practice of shops charging unfair storage fees is a problem, but I do not see any evidence of it in northern Nevada.

In my shop, there is no problem. We charge for the tow, and we contact the vehicles' owners and allow them time to remove their vehicles from the shop. What the proponent is saying about storage charges is not true. I do not charge

unfair storage fees at my shop, and I cannot remember hearing of the practice being done at any shops in my area.

If S.B. 170 passes, insurance companies will take advantage of the free storage available at my shop. My shop incurs costs for storing vehicles. My business decision is not to charge storage fees to consumers who do not have insurance. I charge insurance companies to remove vehicles under their purview in order to avoid costs we incur with insurance companies. To process insured vehicles, my personnel must perform certain administrative tasks. Charges give the insurance companies the incentive to remove vehicles from my shop. The consumer benefits because the incentive causes the insurance companies to expedite the claims in a timely and fair manner. I have noticed insurance companies delay the claims process. Consumers get upset because they want their claims to be closed and ended to their satisfaction. Insurance companies violate their own policies. This is common practice. The consumer has options for fighting them.

My concern is if S.B. 170 passes as written, insurance companies will stall the closing of claims because body shops will not be allowed to charge storage fees on vehicles left on their property for long periods. Insurance companies want to gain an advantage. I do not see evidence of uninsured consumers being taken advantage of.

**Ms. Carter:**

In a follow-up to Senator Hardy's question regarding information consumers can find regarding body shops, I consulted the DMV's Website. The Website lists all the body shops that participated in the survey. It also details body shop locations by geographic area: Carson City, Clark County, rural areas and Washoe County. It further details the average hourly rates for auto body repair, frame repair, refinishing, paints and materials, glass, mechanical repair and aluminum. The DMV survey does not include storage rates. Does this answer your question, Senator Hardy?

**Senator Hardy:**

The other part of the question I asked is whether the body shops make a phone number available for consumers interested in taking their vehicles to other body shops. How do consumers know whom to call?

**Ms. Carter:**

Are you asking whether a number shown for consumers to call a particular body shop is shown on the DMV's Website?

**Senator Hardy:**

Consumers whose cars are towed may worry their insurance rates are going to increase. They may wonder whether they could mitigate the possibility by choosing a shop whose prices are lower. I do not know how I would handle such a situation, so I wonder how anyone would.

**Ms. Carter:**

Perhaps Mr. Compan could answer that. It is not something that is under the DMV's purview.

**Senator Hardy:**

Are you saying the DMV is not required to provide a phone number to consumers? Is there no person to whom consumers can direct their questions and concerns?

**Ms. Carter:**

The DMV's Division of Compliance Enforcement would do an investigation only if there was a problem with particular body shops. The investigation would be done as it relates to licensing for the companies, but it would not address the companies' rates.

**Senator Hardy:**

Does the DMV list a phone number for consumers to call?

**Ms. Carter:**

No, the DMV does not.

**Jim Jackson (Jackson and Farmer Auto Body):**

To a degree, I am neutral on S.B. 170. If storage fees were imposed according to the DMV's survey, I would not be opposed to it. Representatives from insurance companies come into my office every day and tell me what my rates will be. I do not tell them. If I challenge them by citing the DMV's survey, they tell me it does not matter and that we must charge the rate they want to pay. Farmers will pay \$52. State Farm Insurance Company and many others also follow this practice. None of them abides by the survey. If they chose to abide

by the other aspects of the survey, I would not be opposed to them also paying for storage according to the survey. I would just like to be treated fairly.

**Senator Spearman:**

Testifiers keep referring to "the rest of the survey." Can you give me some examples of what the rest of the survey includes?

**Mr. Jackson:**

In my experience, the labor rates on paint, body and framework are examples of services for which insurance companies do not pay the survey rate. They refuse. We are mentioning Farmers a lot, but it is not only Farmers that refuses. It is every one of them. My posted rate for working on car doors is higher; it is \$60. The survey rate is \$59. I have said I would accept the survey rate from any insurance company. In northern Nevada, Farmers will pay only \$52. Geico, for example, will pay only \$48. That is the way they do business. They say, "I'm sorry, I cannot pay that. If you have a problem, call my supervisor." If I call the supervisors, the supervisors say the same thing.

**Chair Manendo:**

Why do we have a survey if it is not adhered to?

**Mr. Jackson:**

That is my point. It is ignored. Any body shop owner in northern Nevada will tell you this.

**Senator Hardy:**

Are you saying the survey is not for the insurance companies? Is it because the insurance companies do not pay the rate shown on the survey, let alone 1.5 times the rate? Are you saying the survey rate functions more to protect uninsured or underinsured persons? Would consumers be better off if they told body shops they are uninsured?

**Mr. Jackson:**

Where the survey is concerned they would probably be better off. I wish the survey were used or that it were done by an outside, independent entity. The survey functions only as window dressing.



**Senator Hardy:**

When we start mandating what proprietors have to charge or what the consumer has to pay, it becomes price fixing.

**Mr. Jackson:**

If the DMV sent someone with a wrecked car to body shops and asked for estimates, they could determine realistic rates. That would address Mr. Compan's complaint that body shops raise rates at every opportunity and skew the survey.

**Chair Manendo:**

I know the DMV survey asks for body shops' storage rates. I am looking at the DMV's Website now, and I do not see them. Ms. Carter, do you ever post them? Should you post them? Can you explain why the storage rates are not shown on the DMV's survey?

**Ms. Carter:**

I am not familiar with how that process works, but I will get the information back to the Committee. We should display the rates. You are correct. The rates are not shown.

**Senator Spearman:**

We just heard the prevailing rates are not followed. Mr. Compan, how do you decide the amount your company will pay for repair or storage?

**Mr. Compan:**

We pay the prevailing rate. We base it on what the DMV survey determines as the prevailing rate. It is great to hear that some shops, as detailed by other testifiers, do not charge storage fees. The testimony we have heard today does not reflect the concerns I hear from my company's claims department.

If body shops have complaints against insurance companies, they can file them with the DMV. There is a system in place for them to file complaints. They can also file complaints against insurance companies by contacting the Division of Insurance.

**Senator Spearman:**

I asked how you decide the amount your company pays for storage because the invoice samples you presented, [Exhibit D](#), show charges for labor, repair and

storage. Would you be amenable to addressing labor and repair in an amendment to the bill?

**Mr. Compan:**

That is a loaded question. The bill needs to be through the first House in less than 3 weeks. I would be willing to work with the NCIA and the DMV in the interim. When I spoke to the NCIA, they pointed out that numbers at the DMV Website are skewed. Some shops are not reporting their rates accurately. Part of S.B. 170 mandates that the information they give to DMV will have to be reflected in the Consumer's Bill of Rights. The consumer protections are beginning to take shape. Yes, I would be willing to help further regulation of body shops' practices.

**Senator Spearman:**

The time constraints notwithstanding, we hear bills nearly every day that require amending. If the invoices you shared with us in [Exhibit D](#) show repairs and storage included in the total amount due, would you consider that as an amendment to the bill?

**Mr. Compan:**

It would be very difficult to get those in the body shop industry and those of us in insurance together to draft rules and regulations within the next few weeks. The DMV could adopt regulations in the interim through provisions under the NAC. They could be codified during the 78th Legislative Session, but action could be taken during the interim between the 77th Legislative Session and the 78th Legislative Session.

**Senator Gustavson:**

Mr. Compan, I am not convinced that overcharging for storage fees is a major problem. I understand tow companies in Clark County take accident calls on a rotating basis. This makes me assume tow companies take vehicles to many body shops, including those who do not charge exorbitant prices. Am I wrong? How widespread is the problem you have described?

**Mr. Compan:**

You are right. It is not a towing issue. The tow companies do operate on rotation. The tow process works well. I will provide you with more documentation that illustrates, for instance, cases like ones in which we have taken cars to shops for teardowns that should take 3 hours. This method is

used to determine if the car is a total loss. The shops have taken 6 days to do the teardowns, and when we get the vehicles back, we are told there is \$600 due for storage.

**Chair Manendo:**

The DMV tries to ensure the numbers reflected on the survey are legitimate. May I please get a blank copy of the survey from the DMV by the week of April 1, 2013, Ms. Carter? Also, since parties from both sides of this issue are here, I strongly suggest you all meet to discuss the issues. I close the hearing on S.B. 170.

We will now open the hearing on S.B. 508.

**SENATE BILL 508**: Repeals provisions relating to the employment of certain employees of railroad companies. (BDR 58-576)

**Jered McDonald (Policy Analyst):**

Under NRS 220.085, the Legislative Counsel and the Legal Division of the LCB work together to identify obsolete or antiquated statutes, and make recommendations to the Legislative Commission. The Legislative Commission can request a bill draft to repeal the statutes that were identified. Senate Bill 508 is one of four bills introduced this Session on behalf of the Legislative Commission. Senate Bill 508 recommends the repeal of three statutes in chapter 705 of NRS. The first is NRS 705.240. Sections 1 and 2, respectively, make it unlawful to employ a train engineer who cannot read timetables or ordinary handwriting to act as a train engineer or operate a train. Section 3 states anyone who violates these provisions is guilty of a gross misdemeanor.

The second statute is NRS 705.390, which includes amendments made in 1963 and 1985. In both cases, the Legislature removed mandatory requirements for the size and composition of train crews. To protect workers employed at the time, the legislation added language to protect the workers from discharge if they were employed on the effective date of the legislation.

The third statute is NRS 705.420. It sets a penalty of \$500 for a violation of the NRS 705.390. The penalty is payable to the Public Utilities Commission of Nevada (PUCN).

Following the identification of these three statutes, staff from the Research Division of the LCB contacted PUCN regarding their position on the continued necessity for these provisions. In each case, the PUCN agreed the subject provisions are obsolete. An additional opinion was sought from David M. Pickett, General Attorney, Law Department, Union Pacific Railroad Company. He agreed all three statutes should be repealed.

**Senator Gustavson:**

Mr. McDonald, can you refresh my memory as to the details regarding railroad engineers not being able to read handwriting? I realize they have to read safety signs. What does the bill state, and what was its original purpose?

**Mr. McDonald:**

A long time ago, job screenings for engineer were done verbally. At some point, applicants for train engineer were required to pass a written test. Because the practice of issuing the written test has been done for so long, the reading requirement is now obsolete.

**Chair Manendo:**

We will now close the hearing on S.B. 508. We will now open the work session on S.B. 244.

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

**Mr. McDonald:**

Senate Bill 244 was sponsored by Senator Greg Brower, Senatorial District No. 15. The Committee heard this bill on March 20, 2013. Please see the work session handout on S.B. 244 ([Exhibit F](#)). The bill's sponsors were amenable to Senator Gustavson being added as a cosponsor. They also found more cosponsors who, at this time, include Senator James A. Settelmeyer, Assemblyman Crescent Hardy, Assemblyman James Healey, Assemblywoman Irene Bustamante Adams, Assemblyman John Hambrick, Senator Mark A. Manendo and Senator Michael Roberson.

**Caleb S. Cage (Executive Director, Office of the Executive Director for Veterans' Services, Office of Veterans Services):**

The Nevada Office of Veterans' Services has been given a grant or funding opportunity to develop a veterans data warehouse to be used to better identify

where veterans are disbursed throughout the State. For example, the data warehouse would allow Veterans Services to notify veterans of benefits offered in their zip code areas. Communication could be done via email or United States Postal Service mail.

We worked with representatives of the DMV who were amenable to the amendment. The sponsors of S.B. 244 agreed to the amendment as well. We have formulated it with Mr. McDonald.

**Darcy Johnson, Counsel:**

The amendment language you provided says that DMV will be required to send you a list of those who have identified themselves as veterans. Is the intent of Veterans Services to obtain other information besides veterans' names?

**Mr. Cage:**

Mr. McDonald and I modified the amendment several times. The portion that uses the word "list" is the only part with which I am concerned. We would be required to post the information in a secure database format. I am not familiar with all the technical terms and concepts. We have been working with the Division of Enterprise Information Technology Services, Department of Administration, to develop the list. It could be interpreted as a paper list or a digital list. That would not meet our needs. We hope to work out the concerns with DMV as we develop the program.

**Ms. Johnson:**

With regard to consent, do you want to ask veterans for their names when they provide information to the DMV? Will their names go only on your database?

**Mr. Cage:**

Yes, we want to ask for their names, and their names will go only on our database. The intent is not to gather information from people who do not wish to be identified as veterans or contacted by our agency. We envision formulating a box on a form for veterans to mark or designing some other method to allow them to identify themselves.

**Ms. Johnson:**

Would you still want DMV to compile separately the aggregate information they compile now? In other words, do you want a list that will include information on the veterans who choose to not share their information?

**Mr. Cage:**

No. Though the DMV has provided their list faithfully, it is inadequate for our needs and purposes. The DMV's list has been tracking roughly half of the veterans reported in the State by census. Requiring DMV personnel to do both reports on veterans would not be an efficient use of their time.

SENATOR SPEARMAN MOVED TO AMEND AND DO PASS S.B. 244.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

Senate Committee on Transportation  
March 29, 2013  
Page 31

**Chair Manendo:**

Seeing no further business before the Committee, we are adjourned at 10:29 a.m.

RESPECTFULLY SUBMITTED:

---

Melodie Swan-Fisher,  
Committee Secretary

APPROVED BY:

---

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	3		Attendance Roster
S.B. 302	C	1	Paula Penrod	Written Testimony
S.B. 170	D	12	Robert Compan	Tow Invoices Handout
S.B. 170	E	5	Tim Waldren	Written Testimony and Bill Amendment
S.B. 244	F	2	Jered McDonald	Work Session Handout