

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

**Seventy-Eighth Session  
March 3, 2015**

The Committee on Transportation was called to order by Chair Jim Wheeler at 3:33 p.m. on Tuesday, March 3, 2015, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/78th2015](http://www.leg.state.nv.us/App/NELIS/REL/78th2015). In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Jim Wheeler, Chair  
Assemblywoman Jill Dickman, Vice Chair  
Assemblyman Nelson Araujo  
Assemblyman Richard Carrillo  
Assemblywoman Victoria A. Dooling  
Assemblywoman Michele Fiore  
Assemblyman Edgar Flores  
Assemblyman Brent A. Jones  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman P.K. O'Neill  
Assemblyman Stephen H. Silberkraus  
Assemblywoman Ellen B. Spiegel  
Assemblyman Michael C. Sprinkle  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman Derek Armstrong, Assembly District No. 21

Minutes ID: 399



**STAFF MEMBERS PRESENT:**

Michelle L. Van Geel, Committee Policy Analyst  
Melissa N. Mundy, Committee Counsel  
Henri Stone, Committee Secretary  
Trinity Thom, Committee Assistant

**OTHERS PRESENT:**

Kelly Martinez, Government Affairs Officer, City of Las Vegas  
Terri L. Albertson, C.P.M., Administrator, Division of Management  
Services and Programs, Department of Motor Vehicles  
Mark Trafton, Attorney at Law, Trafton & Chatlin, Ltd; Chairman of the  
Board, Insurance Guarantee Association; and Vice President and  
General Counsel, Bell United  
Jonathan Leleu, representing Nevada Bus and Limousine Association and  
Las Vegas Defense Lawyers, Inc.  
Sarah Suter, representing Las Vegas Defense Lawyers, Inc.  
Pat Sanderson, Private Citizen, Carson City, Nevada  
Bill Bradley, representing Nevada Justice Association

**Chair Wheeler:**

[Roll was taken and Committee rules and protocol were reviewed.]  
Assemblyman Armstrong, please present Assembly Bill 176.

**Assembly Bill 176: Establishes the Nevada Yellow Dot Program within the  
Department of Motor Vehicles. (BDR 43-649)**

**Assemblyman Derek Armstrong, Assembly District No. 21:**

Today I bring before you Assembly Bill 176, which, if approved, would establish the Nevada Yellow Dot Program within the Department of Motor Vehicles (DMV). The purpose of the Yellow Dot Program is to assist Nevada citizens and first responders in the event of an automobile crash or other medical emergency involving the participant's vehicle. What we are trying to do is give the opportunity for first responders to quickly assess medical needs and to help those that are in the most need at the most critical time (slide 1, [Exhibit C](#)).

The program can help save lives during a critical time called the golden hour. The Yellow Dot is in reference to the golden hour. Sometimes people put a certain time limit—the first hour—on the golden hour, but the golden hour really refers to a time period following traumatic injury being sustained by a medical emergency, during which there is the highest likelihood that prompt medical treatment will prevent death.

I am not creating anything new. This is currently in some form in 22 states. It has spread like wildfire. How does it work? I have given you an exhibit from the Alabama version. The first step is the medical information sheet provided on slide 4 ([Exhibit C](#)). There are two different options. You can fill out the form online and print it out or you can print out the form and fill it out yourself.

Step 2 requires a photo to be attached, which is quite important because you do not want medical information for someone else that is not there. Attaching a photo is a good idea so we are not confusing the driver with someone who has diabetes and really is not the person driving the car.

The next part, step 3, is to contact or visit your local enrollment station. Currently this is going to happen through the DMV, but I have also talked to agencies like the Regional Transportation Commission (RTC) that have shown some interest in providing this information as well. You would pick up the Yellow Dot decal and the folder which is provided free of charge and optional. Nothing in this is mandatory. This is an optional program.

In Step 4, you place the Yellow Dot decal on the bottom left corner of the rear windshield of the vehicle. That is a uniform location so that first responders can look for that location when they are providing the medical attention. We do not want them placed all over the car because that would not serve the purpose of the program of easy identification.

Step 5 is to insert this medical information into the Yellow Dot Folder, which is then put into the vehicle's glove compartment. Another standardization so that first responders can look to one place for the medical information. They will not have to look under the seats or in the trunk. We have designated that it is the vehicle's glove compartment.

I have a few notes. There are some concerns about identity theft. In this day and age that is always a concern with everything. This does not alleviate that; however, this is a voluntary program. We are not forcing anyone to give up any information that they are not willing to. In conclusion I have an example to humanize this situation. In 2013, Miss Vivian Howard, who is a diabetic, was losing consciousness (slide 6, [Exhibit C](#)). She does not remember much about the drive. When she woke up paramedics were all around her. She was a participant in this program, so they knew she was a diabetic and were more able to quickly assess the situation and provide her with the medical attention she needed. That concludes my presentation. If you would like to go over the bill or ask questions, I will be happy to answer them.

**Chair Wheeler:**

Does anyone have questions?

**Assemblywoman Dickman:**

Is there any cost to DMV associated with this program, or would there be a cost to the person who uses it?

**Assemblyman Armstrong:**

This would be a state-funded program unless there are grants. Section 3 of the bill authorizes DMV to obtain grants, but at this time there is a fiscal note on the bill that I am working with DMV to obtain.

**Assemblywoman Dickman:**

Do we have any idea of what it would cost per person?

**Assemblyman Armstrong:**

There is a national Yellow Dot organization. They charge \$9.00 and I think that includes shipping. I do not have a per person break down. I know that DMV in their fiscal note has projected \$50,000 per year. I think it is around \$3.00 per person. I do not know that for sure, but I will follow up on that.

**Chair Wheeler:**

Just so you know, I am looking at a fiscal note of \$327,000 on the biennial.

**Assemblyman Sprinkle:**

I am very supportive of this. It is something I would be doing on my other job all of the time. I am curious about section 1, subsection 6. You are putting in the liability protections for the first responders, but you had just mentioned the part about identity theft. Is the intent of this legislation to protect the first responders in the event that the victim's personal information is missing if there is a car wreck? When the person goes back to get his car after the wreck and his personal information is missing, will those first responders be protected?

**Assemblyman Armstrong:**

The intent is to create some immunity for first responders. In addition to the information coming up missing, if for some reason they did not see the sticker, if the wrecked car were in such a state that the rear windshield was not even visible, and if they did not see the sticker, this creates some immunity for them as well.

**Assemblywoman Kirkpatrick:**

Is there a possibility that DMV could at least put the program in place and people could opt in and buy the sticker? It seems that some families might

want to buy them for their senior citizens. It might be something that the AARP or parent teacher associations might want to give out as opportunities to promote safety. Have any of the other states done something like that?

**Assemblyman Armstrong:**

From my research it seems that states provide it for free. My intent was not that people would actually pay for this program. We would provide it as a state and as good policy, making it available to people for free.

**Assemblyman Araujo:**

Can you speak more about the data program that is being used to exchange the information so that first responders know what the medical conditions actually are?

**Assemblyman Armstrong:**

The process is if the first responder sees a sticker on your window ([Exhibit D](#)), that alerts them to check for the information that is located in the glove compartment. As far as I know, there is not a central data collection point where there is anything available because then we would have other issues with data security. This is just a voluntary program where people can fill out this information and put it in their glove compartment for first responders.

**Assemblyman Flores:**

I have a two-part question. Have any of the states that now have this program repealed it because of unintended consequences? Has there been any litigation resulting as a consequence of this program?

**Assemblyman Armstrong:**

To my knowledge, the only thing I have seen through my research is that this program starts off as a community program, sometimes through sheriffs' associations, and then states pick it up. The only thing that I have seen is a continued expansion of the program since it was founded in Connecticut in 2002. With regard to your second question, I have not seen anything in regard to litigation. I am actually stealing this language from another state, so I am just assuming it was written by an attorney because we live in a day where we need to provide that immunity for first responders.

**Assemblyman Silberkraus:**

I think this is a wonderful piece of legislation that could help some people and possibly save some lives for a very small cost. Just looking at the fiscal note, even though the cost is \$327,000, over \$200,000 is for advertising. I do not see that as being a major impediment. I was going to suggest that you might also want to reach out to the American Automobile Association (AAA). I could

imagine they might be interested in possibly carrying a chunk of this program and possibly paying for stickers and envelopes and being a distribution point as well.

**Assemblyman Armstrong:**

I give you credit as this was your original idea, which I have carried forward. I agree with the fiscal note portion and your comments, which is why I have been in talks with RTC and other groups and why we have the enabling language for grant money or private individuals to eat some of this cost. The real intent is to provide this program for free for Nevada residents because I feel it is good policy and it will save lives.

**Assemblywoman Spiegel:**

In section 1, subsection 2(b), it talks about putting the yellow decal on a specified location of a vehicle. I was wondering if there is any uniform location that the sticker is put on in all of the states that have this program. That way if someone takes a road trip out of state, it would be in the same place and first responders know where to look.

**Assemblyman Armstrong:**

The uniform location, as in the Alabama example, is on the lower left rear windshield for first responders.

**Assemblywoman Spiegel:**

So it is the lower left of the driver's side window?

**Assemblyman Armstrong:**

It is the rear windshield.

**Assemblyman Carrillo:**

This is great. I know there was an incident that happened in the City of Henderson that they actually got on camera. The police officers were under the impression that this driver was under the influence, and they pulled him out of the car and beat him up. They found out he was a diabetic and actually going through low blood sugar. The only question would be in this case what happens if he is in a different car? Do you get multiples for every car that you have? What happens if you do not have the information card that you were supposed to put in your glove box? It is almost like the MedicAlert bracelet. I am not saying you have to wear that. To me it is almost an addendum to that. We have so many people that have different medical issues. It could be if you have an accident with the car and it rolls over, they do not know who the individual is until they actually find the glove box and maybe the contents have scattered out in the desert. It is things like that. Do they go

through the person's wallet? Is that one way of having an identification card instead of actually having it in the glove box? To me your wallet is more likely going to stay on you unless you are a woman and you have it in your purse. How would you identify the person? I am not a firefighter or a rescue paramedic, but the first thing you want to do is identify that individual to see if maybe they have a MedicAlert bracelet or something around their neck to show they have certain medical conditions that they have to be aware of. This brings it to light much better than just having that little bracelet or something to that effect. I want to see if all states, the 22 that you mentioned, have it the same way where that information is located in the glove box and that information always has to be transferred to another car and they have to have a yellow dot on every car that they are expected to be in or drive. I am looking at consequences like that.

**Assemblyman Armstrong:**

It is pretty uniform that the information is located in the glove compartment. This bill does not completely solve all of the issues in the time of crisis. This is just one tool for first responders. I would say "yes" if you have multiple cars and you wanted to participate in this program, then you would get two yellow dots and you would get two yellow envelopes, one for each vehicle. I do not see that as being too extenuating. It might take a minute to fill out this form and attach a photo so you have to get an extra photo and fill out an extra form.

**Assemblyman Carrillo:**

Is this something like an organ donor? If there was an accident and they know that individual is an organ donor, they are not going to go through the glove box and look to see if that individual has some kind of medical condition. That might be an option. Are there unintended consequences with fiscal notes? I understand DMV has to make sure this is covered. I would hate to see something like this go off to the Ways and Means Committee and never come back.

**Assemblyman Armstrong:**

I am on that committee so maybe not. I appreciate your concerns. I think that this is a way to be uniform with a lot of those other states. I think that more states will continue to join the program. This is a program that I see a lot of other states hopping onto, and I see us being part of the lead in the West. Maybe your concerns could be alleviated with a different program.

**Chair Wheeler:**

Just as a quick follow-up I will tell you a story. I am a diabetic and I wear a chain around my neck that identifies me as a diabetic. I actually had an episode once where I had to pull over because of a diabetic episode. I was lucky

enough to pull into a gas station that had candy bars. A cop did come in and ask what was wrong. He certainly could not see that necklace underneath my shirt and tie. I really like this program, and I thank you for bringing it forward.

**Assemblyman Armstrong:**

Assemblyman Paul Anderson saw this bill and thought it could have helped his family as well.

**Assemblywoman Fiore:**

This sounds like a great program. Have you thought about how the costs could be paid perhaps by the participants?

**Assemblyman Armstrong:**

My intent was that if we cannot find grants or private donations to cover the program and there is enabling language for DMV to find grants, that the state picks up the costs. I think this program should be provided for the residents of Nevada at no cost.

**Assemblywoman Fiore:**

So the state should pick up the costs on top of the \$1.2 billion tax increase?

**Chair Wheeler:**

Assemblywoman Fiore, we are not going to discuss tax increases in Transportation. This is a policy committee not a tax committee. Are there any further questions? Is there any testimony in Carson City in favor of A.B. 176? [There was none.] In Las Vegas?

**Kelly Martinez, Government Affairs Officer, City of Las Vegas:**

I wanted to lend the City of Las Vegas' support for A.B. 176. The Yellow Dot Program would be helpful for our first responders and would provide important medical information that we could utilize if individuals are impaired or could not speak.

**Chair Wheeler:**

Is there anyone else in Carson City in favor of A.B. 176 ? Seeing no one, we will go to Las Vegas. Is there anyone who would like to testify in favor of A.B.176? Seeing none, is there anyone in Las Vegas opposed to A.B. 176? [There was no one.] Is there anyone in Carson City, opposed to A.B. 176, besides to the fiscal note? [There was no one.] Is there anyone neutral to A.B. 176?



**Terri L. Albertson, C.P.M., Administrator, Division of Management Services and Programs, Department of Motor Vehicles**

The Department of Motor Vehicles does have a fiscal note on A.B. 176. I want to clarify for the record the way that the fiscal note appears there is actually an increase in expenses, not a reduction as reflected on the fiscal note. To give a little more information on the Yellow Dot Program, I actually have some of the actual documents that are used by some of the other states. This is what they look like ([Exhibit D](#)).

According to the research that the staff did on this, the cost for these is actually \$1.09 each if we were to order a quantity of 50,000. Fewer than that they would be \$1.59. We based our estimates on the state of Tennessee and their population and basically reduced it by half to come up with the 50,000. As indicated in the bill, it does require the Department to market and have a public information campaign for this. I have David Fierro, our public information officer, here to answer any questions about the amount that was proposed for the marketing campaign. He can assist with that. Finally, there are going to be the regulations and also a small amount for mailing costs in the event that one of these packets would be requested through the mail. With that, I will be happy to answer any questions you may have.

**Chair Wheeler:**

Thank you. Are there any questions from the panel? [There were none.] Is there any other testimony in the neutral position in Carson City or Las Vegas? Seeing none, I will close the hearing on A.B. 176. Thank you, Assemblyman Armstrong. Do you have any additional comment? We are going to close the hearing on A.B. 176, and we will open the hearing on Assembly Bill 175. I will be presenting the bill, so Vice Chair Dickman will be taking over.

[Assemblywoman Dickman assumed the Chair.]

**Vice Chair Dickman:**

Please proceed when ready.

**Assembly Bill 175: Revises provisions relating to the use of safety belts in taxicabs. (BDR 43-703)**

**Assemblyman Wheeler:**

With me today is Mark Trafton who has practiced law in Nevada since 1997. He serves as the chairman of the board of the Nevada Insurance Guarantee Association as well. He is vice president and general counsel of Bell United. I will give a brief overview of the bill. Some of you may remember the bill from two years ago. It is the same bill. Mr. Trafton will be able to explain any of the

intricacies of the bill. I was asked to sponsor this bill by some people who had actually had a small problem with it. What the bill says is pretty much common sense. In the state of Nevada all cabs, under regulation, have a sign that says you must wear your seat belt. A lot of times the driver will ask you to wear your seat belt if you do not. No driver is going to refuse someone a ride. Obviously that is their living. If there is an accident, it is my belief that you are partially responsible for your injuries because you did not put on your seat belt. There have been numerous case studies that say wearing a seat belt saves lives. We brought this bill back because we felt it was the right thing to do. I will let Mr. Trafton present the bill.

**Mark Trafton, Attorney at Law, Trafton & Chatlin, Ltd.; Chairman of the Board, Insurance Guarantee Association, Vice President and General Counsel, Bell United:**

It is nice to be back. I have presented this bill previously, and I think it would help to set the context for this bill and understand how this applies in the courtroom. That is really where it comes about. It comes about in the context of our tort law system, which is any civil case, with the exception of a contract type of case. Tort law typically involves one person suing another person for a wrong. In this situation it is usually a car accident, so you have one party suing another party for a car accident alleging injuries.

I will give you a hypothetical situation in the context of a taxicab driver. Let us say a taxicab driver rear-ends another car. Those are all the facts you have as far as how the accident happened. You are likely going to say that the taxicab driver is responsible for causing any injuries that resulted from that. The scrutiny that happens in the courtroom is that we look at the actions of all the parties in the lawsuit. In my lawsuit you will look at the action of the taxicab driver and the action of the driver of the car that was rear-ended. Now, if I were to add a few more facts to that scenario such as the car that was rear-ended, had no lights on in the dark, and made an illegal lane change in front of the cab, those are conditions that might alter your ultimate conclusion about who was responsible.

A real-life courtroom example is the concept of comparative negligence. In this hypothetical, the jury would look at actions of the parties and decide if the cab driver was 100 percent at fault or the guy that was driving with his lights off and made an illegal lane change bears some of the responsibility. A jury may say that the guy who made the illegal lane change without his lights on was 25 percent responsible and the taxi cab driver was 75 percent responsible, and they would divide up the award accordingly by percentages. This bill would change that analysis in the context of a situation like this. In my little scenario, cab rear-ends the car and there is a passenger in the cab that is not wearing his

seat belt. Despite the fact that Nevada law requires a passenger in a taxicab to wear a seat belt, it also requires the taxicab company to put signs in the cab saying that Nevada law requires you as a passenger to wear your seat belt. The third requirement for taxicab companies is that they must transport all passengers that want to ride, unless the driver is fearful for his or her safety. They can then say no to a passenger.

If a passenger gets into a cab and says I need to be taken from point A to point B and I refuse to wear my seat belt, the driver has to transport them. It is *Nevada Revised Statutes* 706.8847 that requires the transport of a passenger. In my scenario the passenger is in the back seat of a taxicab when the driver rear-ends the car in front of him and the passenger flies up into the windshield. Clearly if the passenger had been wearing his seat belt, he would not have flown into the windshield. Right now in the courtroom, the fact that person was not wearing a seat belt is not allowed to be discussed in front of the jury. They are not even allowed to hear that. I can tell you from personal experience that before the jury comes in, the judge admonishes both attorneys that they better not talk about the seat belt because if you do I am going to have to declare a mistrial. That is the way the law has been. I never thought it was fair, but that has been the law. I never heard a good argument for why that is to be excluded from the consideration of the jury. I have said this before. When a witness takes the witness stand, they are asked to be sworn in to tell the truth, the whole truth, and nothing but the truth. By not telling the jury that somebody is not wearing their seat belt, we are not telling the whole truth to the jury. The jury needs to hear all of the facts. Let us let them consider who bears what percentage of responsibility. That is what this is about and that is what this bill is hoping to remedy. That concludes my statement. I am happy to answer any questions.

**Assemblywoman Kirkpatrick:**

I have two questions for clarification. Is it true that this only refers to taxicabs?

**Mark Trafton:**

Yes.

**Assemblywoman Kirkpatrick:**

How would this work if you got into a cab that had a faulty seat belt? I had a hard time buckling my own seat belt in my car this week. How would that affect this scenario?

**Mark Trafton:**

I will get to that specific question in a second. However, the cab companies that I have represented through the years have policies where they have to

inspect the vehicles every day before they go out on the road, and seat belts are part of that check list. That is a critical part. We do not want anyone injured in our cabs because they cannot find the seat belt or it does not work properly. That is a big part of the cab inspection. But, in the scenario that you paint, if that happens, it would be a fact the jury would hear—if there was a malfunction in the seat belt or if they could not find it, all of that would be something that the jury would consider and ultimately use to determine whether or not that is an excuse for not wearing your seat belt.

**Assemblywoman Kirkpatrick:**

Could they do that now based on how the law is written?

**Mark Trafton:**

No.

**Assemblywoman Spiegel:**

I actually had a similar question. A lot of times, the seat belts are of different lengths. I have gotten into two planes on the same day. In one, the seat belt barely closed due to seat belt repair, in the other I had a good 8 inches of strap left over. This bill makes an exception for someone who has a written statement by a physician certifying, but what happens if the seat belt had been broken and was repaired and made really short and then it did not fit and was not the standard length?

**Mark Trafton:**

Again, this is not going to be 100 percent perfect all of the time. However, the cab clients I have represented through the years are adamant about inspecting the vehicles before they go on the road. Safety is a huge concern for the cab companies. There may be a situation where there is a seat belt that does not fit properly. There may be one on one side of the vehicle and the other side might be able to be adjusted. I have spoken to cabdriver clients of mine through the years about the seat belt issue. They routinely help people that need assistance getting their seat belt on properly because sometimes a person may have a hard time for various reasons. They may have shoulder surgery or something like that. Cab drivers routinely help their passengers adjust the seat belt so that they fit properly.

**Assemblyman Sprinkle:**

I would like to go back to your hypothetical courtroom situation that you presented. You were talking about percentages and liability. If a person were to be riding in a cab and there were to be an accident and that person were to sustain pretty significant injuries, who is it that would be called upon to figure out the percentage of liability? Who would consider whether that person had

been wearing a seat belt or not wearing a seat belt, what type of injuries were involved, and how much of the blame is then going to be placed on the cab driver because, say hypothetically, the driver caused the accident versus the fact that this person did not have their seat belt on.

**Mark Trafton:**

This is a very realistic scenario in a significant personal injury case in the courtroom. This is an issue that typically is discussed by experts, that is which injuries were caused by what part of the accident, whether or not it is related to the seat belt, whether or not it is related to a whiplash. In catastrophic type injury cases, like spine or head injuries or accidents involving a death, both sides pretty typically have a very solid team of experts to include accident reconstruction experts, medical doctors, and biomechanical engineers. They talk about the forces that are placed on the human body, human factors experts.

Typically in a big case, those experts are already there regardless of whether we are talking about seat belts or not. Now those same experts would be able to comment on whether if this person had been wearing their seat belt, would they not have flown into the windshield. Therefore, they would not have had a gash across their forehead. Some of it would require expert testimony, but there is a large part that would require the jury's common sense. By the way, there is a jury instruction that says you are allowed to use your common sense. If someone got a huge gash in their forehead from flying into the windshield from the back seat because they failed to use their seat belt, I think that would be a situation where a jury might say common sense tells me that if that person had been wearing their seat belt and following Nevada law, they would not have had that gash. The taxicab driver would still be responsible for doing whatever he or she did to cause the accident. I want to make that very clear. I am not trying to say that the taxicab driver should not be held responsible. Every party to a lawsuit should be held responsible for their own actions. That is what I am aiming for with this bill. I do not think that just because it is a passenger in a taxicab we should leave out that scrutiny, especially when the law says that you need to buckle up.

**Assemblyman Sprinkle:**

Ultimately that gets to my question as to the expense of something like this. From what you are saying, there should not be any kind of significant increase in expense from us passing this bill when we are going to have all of these different experts that are now going to be necessary to determine, say, if the seat belt was faulty or if it was used or not used, because that is also hearsay if the person says whether or not they had it on. Specifically, you do not feel there would be any added expense?

**Mark Trafton:**

I can generally tell you from my experience in these catastrophic cases that the experts are already in the courtroom. They want to talk about seat belt pros and cons. They want to talk about all of this stuff, but they are precluded from doing so. Therefore, they start testifying about the forces involved and how the body moves. They are already there. The parties have already expended the money to have them there. I can tell you that I do not think there would be any increase in cost. They would talk for a little bit longer about the effect of the failure to wear the seat belt. That would be extra testimony, so it would take a little bit more time to describe that. They would give their expert opinion on whether the seat belt would have made a difference. The expert on the other side may or may not agree. The jury ultimately has to decide.

**Assemblyman Silberkraus:**

If you were to have a seat belt that did not function in the cab, that would be admissible evidence in the court as it stands now, right?

**Mark Trafton:**

I have never had that scenario and do not know if it would be or not. I can tell you in the cases I have tried to a jury, before the trial where the seat belt might be an issue, the judge knows that and usually says that he does not want to hear anything about a seat belt, one way or another. My gut response to your question is probably that any information regarding a seat belt is not admissible. However, if the plaintiff's lawyer, representing the injured party, wanted to bring it in, I do not know what would happen. It is an interesting question. I am not sure how a judge would rule on that.

**Assemblyman Silberkraus:**

With this law if you were to get into a cab with a faulty seat belt, want to go for the ride, and an accident were to occur, you would absolutely be able to take in the fact that the device had been faulty and that would take care of the issue.

**Mark Trafton:**

Yes.

**Assemblyman Flores:**

Number one, can you talk about the intent? When this was codified, what was the intent of having that language there? Number two, are you concerned that by doing this we are going to go down a pathway where we are going to have a bunch of lawyers saying, yes my driver was intoxicated and at fault, but it is the victim's fault because he should have been wearing a seat belt. Are you

concerned that we are going to shift the burden onto the victim as opposed to the individuals who caused the fact that they got injured, the negligent driver?

**Mark Trafton:**

I will start with your second question first. It is all the victim's fault for not wearing the seat belt. Right? I can tell you that might be a temptation for a very young and inexperienced trial lawyer. I will tell you that lawyer will get burned. When I first started practicing that is the temptation because you are really vigorously representing your client. You want to paint the other guy as a really bad person. However, I have learned from experience that juries can smell that so quickly and you get burned by that type of argument. You have to be reasonable as a trial lawyer in presenting your case. That is the way to get the best result for your client, to be a reasonable person when you are up there talking to a jury. This amendment gives a reasonable assessment of everybody's actions in a car accident. We are going to assess the actions of the driver of the taxicab, of any other driver that may have been involved in the accident, and we are going to assess the actions or inactions of the passenger. That is consistent with law throughout the country with regard to comparative negligence. The whole idea of comparative negligence is that we look at everybody's actions in a lawsuit, and we compare and we attribute responsibility on a scale of 100 percent. That is what I think is fair. If somebody does not wear their seat belt, they may get a little ding in the percentage because the jury thinks that if they had been wearing their seat belt, they probably would not have done somersaults in the air in the car. The example that you give is definitely something that I started thinking about as a first-year lawyer. In practical trial work that is not how it works. If you do that, you are going to get burned.

Back to your first question of intent. I think it was an effort by certain successful lawyers to keep the focus solely on the taxicab driver or the driver of the vehicle to make sure there would never be a light shining on the passenger. That is not what this is about. This is about the injuries to the passenger, not about their actions. Let us broaden the focus a little. The injured party will have plenty of opportunity to talk in court about their injuries and all that goes with that. Let us also look at their actions. Did their actions contribute to their injuries or not? I think when this was put in the law in 2003, they were trying to avoid this.

**Assemblywoman Kirkpatrick:**

This has been a pretty controversial bill. I have never had the privilege of sitting on Transportation, and I want to understand a bit of the history. Ironically you said 2003. I ran to get the book to see how long this has been in place. I think the record has to be crystal clear. Last session we heard it on the same day

that the special session was meeting to expel Assemblyman Brooks. The session before that, we heard it on the same day the Supreme Court was overturning the water decision. This is the first time we are having a real discussion on it. Since 2003, how many specific incidents have we had and if legislation is changed, how will we be able to know if this was an effective change or not an effective change? I worry that in the Legislature sometimes we do not ever see the outcome. This sounds like we will not be in court with you. From my perspective, we have 41 million tourists that come to Clark County every year, and I have to believe that their safety is a top priority for us, because one tourist that gets hurt could damage us for a long time. I want to understand how we will track this to see if it made a difference or what the outcomes will be. I think a little bit of legislative history would be helpful for everybody.

**Mark Trafton:**

I do not know if I can give you an exact number, but I can get close. Since 2003, I have represented probably 25 to 35 percent of the taxicab companies in southern Nevada and probably 30 percent in northern Nevada. As of right now I have about 25 cases in litigation involving car accidents with taxicabs. There are probably another 100 claims that are not yet lawsuits. That means that a cab has been in an accident, someone has been injured but has not yet filed a lawsuit. They have two years to file. When we are aware of those, my client sets up a claim and communicates with the injured party or their attorney. The numbers currently are about 125 open files. That is for about roughly 30 percent of the cab industry in the state. Of those 130 claims, how many involve somebody wearing a seat belt or not wearing a seat belt? I can think of two cases that I have right now in litigation that involve the seat belt issue. That is 10 percent. My guess is that 10 percent of the claims against taxicab companies involve the seat belt issue. If this goes into effect, how would this affect personal injury lawsuits involving car accidents? We are here only talking about taxicabs, so it is only going to affect those cases in the taxicab industry, and I only have 10 percent of those filed that involve seat belts. I do not think it is going to be a dramatic impact on the personal injury litigation with car accidents as a whole, but it will have an impact in the taxicab industry.

**Assemblywoman Kirkpatrick:**

Let me be clear on the process. I have been fortunate to never have been involved in an accident in a taxicab. Who brings the expert witness so that the person involved in the accident has access to them? Is it the taxicab folks or the personal injury people? How does that work?



**Mark Trafton:**

In a situation where injuries are such that they may have been less if the person had been wearing a seat belt, I have never been able to argue this in a courtroom because of the law, but I could envision the way it would work. I would hire an expert, who I would probably have anyway because these issues typically arise in a major injury setting. I would ask my biomechanical engineer or my medical doctor if it was appropriate to evaluate the seat belt issue and whether or not that would have made a difference. I have had some cases where it probably would not have mattered. There are some cases where it would. In that situation I could almost guarantee that the plaintiff's lawyer would have already had a biomechanical engineer or a medical doctor also that would have an opinion probably contrary to the expert that I had retained

**Assemblywoman Kirkpatrick:**

My last question is, who keeps track of those lawsuits? I would think that the Taxicab Authority or someone needs to know the outcomes or how many different write-ups you see. Driving home on the freeway I see the same cabs that are on the side of the road with a flat tire, so that makes me concerned that maybe they are not doing the safety checks as well as they should be. Who actually monitors that? I think that at least for our future legislators, they need to understand where you can go back and track these things.

**Mark Trafton:**

Typically when the accidents involving taxicabs get to me, it is a lawsuit situation, although there have been a couple of very major claims that I have handled pre-lawsuit. I do not know if the Taxicab Authority keeps statistics on that. I know they keep statistics on a lot of things. That includes the Nevada Transportation Authority up here. My educated guess is that they do keep statistics on that, but I do not think that they would keep numbers on a seat belt issue. I do know that my client's property and vehicles are regularly inspected. If there are problems with the seat belts or tires or other nonfunctioning equipment, they are written up. There is some pretty strong effort to police seat belt safety and things like that.

**Vice Chair Dickman:**

I have one quick question. I see several amendments. Is one of them yours and did you address it?

**Assemblyman Wheeler:**

The proposed amendment that is a friendly amendment is the one that addresses section 1, subsection 3, paragraphs (a) through (c), ([Exhibit E](#)). You will see that in the bill that language is completely stricken. Instead of the language being stricken, we will just be striking the "not." The rest of the

language stays in there. We felt that gives the judge or the jury a little more leeway in figuring the damage and how it should be calculated. We are trying to be a little more fair.

**Assemblywoman Kirkpatrick:**

That kind of changes the whole thing, right? You are putting all of that language back in, in (b) and (c). Is that correct? So it would say, a violation of subsection... I am asking because I do not understand.

**Mark Trafton:**

It brings the same result. Prior to this proposed amendment, the status was that you cannot talk about somebody not wearing a seat belt in the courtroom. This is saying that you can talk about it and you can consider that as either negligence or causation to the injuries. Previously, before my friendly amendment, it said essentially the same thing, but my concern was that because we are not addressing the other seat belt law in private passenger cars—and that exclusion of talking about a seat belt remains—if this bill were to pass and the other seat belt law remains the same, we go to court and I say that I want to talk about the seat belt in the taxicab, the opposing counsel is going to say well we have this other law that says you cannot talk about seat belts in a passenger car. Why should you be able to talk about it in a taxicab? That is why I thought it would be stronger to have an affirmative statement in the taxicab law regarding seat belts.

**Assemblywoman Kirkpatrick:**

So then we are not expanding it to include other vehicles, but you are using it more as a comparison. Is that correct? I think our staff at some point would determine what the legislative intent is and put it in. I just want to make sure that we are not expanding it because to me it seems that everyone needs to wear a seat belt. But you are saying that you want to use it as a comparison. Is that my understanding?

**Mark Trafton:**

The language that exists in the law now between taxicabs and private passenger vehicles with respect to offering into evidence someone's failure to wear a seat belt is identical. Cutting through all of the legal jargon, it says that you cannot talk about it in a courtroom. Now I am trying to say that only with regard to taxicabs you are allowed to talk about it in the courtroom.

**Assemblywoman Kirkpatrick:**

Okay. I just wanted to be clear. I thought that was what we were trying to get to, but I was not sure what those other words meant.

**Assemblyman Sprinkle:**

You certainly answered what the intent was with this amendment. I just wanted to be clear myself. Is there a specific difference in statute that you are aware of between a private vehicle and a taxicab? Would that not be covered anyway without the need for this amendment?

**Mark Trafton:**

I think a reasonable interpretation of the language in the private passenger vehicle is that it includes all vehicles. I just think that this friendly amendment more clearly expresses the intent of what I was trying to get at. That is with regard to taxicabs, the taxicab companies and cars have a couple of extra burdens that private passenger vehicles do not have. That is why I think it is a worthy distinction to make. We have to have signs and tell people it is the law. I thought it was stronger and more clear to have an affirmative statement. Previously you could not talk about seat belts. Now you can specifically talk about it and the jury can consider it.

**Assemblyman Sprinkle:**

I think that you have done a good job from a legislative intent standpoint of clarifying that.

**Vice Chair Dickman:**

Are there any other questions from the Committee?

**Assemblyman Carrillo:**

With regard to the friendly amendment and your taking out "not." Are you putting that language back in? The one that is stricken?

**Assemblyman Wheeler:**

The only word that will be stricken after the amendment is "not."

**Assemblyman Carrillo:**

Then basically what this does is apply to all vehicles, or is this just more for the purpose of if this would go to court and if it is a taxi versus a personal vehicle and that is the whole intent?

**Mark Trafton:**

The bill would be a change to the statute that only pertains to taxicabs.

**Assemblyman Carrillo:**

Okay. Thank you.

**Vice Chair Dickman:**

Are there any more questions? Seeing none, we will open testimony in favor of Assembly Bill 175. Is there anyone in Las Vegas who would like to testify?

**Jonathan Leleu, representing Nevada Bus and Limousine Association and Las Vegas Defense Lawyers, Inc.:**

We are here in support of A.B. 175. We did submit a friendly amendment that Sarah Suter, to my left, can walk you through.

**Sarah Suter, representing Las Vegas Defense Lawyers, Inc.:**

Our friendly amendment does seek to expand the same introduction of evidence of non-use of seat belt to all passenger vehicles in a courtroom ([Exhibit F](#) and [Exhibit G](#)). We believe it makes sense. We believe, as Mr. Trafton said, that all parties' actions should be considered in a courtroom when you are discussing an accident and damages. Does anybody have questions?

**Vice Chair Dickman:**

Have you spoken with Chair Wheeler regarding this amendment?

**Sarah Suter:**

Yes, we have.

**Vice Chair Dickman:**

Are there any questions? [There were none.] Is there any testimony in opposition in Las Vegas? [There was none.] Carson City?

**Pat Sanderson, Private Citizen, Carson City, Nevada:**

The only question I have is that you are going to take someone that is insured and take them to where they are not insured. There is no insurance that covers taxicab rides no matter whether you have a seat belt or not. If you do not have this coverage, what is going to happen in Vegas with 41 million visitors that come to the state of Nevada? If one of them gets injured, they will go directly to UMC. It will raise our insurance rates. It will raise the cost of doing business. We will be losing doctors and medical facilities and you have to think about this. Nevada is a tourist state. We want everyone who comes to Nevada to be protected, especially if they are coming here to gamble or stay. If you take this insurance away from them, someone will be left holding the bag. That means someone from New York that came out that cannot pay their hospital bills will wind up losing their home in New York. You have to think of these consequences.

I did not know whether to get up in neutral or against it. Everyone is covered right now with insurance. If you get rid of this, there is going to be that number

of people however big or small that are not covered. It is going to hurt the rest of the residents of the state of Nevada. I like to control my own deal. I always wear my seat belt. I always try to take care of myself and pay my own bills. When you add where someone does not have insurance, it is you and I that are going to be paying the bills for these medical expenses. I could care less about the attorneys and their high fees and what they win or what they lose. It is the medical bills and the citizens of the state of Nevada. I just hope that you think this all the way through and if it makes sense, which sometimes I do and sometimes I do not, fine and dandy. You just think about it and let us protect our tourist industry and take it from there. I would be happy to answer any questions.

**Vice Chair Dickman:**

Thank you Mr. Sanderson. Is there anyone who wishes to testify in the neutral position?

**Bill Bradley, representing Nevada Justice Association:**

We oppose A.B. 175. I want to express a sincere thanks to Chair Wheeler for sitting down with us and listening to our concerns. Chair Wheeler and I had an animated discussion about this two years ago, as I recall. I would like to address a couple of the questions just to make sure we are clear. To give a real recent example, I just finished a very serious case involving a passenger in a taxicab in Las Vegas. In fact, if you go under the airport on Sunset and head toward the post office, just to the left of that intersection is a large tree. You will see a huge scar on that tree where a cab hit that tree going about 40 miles per hour with my client in the back seat. She was here from Florida with her husband celebrating her sixty-fifth birthday. She had her seat belt on and she was catastrophically injured. We are seeing a tremendous amount of rib and chest injury because of the seat belts in significant crashes.

I was sitting here trying to think of how to make this point to you. She had her seat belt on. She was at St. Rose Dominican for six days severely injured and will have a lifetime of problems because of those injuries. I was thinking that if she did not have her seat belt on and had those same injuries, then I think if this bill passes she would have been blamed for that. The problem that many of you pointed out is that how do people really tell what the injuries were if they had their seat belt on versus if they did not. Let me make something perfectly clear. On behalf of the Nevada Justice Association, we, too, strongly support the use of seat belts.

As to what this does in a courtroom, I have to respectfully disagree with Mr. Trafton. In that case there were no biomechanical engineers. There did not need to be. The cab hit a tree at a high rate of speed and the lady was badly

injured. If she does not have her seat belt on and this bill passes, now is when the biomechanical engineers show up. Mr. Trafton's company may be able to afford to put one on retainer with that company to deal with the 10 percent of the cases. By the way, I think they run an outstanding cab company and do a great job. However, if I represent one of you, what happens if the seat belt really did fail? There are times when they are inaccessible despite the cabdriver's desire to make sure they are on the seat. That is not checked throughout the night. I do not know about many of you, but not many of us are too wild about sticking our hands down in a cab seat to see if we can find that inaccessible seat belt.

What if it does fail? The history of this all goes back to a Jeep case, a CJ5, and a young man who was a habitual seat belt user was driving that CJ5 and lost control, rolled, and he was ejected. There was a tremendous amount of testimony in that courtroom about whether he had that seat belt on. You can look at the seat belt to see if there are witness marks when the force creates an impression from the buckle on the belt. But you get into a huge discussion among a battle of experts. The problem is if I represent one of you, and even though you may have had your seat belt on and it failed, you and I cannot afford to go out and hire that biomechanical engineer for each of those cases unless it is a catastrophic injury case. What this bill will do is change the focus of who caused the crash. That will now not really be an issue any more. It is going to be what caused the injuries. In my experience, that significantly drives up the cost of litigation. I believe what causes the injuries is a very inexact and unscientific science. Put yourself in that lady's position in the back of the cab. Had she not had the seat belt on and a defense biomechanical engineer came in and would have said, Of course, she has all of those injuries from hitting the back of the driver's seat. In reality, it was not. It happened with the seat belt on. So you run into this very difficult problem.

We are very concerned and the reason we have opposed it is that we are concerned it will drive up the cost of litigation and the little people will not be able to fight big people. We also question why government wants to get into the back seat of a cab. There are a lot of reasons to eliminate statutes. This is not one of them. It creates a very difficult problem. The final point I would raise is what about party buses, party vans, other places where we are not requiring seat belts, even school buses? Why is that? I believe that is because it is too hard to predict what would happen and what does not happen. It becomes very, very expensive. With that, I will end my testimony. I am happy to give you more of a history if you are interested. The genesis of this emanated out of that Jeep case. A judge decided not to tell the jury about the seat belt issue. When that was appealed to the Nevada Supreme Court, the

Nevada Supreme Court upheld the discretion of the judge not to admit that testimony. It was that case that actually led to the introduction of this bill.

**Vice Chair Dickman:**

We were actually past opposition so we will go south to see if there is anyone who would like to speak in the neutral position. [There was no one.] Would Assemblyman Wheeler or Mr. Trafton like to make some closing statements?

**Assemblyman Wheeler:**

I did want to address the other amendment that was presented by Mr. Leleu and Miss Suter ([Exhibit G](#)). I have not had a chance to speak with them today. I spoke to them yesterday and felt that this would be a friendly amendment at that time. Since then, after discussion with some other people, I have decided not to treat this as a friendly amendment, and I will call Mr. Leleu and Miss Suter when we finish.

**Vice Chair Dickman:**

Thank you. We will close the hearing on A.B. 175.

[Assemblyman Wheeler resumed the Chair.]

**Chair Wheeler:**

I will open the floor to public comment. Is there anyone in Carson City? Las Vegas? [There was no one.] Seeing none, I will close today's hearing. Meeting is adjourned [at 4:54 p.m.].

**RESPECTFULLY SUBMITTED:**

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Henri Stone  
Committee Secretary

APPROVED BY:

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Assemblyman Jim Wheeler, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Transportation

**Date:** March 3, 2015

**Time of Meeting:** 3:33 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 176	C	Assemblyman Derek Armstrong	PowerPoint Presentation
A.B. 176	D	Terri L. Albertson/DMV	Yellow Dot Example
A.B. 175	E	Mark Trafton, Attorney at Law, Trafton & Chatlin, Ltd., Chairman of the Board, Insurance Guarantee Association, Vice President and General Counsel, Bell United	Proposed Amendment
A.B. 175	F	Jonathan Leleu, representing Nevada Bus and Limousine Association, and Las Vegas Defense Lawyers, Inc.	Cover letter
A.B. 175	G	Jonathan Leleu, representing Las Vegas Defense Lawyers, Inc.	Proposed Amendment