

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

**Seventy-Eighth Session  
April 7, 2015**

The Committee on Transportation was called to order by Chair Jim Wheeler at 3:23 p.m. on Tuesday, April 7, 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:**

Senator Scott T. Hammond, Senate District No. 18

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Terri L. Albertson, C.P.M., Administrator, Division of Management Services and Programs, Department of Motor Vehicles  
Gen-Gang (Bruce) Fuh, Director General, Taipei Economic and Cultural Office in San Francisco, California  
Lorne Malkiewich, representing E&E Vehicle Solutions, LLC  
Jerry Carnahan, Adviser, E&E Vehicle Solutions, LLC  
Andrew J. MacKay, Chair, Nevada Transportation Authority  
Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance  
Lisa Foster, representing Allstate Corporation; and American Family Insurance Company  
Dan Musgrove, representing CSAA Insurance Group  
Samuel P. McMullen, representing Copart, Inc.  
Scott Scherer, representing Quality Towing

**Chair Wheeler:**

[Roll was called. Protocol and procedures were explained.] We will begin today with Assembly Bill 383. Senator Hammond is here to get us started.

**Assembly Bill 383:     Revises provisions relating to drivers' licenses.  
(BDR 43-743)**

**Senator Scott T. Hammond, Senate District No. 18:**

It is always good to see your counterpart—seeing what is going on up here in the Assembly. This is a great opportunity for me to share with you my recent experience. I have had the pleasure of meeting with delegates from the island of Taiwan and talking with them in getting ready for this particular bill. They saw a need for Taiwanese people living in the United States. I have with me Mr. Fuh, who will be talking with you as well. It is a pleasure to be able to extend a hand to those from other countries—to welcome them, negotiate

with them, and come up with plans. What you have here before you in Assembly Bill 383 is our attempt to do one of two things: (1) to authorize reciprocal driver's licenses with another country, and (2) to encourage the director of the Department of Motor Vehicles (DMV) to begin negotiations toward reciprocal licensing with our sister-state, the Republic of China on Taiwan.

First, Ms. Brenda Erdoes of the Legislative Counsel Bureau Legal Division has informed me that section 2 should not be included in the bill. She has confirmed with the DMV that those persons who move to Nevada from other states and countries are only allowed—and only need—a Nevada driver's license if they become residents of the state. Therefore, we would ask that section 2 be amended out of the bill.

Section 1 of the bill proposes to authorize the DMV to enter into reciprocal agreements with other countries that would allow a person who moves to Nevada from another country to apply for a driver's license under the same terms and conditions as are required for a renewal. These would include eye tests, payment of fees, and so forth. The reciprocal agreement would also allow a person with a Nevada driver's license who moved to Taiwan to apply for a Taiwan driver's license under the same conditions. The DMV would only be allowed to enter into such reciprocal agreements if the other country has requirements for issuance of drivers' licenses that are comparable to Nevada's requirements.

Section 3 recognizes the 30th anniversary of Nevada's sister-state relationship with the Republic of China on Taiwan and asks the Department of Motor Vehicles to begin negotiations toward a reciprocal agreement with the persons listed in this section as authorized by section 1 of this bill. If there are any questions, I can take them at this time.

**Chair Wheeler:**

Are there any questions for the Senator?

**Assemblyman Sprinkle:**

Under Section 1, these individuals would become residents of the state; however, would they have to show any knowledge of proficiency regarding Nevada driving laws?

**Senator Hammond:**

Are you asking if they have to become residents?

**Assemblyman Sprinkle:**

No. My understanding is that they have become residents of the state of Nevada or have established residency. They are here.

**Senator Hammond:**

They are here. They are not residents of the state. They might be working for a company based out of Taiwan. They come here and live here for a period of time. They do not necessarily establish residency. In order to get a driver's license, they will have to show proficiency.

**Assemblyman Sprinkle:**

That was the gist of my question. When they are trying to get the Nevada driver's license, they have to meet the physical requirements of the vision test, but do they need to show any kind of proficiency regarding Nevada driving laws, such as passing a written exam?

**Senator Hammond:**

I will direct you to section 1, subsection 2, of the bill that says that if they have a driver's license in a country that has requirements for issuance of driver's licenses that are comparable to Nevada's, the DMV may issue them a Nevada driver's license. The DMV would have to determine that Taiwan's requirements are comparable to those of the state of Nevada.

**Assemblyman Sprinkle:**

When we are talking about the comparable requirements, do we have any idea what the DMV would be looking for?

**Senator Hammond:**

We have a representative from the DMV here today. She would be able to articulate that better than I can. She will let you know what they would be looking for. I would imagine it would include rules of the road—things we would be asking any first-time licensee to know in order to be on the road.

**Assemblyman Jones:**

The Legislative Counsel's Digest for the bill talks about the Republic of China (Taiwan), but the bill talks about countries. Do you know if we are opening to multiple countries, or is it only specifically for Taiwan? Do we have reciprocal agreements with other countries currently?

**Senator Hammond:**

The bill anticipates the ability to make those kinds of negotiations with other countries in the future. Nevada is not the only state that the Republic of China on Taiwan desires agreements with and they have made these agreements with

several other states. I have lived in Portugal, which had agreements with certain states regarding reciprocity in driver's licenses. This would enable the DMV to look at other countries when they want to negotiate with us. This bill is mainly talking about the Republic of China on Taiwan.

**Assemblywoman Spiegel:**

Would you please tell me what the current process is for someone who comes here from Taiwan and is establishing residency? Do they just go through the same process I went through when I moved here from California, or is it a different process because their documentation is different?

**Chair Wheeler:**

I see that Ms. Albertson from the DMV is here. She could answer that.

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

For some historical perspective, we had the privilege of meeting with the representatives from Taiwan in December to discuss this very issue. The Department is here today in support of this bill. We met with them to discuss what their current procedures and practices are for the issuance of driver's licenses, and how that would impact Nevada. To answer Ms. Spiegel's question, under the current processes, they would apply just as you or I would. They would have to submit the appropriate documents and would be subject to both the drive test and the skills test. We had discussed with the representatives that, in this case, we would waive the drive exam only. They indicated to us that they felt it was important that they would take the written test so that there is a clear understanding that these individuals understand Nevada laws. We are looking to simply waive the drive test for them, but not the knowledge test.

**Chair Wheeler:**

Are there any further questions?

**Assemblyman Silberkraus:**

As it stands now, if someone from Taiwan who has a valid driver's license does come over, they are able to drive in Nevada on that license. Is that correct?

**Terri Albertson:**

That is correct. In this instance, when they establish their residency, meaning they have been here longer than 30 days, by law they are required to obtain a Nevada license.

**Assemblyman Silberkraus:**

Have we already established that they are qualified to drive on our roads? We are already allowing that, so this is simply getting them in line with our rules to have a Nevada license?

**Terri Albertson:**

That is correct.

**Chair Wheeler:**

Are there any further questions? [There were none.] Mr. Fuh, thank you for coming from San Francisco to our beautiful state.

**Gen-Gang (Bruce) Fuh , Director General, Taipei Economic and Cultural Office in San Francisco, California:**

Honorable Chairman, honorable members of the Committee, thank you to Senator Hammond for presenting this bill for us. We spent one extra hour on the road because of snow. This is the second time in about a week that I have come to the great state of Nevada and the great city of Carson. I represent the people and the government of the Republic of China on Taiwan. Joining me today is my senior staff, Ms. Jay Weng. Today, we have the honor to request the Committee to consider your kind endorsement of the proposed bill amendment. If passed, the amendment, with some added language on the current bill, will authorize the possible mutual agreement on issuance of driver's licenses between the state of Nevada and the Republic China on Taiwan.

My brief statement is to provide the Committee with the background information on reasons in deem appropriate for your information. I would like to request your favorable consideration on supporting this amendment. The following are some of the reasons. Taiwan currently has signed mutual agreements on issuance of driver's licenses with 54 countries/areas. In the United States, there are nine states that signed such agreements with Taiwan, and three other states that are undergoing the final state reaching the agreement. As other Taipei Economic and Cultural Offices throughout the United States, my office has been instructed to seek out the possibility of reaching same agreement in the States of Nevada, Utah, and California. That is why we are here today.

I would like to express my very sincere appreciation for your consideration and your support. [Also provided written testimony ([Exhibit C](#)).]

**Senator Hammond:**

I would like to clarify something that was asked of me earlier regarding opening this up to other countries, as this bill does. Section 1 says that the DMV can enter into negotiations with other countries. It does not necessarily mean that they are allowed to. We, as a legislature, would have to enable them to do that. That is what we are doing in section 3. We are enabling them to enter into negotiations with the Republic of China on Taiwan. If the DMV wanted to open negotiations with another country, we would have to do the same thing.

**Chair Wheeler:**

Are there any further questions? [There were none.] Is there testimony in support of A.B. 383? [There was none.] Do we have any opposition to A.B. 383? [There was none.] Is there anyone testifying in the neutral position? [There was no one.] Committee, do you want to vote this out of here today? I will take a motion to suspend Rule No. 57 and vote.

ASSEMBLYMAN SILBERKRAUS MOVED TO SUSPEND  
RULE NO. 57 OF ASSEMBLY RESOLUTION 1.

ASSEMBLYWOMAN DICKMAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMEN FIORE AND  
KIRKPATRICK WERE ABSENT FOR THE VOTE.)

We will open the work session on Assembly Bill 383.

**Michelle L. Van Geel, Committee Policy Analyst:**

Assembly Bill 383 was just heard in Committee. The rules have been suspended. You are able to take a motion to move the bill out.

ASSEMBLYMAN SILBERKRAUS MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 383.

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN KIRKPATRICK WAS  
ABSENT FOR THE VOTE.)

**Chair Wheeler:**

Assemblyman O'Neill will take the floor statement. I have an announcement. Is anyone here because of the work session on Assembly Bill 217? We are not going to work that bill today as there has been a change in the amendment that has not been resolved. We will have that for our meeting on Thursday, April 9. We will move to the work session on Assembly Bill 176.

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

**Michelle L. Van Geel, Committee Policy Analyst:**

Assembly Bill 176 was heard in Committee on March 3, 2015, and was sponsored by Assemblyman Armstrong and others. The bill as written would have required the Director of the Department of Motor Vehicles (DMV) to disseminate information about the Nevada Yellow Dot Program to the public and to public safety agencies, and authorizes the DMV to obtain grants for the program. First responders are immune from civil liability for damages as a result of any act or omission taken by the first responder relating to a collision or other emergency in connection with the program that does not amount to gross negligence. Behind the work session page is a mock-up provided by Assemblyman Armstrong. The amendment provides that the Regional Transportation Commission of Southern Nevada, instead of the Department of Motor Vehicles, will administer the Nevada Yellow Dot Program. The amendment also removes the possibility that the state would have to provide money for the administration of this program. Adopting this amendment will remove the fiscal note from the bill. [Referred to work session document ([Exhibit D](#)).]

ASSEMBLYMAN SILBERKRAUS MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 176.

ASSEMBLYWOMAN DICKMAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN KIRKPATRICK WAS  
ABSENT FOR THE VOTE.)

**Chair Wheeler:**

Assemblyman Sprinkle will take the floor statement. We will now open the hearing on Assembly Bill 385.



**Assembly Bill 385: Revises provisions related to tow cars. (BDR 58-967)**

**Lorne Malkiewich, representing E&E Vehicle Solutions, LLC:**

I am here on behalf of E&E Vehicle Solutions. We have been in communication with Assemblywoman Kirkpatrick. She is, in her words, buried up to her eyeballs in tax bills. She asked us to proceed if she was not able to make it.

Assembly Bill 385 follows up on Senate Bill No. 456 of the 77th Session, which passed unanimously. That bill allowed insurers to designate vehicle storage lots. These lots are where cars that are disabled or are directed to be towed by law enforcement are taken. Insurance companies designate these lots so that they can have all of the vehicles they insure in one safe, secure location; ease the administration of claims; as well as reduce the costs. We have had some concerns with the enforcement of the bill. There is a letter from Andrew MacKay, the chairman of the Nevada Transportation Authority, to all certificated nonconsent tow carriers, which has been uploaded to the Nevada Electronic Legislative Information System (NELIS) ([Exhibit E](#)).

This bill is to enforce the provisions of S.B. 456 No. of the 77th Session and to help enforce the will of the Transportation Authority as expressed in this letter. All four of the points raised by Mr. MacKay in his letter are addressed, in one way or another, in the bill. First, all tows initiated at the request of law enforcement remain subject to *Nevada Revised Statutes* (NRS) 706.4489 regardless of whether the resulting tow is deemed consent or nonconsent. A key provision of this bill is putting into law what is stated there. If someone has designated a vehicle storage lot, the vehicle must be taken to that lot. Second, tow carriers cannot solicit vehicle owners to divert tows to anywhere other than the designated lot in contravention of that legal compulsion. The bill specifically puts this provision in the law. Third, tow carriers are under no obligation to make an effort to independently investigate or attempt to determine the insurance carrier. This we address in another way. We have added a provision to the bill that specifically requires good faith efforts on the part of the tow car operator to determine the insurance carrier. Fourth, carriers are required to maintain documentation related to tows. This is also addressed in the bill in a number of places.

Although the bill is quite long, there are only four provisions that have new language added to them—sections 2, 3, 13, and 16. We also have a proposed amendment ([Exhibit F](#)) that addresses some of the concerns that have been raised in talking to people who are involved with this issue—members of the Legislature, insurers, and other people involved in this.

I will go through the bill and mention where the amendments come into play. Section 2 clarifies that insurance company would include captive insurers and self-insurers. If someone wants to designate a vehicle storage lot for a fleet, they can do so as well.

Section 3 provides that an operator who is required to tow a vehicle [to a designated storage lot] shall not tow it to another location. The amendment ([Exhibit F](#)) provides an exception that, we agreed in discussions with a number of people, simply addresses a practical problem. If a person has a disabled car and the owner of the car tells the tow operator to tow the car somewhere else, that is a very difficult position to put the tow operator in. The tow operator would have to tell the owner the law requires the car to be towed to the vehicle storage lot. Our amendment ([Exhibit F](#)) proposes to provide an exception to say, except as otherwise provided in this section allowing the person to designate it be taken somewhere else, the tow car operator cannot take it somewhere else. The remainder of section 3, subsection 1, is existing language that was moved from NRS 706.4489.

Section 3, subsection 2 of the bill is one of the key provisions addressed in the letter. That operators "shall not solicit the owner or operator of a vehicle to divert the towing of a vehicle to a location other than the designated vehicle storage lot." Our amendment [page 1, ([Exhibit F](#))] proposes to add, "or solicit third-party services." Additionally, this could create a very blurry line. A tow operator cannot solicit taking it somewhere else, but can talk about how wonderful this body shop is and what a great place it is. That comes very close to soliciting. We propose adding a prohibition against soliciting third-party services.

We are suggesting replacing the last sentence in subsection 2 with something that is a key provision [page 2, ([Exhibit F](#))], indicating that if the tow operator does divert a tow by taking it someplace other than the vehicle lot, it does not thereby become a consensual tow—it remains a nonconsensual tow. Therefore, it is subject to the tariffs and to all the laws regarding nonconsensual tows. Section 3, subsection 3, of the bill provides the penalties for this: for a first offense, a fine of not more than \$5,000. *Nevada Revised Statutes* 706.771, subsection 2, currently allows an administrative fine of up to \$10,000. For a first offense, this is less than allowed under existing law. The point is not to provide a penalty for a single slip for a single problem, the idea is to stop a pattern of behavior. That is why we suggest more serious penalties for a second and third offense. For a second offense, up to \$10,000 and possible suspension; for a third offense, possible revocation of the certificate of public convenience and necessity. All of this would be subject to notice and hearing and the procedures of NRS Chapter 233B. I would also point out that it is

limited to offenses within a 24-month period. If offenses are more than 24 months apart, they are still considered a first offense.

Section 3, subsection 5, of the bill provides a shifting of the burden of proof. One of the problems that Mr. MacKay has is if a tow operator says that he or she was asked to take the vehicle to another location, it is very difficult to prove that happened. This says that if the vehicle is insured by a company that has a designated vehicle storage lot and it is taken somewhere else, the burden shifts to the tow operator to show that it was because he did not know that they designated a vehicle storage lot, he did not know the insurance company, or, pursuant to a new provision we are proposing to put in, the person has signed off on it. What we are proposing is that if a person really wants it to go to somewhere, he should be allowed to do that, but to ensure that the operator of the tow car has not improperly solicited this diversion. The amendment [page 2, ([Exhibit F](#))] provides that the operator needs to get the person to sign a simple statement indicating that he was not solicited, urged, or otherwise directed to take the car someplace else. This provides protection to tow car operators because they now have documentation that they are required to retain showing they were directed to take it somewhere else. In the absence of such direction, they are to take it to the vehicle storage lot. The administrative fines deposited to a separate account is in existing law in NRS 706.771, subsection 3.

The next substantive provision in the bill is section 13, on page 10. This is a very minor change regarding the dispatcher's log maintained by operators. One of the things we want to do is identify insurance, document it, and maintain that documentation, which is the last point from the letter ([Exhibit E](#)). The dispatcher's log is to indicate the name of the insurance company, if the operator determines it or is otherwise informed of it.

The next substantive provision of the bill is section 16, subsection 2, on page 11. "If the law enforcement officer does not inform the operator of the tow car of the identity of the insurance company, the operator shall make a good faith effort to determine the identity of the insurance company from the law enforcement officer and the owner or operator of the vehicle." Our amendment, [page 3, ([Exhibit F](#))] proposes inspection of the passenger section of the vehicle. I would ask that that portion of the amendment be withdrawn. I have had mixed reaction to that. A number of people believe it is just not a good idea. We believe that the provision as written here indicates what a good faith effort is, which is asking the law enforcement officer, asking the owner of the car, but not going into the vehicle. Frankly, I believe that the idea of identifying the insurance company and determining whether they have a designated storage lot is very quickly going to become a secondary issue. The bill you processed

recently, Assembly Bill 143, authorizes electronic verification of insurance. I think it is just a matter of time until it will be a simple matter to determine the insurer of any vehicle and the vehicle storage lot. Good faith effort would at that point indicate using whatever technology is available to determine the identity of the insurer.

Finally, section 16, subsection 2(b), at the bottom of page 11 (lines 41 and 42), "The owner or operator of the vehicle shall be deemed to have consented to towing the vehicle...." We have proposed amending this to say that they cannot divert it to another storage lot, but they can direct it somewhere else, and then the provision is about having the operator ask the person to sign something indicating that they requested this without being solicited or otherwise urged to do this by the tow car driver [page 3, [Exhibit F](#)]. We believe that this provides very good protection against inappropriate diversions. The person would have to sign that they, in fact, want their vehicle taken to a body shop. All they have to do is sign the statement. There is a double purpose: it gives permission for the person to have their car go wherever they want, and it protects the tow car operator against being charged with an improper diversion because they now have something in their hand that says they were approved to have this vehicle taken somewhere else.

The deleted language at the top of page 12, section 16, subsection 3(a) and (b) of the bill is the language now in section 3, subsection 1, that was moved. The new language states "The operator of the tow car shall retain any documents provided by a law enforcement officer indicating the identity of the insurance company...." We are not requiring law enforcement to provide any documentation. We do not want to put any additional burdens upon law enforcement because they have far more important things to do at the scene of an accident. If they do happen to provide documentation, the tow company is required to keep it to have a record of who the insurance company is. Our proposed amendment [page 3, [Exhibit F](#)] says that if that documentation is provided at the scene—not requiring that any be provided—it will be taken to the vehicle storage lot.

The remainder of the bill is simply internal references indicating that these two new sections get placed in particular subheadings of NRS Chapter 706. Those are the remaining substantive provisions of the bill. With that, Mr. Chair, I would be glad to answer any questions.

**Assemblyman Flores:**

Could you take me through the procedure for when a vehicle is about to be towed? I am trying to understand the process of making someone sign a document in order for the vehicle to be taken to a different lot. I do not know if

that is overly burdensome. We may already make them sign 30 documents and now we are adding another. How many documents are vehicle owners signing now?

**Lorne Malkiewich:**

We have some people in Las Vegas who could probably give you a better idea of the exact procedure, but I will go through the little bit that I do know. First of all, this bill only applies to Clark County. It is limited to counties with a population of over 700,000. In Clark County, there is a duty tow rotation. Three different tow companies, through a contract with the Las Vegas Metropolitan Police Department (Metro), alternate. When Metro comes to the scene of an accident and says they need tow, the duty tow comes out. Perhaps someone is insured by a company that has designated a tow company and their tow car will be called. The duty tow is responsible for cleaning up the scene and getting those cars removed. Let us assume that my car is in an accident. At that point, my car will be hooked up by the duty tow. They will see that my insurance has designated a vehicle storage lot and will be taking my vehicle to that location. If I want my vehicle taken somewhere else, there would be a single piece of paper to sign that I assume the tow companies would keep for their own protection. It would be a standard form saying that the operator of the tow car did not request me to do this, I asked that my car be taken there. I would just have to sign my name.

**Assemblyman Flores:**

Would the vehicle owner be authorized to keep a copy of that?

**Lorne Malkiewich:**

I do not know why the vehicle owner would need a copy since the person in jeopardy is the tow car operator. The document is for the protection of the tow car, but I believe that is something that could be worked out by regulation, whether it is in duplicate or something like that.

**Assemblyman Flores:**

I talked with constituents to see what they thought about it. They were not sure they wanted to sign something without being given a copy of it. I am echoing their sentiment. People typically want to be able to hold onto what they sign because they want to know what they are signing.

**Loren Malkiewich:**

I understand the concern there. The person we are attempting to protect is the tow operator. The problem is establishing proof. There is difficulty in determining the difference between when someone was improperly solicited to go somewhere and when someone voluntarily chose to go somewhere else.

This is what we came up with as a manner of addressing that problem. This is one way, as simply as possible, we can ensure that the diversion was consensual and was not improperly coerced or solicited.

**Assemblyman Sprinkle:**

My colleague brings up a good point I had not even thought about. When I look at these fines, they are significant. I understand the rationale behind them and I understand what we are trying to do. We are now changing the burden of proof, but if an individual refuses to sign something, the burden of proof is still on the tow operator. At that point, the tow operator is not necessarily going to feel comfortable taking the vehicle to the required tow lot when the owner is demanding to go somewhere else. Is this something that has been considered? How do we work in a third-party witness testament or something that would allow for this? Otherwise, with the switch in burden of proof and the associated fines if they are not able to prove the vehicle owner instructed them to tow the vehicle somewhere else, it is significant.

**Lorne Malkiewich:**

Remember that where we started from is that the tow operator is required to take the vehicle to the designated tow storage lot. We want to allow people to choose otherwise. We have a concern with how exactly to prove it. I think if you put in a third party, it is making it more complex. I believe that if the tow operator is in a position where a person will not sign, he or she has to inform the person that he is subject to penalties if the document is not signed. The tow operator can say the insurance company has designated a vehicle storage lot to save money and make access to the vehicle more convenient. By law, he is required to take the vehicle there unless the document is signed indicating the owner requested it be taken somewhere else. This provides the defense for the tow operator. Mr. MacKay would not even bring a case under these circumstances because there will be documentation indicating that the tow operator has complied with the law and gotten that simple statement signed.

**Jerry Carnahan, Adviser, E&E Vehicle Solutions, LLC:**

I grew up in the tow business. I have about five years of law enforcement experience. I worked for a major insurance carrier for 33 years. I think we should remember that this is only a nonconsent tow, so the officer would have already discussed with the owner or operator whether they wanted a specific tow company or not. The type of tows we are talking about are cases where the owner or operator says they do not have one and this is ordered. The incidents where they would say that they want their vehicle towed somewhere else would take place infrequently. It would be very rare that someone would want their vehicle to go somewhere else. The document would

then protect the insured and the tow operator. As far as providing a copy of the document to the vehicle owner, I do not see a problem with that. This just helps position everyone so that we know what the true wishes of the vehicle owner or operator were.

**Chair Wheeler:**

Are there any further questions? [There were none.] How long will the tow operator have to keep this document? Is that stated in the bill itself?

**Lorne Malkiewich:**

I believe this would be consistent with other documentation that tow companies are required to maintain. It is a matter for the Nevada Transportation Authority (NTA) to indicate how far back documentation must be maintained. I do not know how far back they go for enforcement, but if you can only enforce violations back for a year or two, I think that is how long you would need to maintain the documentation.

**Chair Wheeler:**

We have the director of the NTA here. Mr. MacKay, could you address that?

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

He is correct that it would just fall within the normal record retention schedule for all documentation relating to nonconsensual tows. I believe it is 36 months.

**Assemblyman O'Neill:**

If an owner or operator of a vehicle refused to sign the document, could the law enforcement officer, as a third party, witness that?

**Lorne Malkiewich:**

I think that would work. I do not quite know how the law enforcement officer would know that the person was not improperly soliciting, but perhaps they could confirm it.

**Chair Wheeler:**

Are there any further questions for Mr. Malkiewich or Mr. MacKay? [There were none.] Assemblywoman Kirkpatrick, do you have any comments you would like to add?

**Assemblywoman Kirkpatrick:**

Thank you for allowing my people to testify in my place. I appreciate the Committee's time and effort.

**Chair Wheeler:**

We will go to Las Vegas for testimony in favor.

**Jerry Carnahan:**

We have no further comments.

**Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance:**

We are here in support of A.B. 385, just as we supported Senate Bill No. 465 of the 77th Session. I want to make some ancillary comments regarding the rotation tows and what happened with this legislation after it was passed last session and mandated into law. In Clark County, there are three duty tow companies that work on rotation for Metro; Quality Tow, Fast Tow, and Ewing Brothers. The Nevada Highway Patrol has a number of tow operators they use that are on their duties as well, which include those companies. We are averaging about 2,000 tows a month between the two law enforcement agencies. We are seeing a small portion of those being sent to insurance holding lots. In our case, it seems to go by whichever duty tow operator is on duty at that time. Some companies are better than others in adhering to the statute, and others do not follow up. We applaud the bill sponsors in trying to correct this. Insurance is very competitive in pricing. If we can give a better price to our consumers, we will. Our company found out that by using an insurance holding lot we are saving an average of \$255 per tow. As a competitive company, we take those cost savings and pass them on to Nevada consumers in the form of rate decreases on their collision or comprehensive coverages.

Under section 3, subsection 1 of the bill, it says that an operator of a tow company is required to tow a vehicle to a designated vehicle storing lot pursuant to NRS code, "shall not tow the vehicle to another location." If the operator of the tow car fails to tow a vehicle, that is where we have problems. A vehicle will be disabled at a scene and, somehow, some companies have found ways to circumvent this statute, intentionally or unintentionally, and tow vehicles to body shops or other facilities that are profit centers. They are able to charge regular tow fees. In that case, the tows become even more expensive than if they were to go to the duty lot beforehand. With this in mind, I think it is a good savings to the consumer. One of the contracts that we have with our featured holding lot is that even our customers who do not have collision coverage on their cars will have their vehicles directed to the insurance holding lot. The consumers who cannot afford to pay for collision or comprehensive coverage will be afforded the benefits that we are afforded per our contract with them. They will not be paying the excessive storage charges that go to the regular duty tow lot. They will get the benefits that we get once



they pick up their car. Instead of paying \$500 to pick up their car, which we are now paying for as an insurance company, as a consumer, they are going to be able to come to our insurance holding lot and pay on average \$250. We applaud the bill sponsors for this and support Assembly Bill 385.

**Lisa Foster, representing Allstate Corporation; and American Family Insurance Company:**

Both of these companies support this bill, particularly with the amendment that has been put forward ([Exhibit F](#)). We were at the table supporting the creation of this program last year as well. We appreciate the willingness of the sponsors of this bill, the prime lobbyist of the bill, to work with us in making a few changes that he has included in the amendment. One of my clients was particularly concerned and said, "What if one of our insureds wants to go to the dealership or a repair facility, not to the lot? I think we need to make that clearer." They were very willing to put that in the amendment, and we appreciate it. The bottom line is that this program is working. There are some issues, but it sounds like this bill will take care of some of them.

**Dan Musgrove, representing CSAA Insurance Group:**

I am with AAA Insurance and I will provide a "ditto."

**Chair Wheeler:**

Do we have any questions for any of the insurance representatives? [There were none.] Is there any more testimony in favor of A.B. 385?

**Samuel P. McMullen, representing Copart, Inc.:**

Copart, Inc. is a national company that operates salvage pools, which are actually the companies in the legislation that you are dealing with that are designated as storage lots by the insurance companies. We want to support this bill and the amendment ([Exhibit F](#)) because they solve some of the problems we saw last year after we developed an extra facility to accommodate this. We then saw the variability of the direction of vehicles to our storage lot. It was pretty clear that there were some abuses. This bill solves those. We are totally in favor of the amendment.

**Chair Wheeler:**

Are there any questions for Mr. McMullen? [There were none.] Is there any more testimony in favor of A.B. 385? [There was none.] Is there testimony in opposition to A.B. 385?

**Scott Scherer, representing Quality Towing:**

We have a number of concerns with this bill, and we have submitted a proposed amendment ([Exhibit G](#)). I would like to go through those concerns. Regarding

the history of this bill, when this bill was passed last session, there was a discussion about the owners of vehicles having the opportunity to direct where they wanted their vehicles to go. We do not want to see that right taken away from owners. Let me give you an example of the reason why. If an accident occurs at Interstate 15 and Cheyenne Avenue and the storage lot is in Henderson and the owner lives in North Las Vegas, it may be difficult for the owner, if this is the only vehicle he or she owns, to get a ride to Henderson to be able to pick up the vehicle. If they live in North Las Vegas and are in an accident—and most accidents occur close to home—it would be much easier for them to have the vehicle taken to a local lot and then get a ride to the local lot to be able to pick up their car. We heard testimony about the cost. The cost is a function of how long the vehicle is in storage. If it takes an owner several days to be able to get to Henderson to pick it up, he will not have a lower cost for storage charges for that vehicle. That is one of our concerns.

We heard testimony that this is to put some teeth into the bill that was passed last session. The NTA already has the authority under NRS 706.771 to impose fines for violations of the statute. For any violations of the existing statute, they can impose fines up to \$10,000. While we are concerned about the penalty provisions in this bill, our biggest concern is what we refer to as the death penalty. If you impose a one-year suspension on a certificate of public convenience and necessity, a tow car operator is going to lose its existing contracts and a lot of its business, is not going to continue to be able pay its overhead, and is effectively going to be put out of business. The one-year suspension is especially excessive.

We have no problem with prohibiting solicitation. We have no intention of soliciting customers to take their vehicles somewhere else. We are fine with that section and with section 2 of the bill. We are fine with the part in section 3 that would prohibit solicitation. I have just seen the amendment ([Exhibit F](#)) for the first time today, so I am not completely familiar with it. Generally, we do not have a problem with the solicitation prohibition.

I want to talk a little bit about an accident scene. We heard from Mr. Malkiewich in somewhat clinical terms speak about cleaning up the scene of the accident and moving a disabled vehicle. Not all, but many accident scenes are very hectic. There are safety concerns and traffic concerns. There is a law enforcement officer who needs to do an investigation. We do not want to interfere with that, and we want to follow the directives of the law enforcement officer. You may have a case where the vehicle may be evidence. The law enforcement officer may have a specific place he or she wants the vehicle to go. We have added into our amendment ([Exhibit G](#)) that if it is otherwise directed by law enforcement, it could go to whatever location that officer

directs. Our concern is that getting a statement at the scene may be extremely difficult. We are happy to do it when things are normal and not hectic, but that is not always the first priority. Getting the scene cleaned up, the vehicles out of the traffic lanes, and following the directives of law enforcement are the primary objectives. Certainly, we would help protect ourselves, and that would be a good policy to have, but it will not happen in every case. Whether the consumer balks at signing the statement or whether the tow car operator just forgets while trying to make sure that he is following the directives of the law enforcement officers on the scene in getting the vehicles out of the traffic lanes, there may be times that just does not happen.

That brings us to our next concern, which is the burden of proof. Shifting the burden of proof is effectively asking tow car operators to prove a negative—to prove that they did not know something. It violates fundamental fairness and elements of due process to ask us to carry the burden of proof of showing that we did not commit a violation of the law. We are very concerned about that, especially when that is combined with the requirement for a good faith effort. How are we going to prove that we made a good faith effort to obtain that information? The combination of those two provisions of the bill is going to make it virtually impossible for tow car operators to defend themselves against a complaint.

The possibility of third-party witnesses was brought up earlier. Certainly, the NTA has investigators, and they have an obligation under NRS 706.286 to investigate complaints. They can talk to vehicle owners to confirm that they directed their vehicle be taken to another location. The insurance company has a relationship with that insured and is in a better position than the tow car operator to actually get testimony from owners of vehicles. To shift the burden to the tow car operator we think is especially inappropriate.

With regard to the good faith effort, I appreciate Mr. Malkiewicz's testimony that they have removed provisions regarding looking into the vehicle. We are still concerned with the good faith effort because we were concerned that it would require us to rifle through the vehicle, through somebody's glove box, potentially invading the owner's privacy and opening ourselves up to liability if they claim later that something was missing from the vehicle. We are concerned about that provision as well.

With regard to being able to take a vehicle to another storage lot, if there is another storage lot that is closer and more convenient for the consumer and that is where they want the vehicle to go, they should be able to designate that, as well as to a body shop or other places. We will not solicit. We are fine with

putting into this bill a prohibition on solicitation, but if the owner says he needs it to go to North Las Vegas, we want to be able to take it to North Las Vegas.

Finally, I mentioned that we were fine with the nonsolicitation. We are also fine with the record-keeping provisions. We are fine with the dispatch logs. We are not against having some additional provisions in this law to allow the NTA to better do its job in reviewing records and making sure that the documentation is there, but we are very concerned about the potential suspension of the certificate of public convenience and necessity (CPCN). There is authority to suspend the CPCN and now it is for 60 days rather than a year. Extending it out to a year seems excessive.

Effectively, what the insurance companies and the lot owners are telling us is that we have to use our employees, on our dime, to do their job. We think that is unfair to the tow companies to have to do that, but we are willing to cooperate if we are aware. If there is a database that will tell us clearly who insures a car, we are happy to follow that.

**Chair Wheeler:**

I have some questions for you. Most of what you are saying is already in law. If you live in North Las Vegas and the lot is in Henderson, the car will go to Henderson. What this law is doing is stiffening the penalties and some of the tracking. I agree with you that a one-year suspension would kill a towing company, and I would like to talk to the bill sponsor about that and make an agreement, so that we can proceed with this bill. I think a compromise needs to be reached.

**Assemblyman Flores:**

I agree with you, Mr. Chair. It is my understanding that you brought up the concern that if you lived in North Las Vegas and they have to take the vehicle to Henderson, you have the option now and through this bill to go to the lot in North Las Vegas. There is nothing preventing anyone from doing that.

**Scott Scherer:**

Under current law you have that option. This bill would change that, so that the owner could not direct it to another lot or any other location. The amendment, if I understand it correctly, would say that you can direct it to a body shop or some other location, but you cannot direct to another storage lot. If I am wrong about that, I apologize, but that was my understanding of what was said.

**Assemblyman Flores:**

I think the bill sponsor can clarify that.

[Assemblywoman Dickman assumed the Chair.]

**Assemblyman Carrillo:**

In the example you gave of a vehicle being taken to a tow lot in Henderson, if the accident took place in Henderson, would they be able to have the car taken to a storage lot in Las Vegas or should they just leave it in Henderson? It works both ways. I know you are representing Quality Towing and I do not know if Quality has two different tow lots. Are we comparing apples to apples here, or apples and oranges? I would also like to address the issue of multiple tow lots. Some companies have multiple tow lots.

[Assemblyman Wheeler reassumed the Chair.]

**Scott Scherer:**

You are correct that some tow car operators do have multiple tow lots. The law currently requires them to take it to the closest tow lot, unless otherwise specifically directed. If someone lived in Henderson, I cannot imagine that they would say they wanted their vehicle to go to Las Vegas or North Las Vegas. It would not make any sense for the owner. All we are saying is that we want the owner to have the right to designate a different destination for their vehicle. If it is completely disabled, it may not matter, but if the vehicle is drivable and the owner can go and pick it up, it makes sense for it to be more convenient to them and closer to home. They will probably be able to pick it up sooner and with less difficulty.

**Chair Wheeler:**

Are there any further questions? [There were none.] Is there testimony in opposition in Las Vegas? [There was none.] Is there testimony in the neutral position? [There was none.] We will close the hearing on A.B. 385. We will open the hearing to public comment. [There was none.] We are adjourned [at 4:30 p.m.].

RESPECTFULLY SUBMITTED:

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Joan Waldock  
Committee Secretary

APPROVED BY:

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Assemblyman Jim Wheeler, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Transportation

**Date:** April 7, 2015

**Time of Meeting:** 3:23 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 383	C	Gen-Gang (Bruce) Fuh, Director General, Taipei Economic and Cultural Office in San Francisco, California	Written Testimony
A.B. 176	D	Michelle L. Van Geel, Committee Policy Analyst	Work Session Document
A.B. 385	E	Lorne Malkiewich, representing E&E Vehicle Solutions, LLC	Letter from Nevada Transportation Authority
A.B. 385	F	Lorne Malkiewich, representing E&E Vehicle Solutions LLC	Proposed Amendment
A.B. 385	G	Scott Scherer, representing Quality Towing	Proposed Amendment