

**MINUTES OF THE  
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Eighth Session  
May 5, 2015**

The Senate Committee on Transportation was called to order by Chair Scott Hammond at 8:34 a.m. on Tuesday, May 5, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Scott Hammond, Chair  
Senator Don Gustavson, Vice Chair  
Senator Patricia Farley  
Senator Mark A. Manendo  
Senator Moises (Mo) Denis

**GUEST LEGISLATORS PRESENT:**

Assemblyman Derek W. Armstrong, Assembly District No. 21  
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1

**STAFF MEMBERS PRESENT:**

Megan Comlossy, Policy Analyst  
Darcy Johnson, Counsel  
Tammy Lubich, Committee Secretary

**OTHERS PRESENT:**

Sara Chohagian, Touro University Nevada  
John Fudenberg, D-ABMDI, Assistant Coroner, Office of the Coroner/Medical Examiner, Clark County, Nevada  
Chuck Callaway, Las Vegas Metropolitan Police Department  
Teri Baltisberger, DMV Services Manager III, Business Programs Management Services and Programs Division, Department of Motor Vehicles  
Bruce Fuh, Director General, Taipei Economic and Cultural Office, San Francisco

Senate Committee on Transportation  
May 5, 2015  
Page 2

Lorne Malkiewich, E & E Vehicle Solutions  
Andy MacKay, Chair, Nevada Transportation Authority, Department of Business  
and Industry  
Lisa Foster, Allstate Corporation; American Family Insurance Company  
Robert L. Compan, Farmers Group, Inc.  
Samuel P. McMullen, Copart, Inc.  
Scott Scherer, Quality Towing

**Chair Hammond:**

I will open the hearing on Assembly Bill (A.B.) 176.

**ASSEMBLY BILL 176 (1st Reprint)**: Requires the regional transportation commission in certain counties to establish and administer the Nevada Yellow Dot Program. (BDR 22-649)

**Assemblyman Derek W. Armstrong (Assembly District No. 21):**

Thank you, Chair and Committee members, for allowing me to present Assembly Bill A.B. 176.

The intent of A.B. 176 has been changed. The intent when it was first introduced was to have a complete statewide program to be administered by the Department of Motor Vehicles (DMV).

I would like to recognize the Regional Transportation Commission of Southern Nevada (RTC SN) and Touro University Nevada for helping in the development of A.B. 176.

The Yellow Dot program was first started in Connecticut in 2002. Since then, 22 states have some form of the Yellow Dot program. Touro University Nevada took on the project to assist Nevada citizens and first responders in the event of an automobile crash or other medical emergency involving a participant's vehicle.

The basic idea of the program is to place a yellow dot sticker in the lower left corner of the rear windshield of a vehicle. The yellow dot is to alert first responders to check the glove compartment for pertinent medical information. The pertinent medical information is placed in a yellow envelope and alerts first responders of a person's medical conditions and medications during the

“Golden Hour” of a crash. The Golden Hour is the period of time following a traumatic injury where prompt medical treatment will help prevent death.

Slide 5 of ([Exhibit C](#)) shows how the program works. On the medical information sheet ([Exhibit D](#)), a photo is attached and information is provided. The photo is required to verify that the information provided is pertinent to that particular person. This program is completely voluntary.

To enroll, the applicant visits the local Nevada Department of Transportation (NDOT), sheriff’s office or designated place to pick up the Yellow Dot decal and folder. The Yellow Dot decal is placed in the bottom left corner of the rear windshield. The medical information is placed in the Yellow Dot folder and placed in the vehicle’s glove compartment. If more than one person operates the vehicle, there can be more than one packet. In addition, if drivers have multiple vehicles, they could have one packet for each vehicle.

Slide 6 of [Exhibit C](#) explains a case I would like share with the Committee showing how the Yellow Dot Program worked for one individual.

While driving from a funeral in March 2013, Vivian Howard, a diabetic, began to lose consciousness on a 12-mile drive back to her residence. Vivian did not remember much about the drive, but she did remember waking up.

Vivian stated that when she opened her eyes, there were paramedics around her. She remembered steadily bumping the curb as she drove, and then she must have blacked out and crashed.

Because Ms. Howard had taken advantage of the statewide Yellow Dot program, the first responders had immediate access to her medical information helping them quickly assess her condition and initiate appropriate procedures.

When I first introduced this program, there was a large fiscal note attached by the DMV. As referenced in the letter you have received ([Exhibit E](#)), the RTC SN has marketed this program at no cost.

**Chair Hammond:**

Is the RTC SN receiving any cooperation from other entities in the south to help with the cost?

**Assemblyman Armstrong:**

No specific companies have offered financial support for the Yellow Dot program. Ms. Tina Quigley with the RTCSN stated that this was "right up their wheelhouse." In addition, enabling language within A.B. 176 allows that if there are grant monies or donations available, they can be accepted through this program.

**Chair Hammond:**

You mentioned this is similar to other states with Yellow Dot programs. If I were to travel outside of Nevada and go into another state, would our Yellow Dot program cross over from one state to another?

**Assemblyman Armstrong:**

I believe you are asking if there is program standardization across the Country to make sure that first responders are aware of the program and can meet those needs. With different agencies being responsible for the program, Slide 4 of [Exhibit C](#) shows the different style yellow dots used in other states.

In answer to your question, yes, this is a known program across the Country. The language in section 1, subsection 7, states a first responder is not liable for any civil damages due to an act by the first responder relating to a collision or other emergency. This language was added to A.B. 176 to protect the first responders should they not recognize the Yellow Dot program or the accident prevents them from identifying the Yellow Dot.

**Chair Hammond:**

Is there a plan in the future to advertise the program availability and what to do if there is a crash?

**Assemblyman Armstrong:**

The third paragraph in the letter from the RTCSN, [Exhibit E](#), states it would be willing to take on the information campaign because it is similar to some of its current programs.

**Senator Denis:**

Would this program be available in other parts of the State?

**Assemblyman Armstrong:**

The original bill was to offer the program through every DMV office in the State. Unfortunately, due to the fiscal note and the difficulty of the DMV to implement the program, it was not a viable option. The RTCSN is working with the Regional Transportation Commission of Washoe County (RTCWC) to implement the program in the north. The language in section 1, subsection 3, paragraph (a), states it is available to anyone in the State who wishes to participate in the program. The RTCSN is looking to work with other agencies to provide the Yellow Dot program to individuals throughout the State.

**Senator Denis:**

If other agencies throughout the State want to adopt the program, would they go through the RTCSN?

**Assemblyman Armstrong:**

My original intent was for the program to be available throughout the State. The program would start in Clark County because of the population minimum of 700,000.

**Senator Denis:**

You mentioned that the RTCSN was working with the RTCWC in the north. If they are able to work with the RTCWC, will they be able to implement the program in the north?

**Assemblyman Armstrong:**

Absolutely, the RTCSN and the RTCWC are working on this.

**Senator Denis:**

Is there anything that would limit the north from providing the program?

**Assemblyman Armstrong:**

No, there is nothing limiting the north from providing the program.

**Senator Manendo:**

I want to be sure that southern Nevada is not paying for all of the costs. If the RTCWC in the north decided to adopt the program, would they incur the cost?

**Assemblyman Armstrong:**

If the north has the same business relationships as the south, then the language in A.B. 176 would allow them to accept gifts, donations or grants to carry out the program.

**Senator Manendo:**

If the north decides to sponsor the program, would the RTCSN be funding the north as well as the south?

**Assemblyman Armstrong:**

If the RTCWC decides to sponsor the program in the north, then the RTCWC would incur the costs for the north.

**Chair Hammond:**

Will there be communication between the first responders and the RTCSN letting them know what the Yellow Dot program is?

**Assemblyman Armstrong:**

Yes.

**Chair Hammond:**

Would the RTCWC be the organization to educate the first responders in the north on how the program works and where the information is located?

**Assemblyman Armstrong:**

Yes, that would be part of the social media campaign.

**Sara Chalhagian (Touro University Nevada):**

Touro University Nevada supports A.B. 176. This is a program the Touro University School of Physician Assistant Studies started as part of one of its curricula in 2011, and it has worked with several entities in the south to implement the Yellow Dot program on a volunteer basis. The University has marketed the program in different areas such as the Henderson Fire Department, the Henderson DMV office and at the Touro University Nevada campus. Touro University Nevada would like to offer its services on a volunteer basis.

Senate Committee on Transportation  
May 5, 2015  
Page 7

**John Fudenberg, D-ABMDI (Assistant Coroner, Office of the Coroner/Medical Examiner, Clark County):**

Clark County supports A.B. 176 and believes it will be very beneficial for the community.

**Chuck Callaway (Las Vegas Metropolitan Police Department):**

Las Vegas Metropolitan Police Department supports A.B. 176.

**Teri Baltisberger (DMV Services Manager III, Business Programs Management Services and Programs Division, Department of Motor Vehicles):**

The DMV is neutral on A.B. 176, and as A.B. 176 is amended, it eliminates the fiscal note.

**Assemblyman Armstrong:**

Thank you Chair Hammond and the Committee, for hearing A.B. 176.

**Chair Hammond:**

I will close the hearing on A.B. 176 and open the hearing on A.B. 383.

I would like to welcome Assemblywoman Kirkpatrick and will excuse myself and turn the gavel over to Vice Chair Gustavson.

**ASSEMBLY BILL 383 (1st Reprint)**: Revises provisions relating to drivers' licenses. (BDR 43-743)

**Senator Gustavson:**

Welcome, Assemblywoman Kirkpatrick, please proceed with A.B. 383.

**Assemblywoman Marilyn Kirkpatrick (Assembly District No. 1):**

Assembly Bill 383 will have long-lasting meaning to our State and for our friends within the Taiwanese government.

Assembly Bill 383 authorizes a mutual agreement with Taiwan pertaining to the issuance of drivers' licenses in the State of Nevada.

Last year, I was fortunate to be part of the Nevada delegation that went to Taiwan. For 30 years, Reno has had a sister-city agreement and we hope to expand those across the State.

One of the most fascinating places the delegation visited in Taiwan was its Department of Transportation. Taiwan registers approximately 13 million mopeds. Taiwan also has high-speed rail and many opportunities for individuals to get around in the country, as opposed to the one option in southern Nevada, the freeway.

One of the things the delegation spoke of is having the ability for reciprocal drivers' licenses. The Taiwanese have legislation or are working toward the reciprocal drivers' licenses with 54 other countries and 10 states plus, potentially two more including Nevada.

There are approximately 20,000 Taiwanese living within the State of Nevada. Once they become residents, A.B. 383 will help them get Nevada drivers' licenses.

To help Nevada grow, it is important to invest in partnerships with other countries outside of the United States. Taiwan and Nevada have similar driving laws and I believe having reciprocal drivers' licenses would be an asset to the State.

Section 1 of the A.B. 383 states, "When a person becomes a resident of Nevada." This is important because we want them to be residents. Section 2 has been deleted. Section 3 commemorates the thirtieth anniversary of the sister-state relationship between Nevada and Taiwan, and allows the DMV to work with the Director General of the Taipei Economic and Cultural Office located in San Francisco.

I would like to propose a verbal amendment to remove the reference, "Republic of China," on lines 18 and 26 of section 3 and leave it as Taiwan.

I would like to introduce Director General Bruce Fuh from San Francisco. Director General Fuh visits Nevada often to talk about the different aspects of the sister-state relationship.

**Senator Scott Hammond (Senatorial District No. 18):**

Assemblywoman Kirkpatrick has mentioned all the aspects of sections 1 and 3 and I would like to turn the testimony over to Director General Fuh.



**Senator Gustavson:**

Do the other countries with which we have reciprocal agreements have the same type of commercial driver's license endorsements, medical requirements and endorsements for mopeds?

**Senator Hammond:**

When we talk about reciprocal agreements, we are mostly talking between states. Assembly Bill 383 would allow the Nevada DMV to start negotiating with other countries as well, beginning with Taiwan, as stated in section 3. This would be allowed when a country has similar requirements to Nevada for its licensing. As far as other endorsements, I believe the individual would have to meet those requirements to get the license. This would allow an individual to get a driver's license if the country's driving requirements are the same as Nevada's.

**Senator Denis:**

Who determines whether or not the laws of other countries are similar to Nevada's?

**Assemblywoman Kirkpatrick:**

Line 21 of section 3 of A.B. 383 allows the DMV to start the process of verification to ensure the countries have similar laws to Nevada. This will ensure people know the rules of the road within our State. The DMV would work with the Director General to verify all qualifications are met.

**Senator Denis:**

Would a Nevada driver's license be honored in Taiwan?

**Senator Hammond:**

Yes, individuals with a Nevada driver's license would be able to use the driver's license in Taiwan.

**Senator Denis:**

Is this part of what the DMV would coordinate between the two jurisdictions?

**Senator Hammond:**

Yes.

**Senator Gustavson:**

Individuals moving here and becoming residents, either permanent or temporary, would be allowed to obtain a driver's license. Would the individual have to give up his or her Taiwanese license?

**Bruce Fuh (Director General, Taipei Economic and Cultural Office, San Francisco):**

I am honored to attend the hearing this morning and to request your kind consideration of A.B. 383. If passed, A.B. 383 will set the basis for the prospective driver's license issuance agreement between the State of Nevada and Taiwan.

In answer to your question concerning the issuance of a license in Nevada, would the individual be able to keep their Taiwanese license? The answer is yes, because they are in different jurisdictions.

The following are some facts for the Committee's information.

Taiwan currently has signed mutual agreements on issuance of driver's licenses with 54 countries and areas. In the United States, there are 10 states that have signed this agreement with Taiwan, and two other states are undergoing the final stage.

Based on the proposed reciprocal agreement, any Taiwanese national 18 years of age or over legally residing in the State of Nevada, and any citizen of this State 18 years of age or over legally residing in Taiwan, properly licensed in their respective places of origin, may exchange their driver's licenses for licenses of comparable class issued by Taiwan or Nevada.

In addition, there are approximately 20,000 Taiwanese residing in Nevada. We expect this mutual agreement to be a good incentive for attracting more Taiwanese to study and invest in Nevada's future. Similar to the 2012 Visa Wavier Program granted by the United States, A.B. 383 would help boost Taiwanese tourism in Nevada.

The traffic laws and regulations concerning the issuance of a license in Taiwan are very similar to those in the State of Nevada. The drivers licensing standards, rules of the road, knowledge and driving skill requirements, identity verification and security procedures are also comparable to one another.

In recognition of the thirtieth anniversary of the sister-state relationship between Nevada and Taiwan, the reciprocal agreement highlights our solid friendship.

**Assemblywoman Kirkpatrick:**

Thank you, Vice Chair and Committee members. I appreciate the opportunity to work in a bipartisan fashion.

**Ms. Baltisberger:**

The DMV is neutral on A.B. 383, and will work with the Taiwanese government and seek legislative approval for such agreements with other countries if A.B. 383 passes.

**Senator Gustavson:**

I will close the hearing on A.B. 383 and return the gavel to the Chair.

**Chair Hammond:**

I will open the hearing on A.B. 385 and welcome back Assemblywoman Kirkpatrick to the table.

**ASSEMBLY BILL 385 (1st Reprint):** Revises provisions related to tow cars.  
(BDR 58-967)

**Assemblywoman Kirkpatrick:**

I appreciate the opportunity to present A.B. 385. In 2013, S.B. No. 456 of the 77th Session was approved to allow insurance companies to designate secure, convenient and safe storage lots for vehicles to be taken after a crash.

I struggled last Session with S.B. 456 because it did not have any “teeth” in it should someone abuse the law. When people are involved in an accident, they are already traumatized. They should not have to worry about where the car was taken. In some cases, people find that their insurance does not cover the cost of the tow because the vehicle was taken to the wrong vehicle storage lot. Assembly Bill 385 will ensure that all of our good actors continue to be good actors and the bad actors will be weeded out.

Assembly Bill 385 specifically prohibits diverting the tow of a vehicle from one storage lot to another unless the owner or operator of the vehicle voluntarily requests a diversion. Assembly Bill 385 also prohibits tow operators from soliciting the diversion of a tow and increases penalties for violations of the law,

if the violations occur within a 2-year period. If the violations occur less often than 2 years, each violation is considered a first offense, for which the penalty is lower. Assembly Bill 385 also requires tow car operators to make a good faith effort to determine the identity of the insurer and to retain documentation.

I would like to turn the testimony over to Mr. Malkiewich, who will walk through the proposed amendment submitted yesterday.

**Chair Hammond:**

Welcome, Mr. Malkiewich. I believe you are going to go over the proposed amendment from R&R Partners that has been passed out to the Committee ([Exhibit F](#)). Please go through the amendment, and questions will be reserved until you are finished.

**Lorne Malkiewich (E & E Vehicle Solutions):**

There is a copy of a February 2015 letter ([Exhibit G](#)) from Andrew MacKay, the Chair of the Nevada Transportation Authority (NTA) to certified non-consent tow carriers.

The letter, [Exhibit G](#), illustrates that there has been concern with enforcement of S.B. 456 of the 77th Session. Mr. MacKay sent this letter [Exhibit G](#) to ensure S.B. 456, which was passed unanimously by the Legislature last Session, is enforced.

All of the points in the letter, [Exhibit G](#), are addressed in A.B. 385. First, all tows initiated by the request of a law enforcement officer following an accident or a theft recovery remain subject to *Nevada Revised Statute* (NRS) 706.4489, regardless of whether the tow is consensual and/or non-consensual.

Second, tow carriers cannot solicit vehicle owners to divert tows to other than the designated lot in contravention of that compulsion. As stated by Assemblywoman Kirkpatrick, there is a provision in the bill specifically prohibiting such solicitation.

Third, tow carriers are under no obligation to make any effort to independently investigate or attempt to determine the insurance carrier. To address this hole, in several places in the bill, language has been added stating the tow operator needs to make a good faith effort to determine the insurance carrier.

Fourth, carriers are required to maintain documentation of the insurance carrier including notification of the insurer.

Assembly Bill 385 is long, but there are only four substantive provisions. The rest are to include the new sections in the appropriate areas in chapter 706 of the NRS. Section 2 clarifies that the "insurance company" defines who can designate a vehicle storage lot. This includes all insurance companies including captive insurers and self-insurers. Section 3 is the penalty provision and the prohibitions. Section 3, subsection 1 states an operator of a tow car shall not tow the vehicle to another location. If an operator is required to tow a vehicle to a designated storage lot, this is where the prohibition is. The remainder of subsection 1 moves existing provisions from another section, so all the penalties are in the same provision.

Section 3, subsection 2 states an operator of a tow car shall not solicit the owner or operator of the vehicle to divert the tow to a location other than the designated vehicle storage lot or solicit or market other services performed by a third party. The last sentence in subsection 2 is very important and states that the owner or operator has the opportunity to have the tow redirected. This does not relieve the tow operator from the obligations relating to towing services performed without the prior consent of the owner or operator of the vehicle.

The second, third and fourth penalties in section 3, subsection 3 only apply if a violation occurs within a 24-month period. The Assembly wanted to make it clear that the penalties cannot be more than \$5,000, \$10,000, \$15,000 or \$20,000. Generally, Mr. MacKay fines lower than these penalties. These penalties are the maximum limits, and often these penalties are suspended if the tow operator does not repeat the violation. The authorized penalty under chapter 706 is \$10,000, so until there is a third offense within 24 months, the penalties are no higher than they are now and are generally lower.

I would like to point out that our client is one of the duty tow operators and every penalty and requirement in A.B. 385 would apply to our client as well as other operators. Our client has no problem complying with the requirements of A.B. 385.

Subsections 4 and 5 of section 3 contain standard language stating that notice and hearing for any penalties and the fines are placed in a separate account as they are in NRS 706.771.

The next provision is section 13, which outlines what shall to be included in the dispatch log. The name of the insurance company that provides coverage for the towed vehicle has been added if the tow operator determines such.

Section 16 is the final substantive provision. This is a provision that was discussed last Session in S.B. 456 to add that an insurance company may designate one or more vehicle storage lots to which all its insured vehicles would be towed. This was to make sure insurance companies have ample coverage in areas with populations of 700,000 or more.

**Chair Hammond:**

If an owner or operator of a vehicle designates more than one storage yard, is the storage yard chosen by preference or by convenience?

**Mr. Malkiewicz:**

The specific lot is designated by an individual's insurance provider. Once the insurance company has been determined, the vehicle will be taken to the most convenient storage lot designated by the insurance company.

**Assemblywoman Kirkpatrick:**

The important part to remember is that the insurance company will know what storage yards are approved, and this will limit what places an owner or operator will have to go to find his or her vehicle.

**Mr. Malkiewicz:**

Section 16, subsection 2 provides that if a law enforcement officer does not inform the tow operator of the identity of the insurance company, the tow operator is to make a good faith effort to determine the identity of the insurance company from the officer or from the owner or operator of the vehicle.

Subsection 3 of section 16 specifies the tow operator shall retain any documents provided by a law enforcement officer indicating the identity of the insurance company. This is not stating the law enforcement officer will have the information, but if the law enforcement officer provides the information, the tow operator is to retain the documentation and provide copies to the storage lot upon delivery.

Subsection 4 of section 16 is where the proposed amendment, [Exhibit F](#), takes effect. The amendment states an owner or operator of a vehicle shall not direct

a tow car operator to tow the vehicle to another vehicle storage lot, but can designate the vehicle be towed to another location. This is to make sure the diversion of the vehicle is voluntary. The reason for not wanting the diversion to another vehicle storage lot is to be sure the vehicle is taken to an insurance company-approved storage lot.

To be clear, the owner or operator of the vehicle still has the ability to have the vehicle taken to another location. If the tow operator knows to which insurance company designated vehicle storage lot the vehicle would be taken, and the owner or operator wants the vehicle taken to a different location, the tow operator is to have the form adopted by the NTA signed by the owner or operator. There was a concern raised that the owner or operator of the vehicle may not want to sign the form. The proposed amendment states that instead of confirming in writing, the officer at the scene would confirm and note on any report of the incident, that the owner operator requested the vehicle to be towed to another location. This is only if there is an officer present at the scene.

**Chair Hammond:**

I want to be sure that the proposed amendment is clear to the Committee. In our hypothetical case, an owner or operator of a vehicle is involved in a crash and there is only one location that the vehicle can be worked on. At the scene, the tow operator asks what insurance the owner or operator has and states that the vehicle should go to a certain storage lot; however, the owner or operator wants it to go to a different location. At that point, the officer would verify that it is the choice of the owner or operator of the vehicle that the vehicle be taken to a location other than the insurance storage yard. Is this correct?

**Mr. Malkiewicz:**

Yes, this is correct. It is important to stress that the owner or operator of the vehicle is always in charge and always has the option to determine where the car is taken. The amendment is a mechanism to confirm that the operator or owner made the choice and that the law enforcement officer at the scene notes the change in the report.

**Chair Hammond:**

If an officer was not at the scene, how would it be verified that the owner or operator of the vehicle requested the change from the insurance storage lot to another location?

**Mr. Malkiewich:**

Should an officer not be present at the scene of a crash, then A.B. 385 requires the vehicle be taken to the vehicle storage lot. There is the prohibition; you will not have the provision relating to a law enforcement officer, but you will have the documentation that is required in A.B. 385 and the requirement to comply. The specific prohibitions and penalties in A.B. 385 give the NTA the authority to investigate.

**Chair Hammond:**

Suppose there is no officer on the scene; the owner or operator of the vehicle has insurance, and the insurance company has one designated lot to which the vehicle should be towed. The issue arises when the owner or operator of the vehicle goes to that lot and finds out that it is not there, and the insurance company cannot locate the vehicle and finds that it was towed to another location. This is where the investigation has to discover why it was taken to another lot or body shop other than the designated insurance lot. This is where it gets harder to prove, but because it did not show up at the designated lot, it can be investigated.

**Assemblywoman Kirkpatrick:**

Section 3 outlines the penalties, so there is a mechanism for the owner or operator to get to the bottom of where his or her vehicle has been taken. It is clear in section 3 that the tow operator cannot solicit to take the vehicle to another location. The amendment for section 16, subsection 4, states that if a law enforcement officer is on duty, there is this mechanism, as well. This adds the information to the report if a law enforcement officer is on duty and at the scene of the crash. The amendment will be put in section 16, subsection 4. I envision the wording: law enforcement officer while on the scene shall confirm that the owner or operator of the vehicle directed the tow operator to go to a specific location.

For clarification in section 3, the tow operators should not be soliciting to take vehicles to different locations, and provides a penalty to ensure that they do what they are supposed to do.

**Chair Hammond:**

These are the teeth you spoke of earlier. When you talk about the penalties in section 3, the wording is "up to," which indicates that the fees could be less, and the cost cannot go over what is specified.



**Assemblywoman Kirkpatrick:**

Yes, that is correct. Unless the tow operator violates the statute more than once within the 24 consecutive months, there is no penalty. If the tow operator makes it the company business model, then there is a penalty imposed at the discretion of the NTA, but never to exceed the stated amounts.

**Senator Manendo:**

If there are multiple owners of a tow company and that tow company operator steers the vehicle to a specific body shop because that specific body shop either owns the tow company or has an employee that owns the tow company, are there any penalties in A.B. 385 for the body shop?

**Mr. Malkiewich:**

Body shops are regulated separately. I do not know, but I suspect that the regulations for body shops indicate there are penalties for violations of any laws, including A.B. 385, applying to the tow companies. Assembly Bill 385 has the provision prohibiting the tow operator from soliciting third-party services. This was put in A.B. 385 so tow operators do not steer tows to other businesses.

**Senator Manendo:**

Thank you. I do believe this is something that needs to be addressed.

**Senator Gustavson:**

I understand stiff penalties are needed; and in NRS 706, \$10,000 is the maximum penalty. I believe a fine should make a point, but these are excessive.

**Assemblywoman Kirkpatrick:**

I appreciate your concern. I have worked in the Legislature many years, and have tried to specify the \$500 fine; for some it was cheaper to pay the \$500 than do the right thing. What I have learned over time in the Legislature is that if you make it hurt the first time, it will probably not happen a second or third time. We have seen many times, either through group home inspections, skilled care facilities or driving violations, that people seem to take notice the first time when the fine is steep. I supported a stiffer penalty and compromised with "up to." We need to make tow companies aware of how serious this issue is and there is a statute they need to follow. I have seen many different businesses willing to pay the smaller fines and say they will worry about it the next time. I believe this one penalty will ensure we have the right employees

working for the tow companies and ensure that the tow truck operators take responsibility and give protection to the consumer.

**Senator Gustavson:**

I agree there needs to be a fine. I understand that the NTA can set the fine, but I believe they do get excessive. I just feel the up to amount is a little high.

**Assemblywoman Kirkpatrick:**

Senator Gustavson, you have my commitment that I will follow this process for the next 2 years. I will work with the Legislature to revisit the issue if it gets out of control going forward and for the long term.

**Chair Hammond:**

Mr. MacKay is here. I would like to invite him to the table to help the Committee understand how the NTA regulates the "up to" language.

The first question is how many times have you had to penalize a tow company.

**Andy MacKay (Chair, Nevada Transportation Authority, Department of Business and Industry):**

This is a complicated question, and that is why we are here. The letter, [Exhibit G](#), I signed was pursuant to a request from a couple of the designated storage lots who were seeing vehicles that should have been going to their lots and were not.

**Chair Hammond:**

If you do penalize a tow company, do you find that the NTA is penalizing the maximum amount, and if not, what is the typical penalty that you are giving?

If you are a tow truck operator trying to talk a person at a crash site into having his or her vehicle towed to somewhere other than the designated lot they were assigned to, obviously there is a financial gain. If the tow operator takes the vehicle to another lot, what is the average revenue the tow operator generates from asking them to go to a different place?

**Mr. MacKay:**

I do not believe what is contemplated in the bill is excessive. The reason is that pursuant to NRS 706.771, any violation of chapter 706 of the NRS or the *Nevada Administrative Code* is punishable up to a \$10,000 fine. Does every

violation result in a \$10,000 fine? Certainly not. Every case stands on its own. When you hear a case, you look at the evidence, find out if it is a mistake of the heart or a mistake of the mind and ask, is the violation repetitive?

If a vehicle does not get to the designated storage lot and is moved somewhere else, as with anything that would constitute an overcharge or an improper tow, the NTA will disgorge that carrier of any profit it gained by violating the law. At that point, a determination is made as to what the fine will be.

There is a reason why our enforcement officers are "compliance" enforcement officers. The first word is compliance. We want to obtain compliance from the carriers and not hammer the carriers. If the NTA has to hammer the carriers, it is done on either the second, third or fourth offenses, up to and including potential revocation of their licenses. Of course, that is the extreme. I cannot put on the record what a potential fine would be for a first offense, because every case stands on its own. The NTA investigates to determine if the offense was willful, if the driver of the tow car had a lapse of judgment and how the company handled the situation.

In the event a vehicle is intentionally diverted from the designated storage lot to another location, the NTA will make sure that any excess profit will be disgorged from the carrier. Then, the NTA looks at the fine.

For argument's sake, say it is a \$5,000 fine on a first offense that is assessed. Unless it is an egregious act, I doubt the NTA official would make a finding and recommend a \$5,000 fine would be appropriate. More likely, a \$5,000 fine would be imposed with that amount suspended for a period of 1 or 2 years. This keeps a hammer on the tow operator moving forward.

I do not like to speak in hypotheticals. For argument's sake, assume a tow company was cited and the State proved its case, there was a \$5,000 fine and all of it was suspended for a period of 2 years. Then the same exact set of facts presented themselves 8 months later. If you look at the bill, there is the ramp-up on the second offense, so you have that additional hammer plus what is held in abeyance. When the proposed language was brought forward to the NTA, we evaluated it when it was compulsory at \$5,000. You can argue that is stronger than what is presently allowed in statute. If anything, I think what Assemblywoman Kirkpatrick is proposing is less punitive.

**Chair Hammond:**

What you are saying is, "Very rarely do you have a first offense and then a fine of \$10,000 that is associated with it."

**Mr. MacKay:**

The short answer is yes; first offense and maximum fines are reserved for the bad actors. Specifically, the illegal operators that come into the State and operate with no level of insurance and unsafe vehicles, those are the people you want to hammer and make sure they do not do it again.

**Senator Denis:**

I have passed bills before that dealt with the tow car industry. I do not remember what the penalty was, but obviously, it was not enough because 2 years later I received a call from a different constituent with problems, after we had already passed the law. Some people do not bother to follow the law unless you call them out on it. I think we need to have a penalty sufficient to get their attention. For every constituent that calls, another nine are having the same problem.

So, we do not have to wait 2 years to know if they are or are not following the law. Does A.B. 385 require a status report?

**Mr. Malkiewich:**

There is no specific reporting requirement in A.B. 385. Because of the additional documentation requirement, I believe Mr. MacKay, the insurance companies and tow car operators will have more knowledge. I believe Mr. MacKay could gain more information on how this is being carried out.

**Senator Denis:**

I would hope we could learn something sooner rather than wait 2 years to find out that we have to fix something else because they are not following the law.

**Assemblywoman Kirkpatrick:**

This does not preclude a Legislative Commission subcommittee that I believe we are contemplating or any other committee from asking for the information from Mr. MacKay. I believe he would provide information upon request.

**Mr. MacKay:**

The designated storage lot operators keep amazing data. Assembly Bill 385 has been brought before the Committee to close some of the loopholes in A.B. No. 456 of the 77th Session. When the storage lots were receiving fewer vehicles after the designated storage lot bill was enacted, the red flags presented themselves. The tow car industry was included in the meetings, but the designated storage lots were not. This data will be very easy to track, and I anticipate that if the designated storage lots do not see more vehicles coming their way, the NTA will receive complaints and will take the appropriate action after an investigation. The tow car industry is on notice concerning the use of designated storage lots.

**Lisa Foster (Allstate Corporation, American Family Insurance Company):**

Allstate Insurance and American Family Insurance are in support of A.B. 385. I have approval from Allstate concerning the amendment, but American Family Insurance has not reviewed the amendment. However, we discussed the concept and they do not believe there is a problem with the amendment.

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

Farmers Insurance is one of the recipients of the duty tows and the insurance holding lots. It benefits Farmers Insurance greatly in savings of several hundred dollars per vehicle. I want to reiterate what the proponents have already talked about. The vendor that Farmers Insurance uses has multiple locations in the Las Vegas Valley. Our customers are not having to drive far to get to their vehicles. The benefits also go to consumers who do not have insurance or may only have liability on their cars, not collision or comprehensive insurance. Under the Farmers Insurance contract with E & E Solutions, the contract benefits are passed on to our customers. The lower rates are honored on storage, times to pick up vehicles, visits, lot setouts, cleanup of glass and vehicle preparation. This reduces the costs for the consumers who cannot afford comprehensive or collision insurance.

We have several hundred tows per month and at Farmers Insurance, we have noticed some bad actors have found ways to circumvent the former legislation. We believe A.B. 385 will secure the former legislation.

Senator Manendo, you mentioned vehicles going to body shops and steering them that way. This legislation addresses this problem, and we can go back and

file a complaint on behalf of our insured to the NTA to seek remittance and reimbursement for the fees.

**Chair Hammond:**

Will this be easier with the paper trail?

**Mr. Compan:**

Yes, our insured holding lot maintains all the records, and we will be able to provide the information to whoever files a request.

**Chuck Callaway (Las Vegas Metropolitan Police Department):**

Las Vegas Metropolitan Police Department (LVMPD) was originally neutral on A.B. 385.

I have spoken with the bill's sponsor and the drafters of the amendment and the LVMPD is in support of the amendment to A.B. 385. I would like to be sure that the wording includes that the officer report notation requirement is when a law enforcement officer is present at the scene. The LVMPD would not want to have an officer return to a scene or to try to track down an owner of the vehicle later to confirm the owner actually directed the vehicle be towed to a different location.

The LVMPD also wants to be sure that in the amendment where it states, "any report of the incident," and then below, "a copy of any documentation provided by law enforcement," does not mandate that the officer give any report to the driver. If the officer does give a report to the driver, he must maintain the report. For example, sometimes a report is taken at the scene that may have information that should be redacted, and the LVMPD would not want to release the information in the field. This information would have to be released through its records department. The LVMPD wants to ensure the officer in the field would not be required to give any particular report to the driver at the scene.

If the vehicle is towed, a copy of the tow slip is given to the driver, and the officer could include the details that the owner stated the desire that the vehicle go to another location. If there was no tow slip completed and another report was done at the scene and it was documented in that report, such as a crime report, a copy of that report would not be given to the driver.

The LVMPD is in support of A.B. 385 with the amendment.

**Senator Manendo:**

Thank you, Mr. Compan, for the clarification. This was something that was totally out of control, where insurance companies owned body shops and all vehicles went to those body shops. This created a tough situation for the others in the market to be competitive. I believe that we are all on the same page, and we appreciate what Farmers Insurance does; it is always on the up-and-up.

**Mr. Compan:**

What Farmers Insurance has noticed since the last Legislative Session, is that bad actors are moving the vehicles to body shops that have no intention of repairing the vehicles, and they become profit centers.

The legislative body last Session passed legislation on behalf of the insurance industry stating body shop storage fees could not exceed 100 percent of the prevailing rate. This is approximately \$150 a day for outside storage. They are charging administrative fees and set out fees at \$150 a day while the vehicles are sitting there.

**Ms. Foster:**

I want to state for the record, "Allstate Insurance no longer owns body shops."

**Samuel P. McMullen (Copart, Inc.):**

Copart, Inc. is a salvage yard for insurance companies and is in strong support of A.B. 385.

**Scott Scherer (Quality Towing):**

Quality towing has asked me to speak about some of the provisions in the bill. There were concerns with A.B. 385 on the Assembly side, and some of the concerns were addressed there.

It appears in the first reprint that one of the concerns that was thought to have been addressed by the Committee did not get into the language. Mr. Malkiewicz and I discussed that we would try to address them with this Committee.

Unfortunately, the amendment does not address these concerns.

Quality Towing has no objection with the non-solicitation provisions of the bill and does not want drivers soliciting at an accident scene. Quality Towing has

no problem with the documentation requirements and no problem keeping documentation.

With regard to the penalties, Quality Towing did agree to the changes that were made, but I would like to point out there are additional penalties already in the law. Not only are there the fines, but there are the requirements that tow companies cannot charge for the tow in the first place. Tow companies lose that revenue and cannot charge for the storage. Therefore, tow companies forfeit those fees automatically, and the vehicle has to be re-towed to the designated storage lot. There are also penalties that go with disgorging the profits effectively of the tow company, should they violate the provisions of the law.

Quality Towing is concerned that an officer has to be on the scene or be present for the owner or operator of a vehicle to designate the vehicle go to another location. Quality Towing is happy to have a written statement if the owner or operator of a vehicle wants the vehicle to go to his or her designated body shop. The only concern is that if the owner or operator does not want to sign anything, then the officer, if present, could witness that the owner or operator designated the vehicle go to another location.

Quality Towing would like the officer, owner or the operator of the vehicle to verify the vehicle being taken to a different location. As was noted by Mr. Compan, the vehicles or owners may not actually be insured, and if they want their vehicles to go to particular locations, they should have the right to control where their own vehicles go.

Farmers Insurance may have multiple lots, but another insurer may only have one lot in the Valley. If that one lot is out at Apex, and the accident occurs in the southwest part of the Valley, it may be very inconvenient for the owner or operator of that vehicle to be able to get out to the storage lot to claim the vehicle. The owner or operator of the vehicle should have control, and should be able to direct where the vehicle is towed even when an officer is not present.

**Chair Hammond:**

The way I understood A.B. 385 is the owner or operator of the vehicle is the ultimate arbitrator as to where the vehicle is taken. The law enforcement officer does not have to listen to the conversation. The officer simply verifies that the owner or operator of the vehicle has not been solicited to take the vehicle to a



location other than the designated insurance storage lot, and the officer notes it on the tow slip or whatever record is being completed.

**Mr. Scherer:**

The concern is that if an officer is not there, could the owner or operator of the vehicle still sign a written statement stating he or she wants the vehicle to go to a different location? Quality Towing does not believe the language of the amendment makes that clear.

If the officer is there, but is dealing with safety issues, Quality Towing does not believe the officer should be pulled away for this purpose. If the owner is willing to sign a written statement, the officer should not have to be pulled away from handling other issues at the scene. If the officer is available, Quality Towing is happy to have the additional witness.

**Chair Hammond:**

According to A.B. 385, the officer does not have to witness, he only has to confirm.

I understand your point, and this was the same question I had. I may not have articulated it well. What happens if there is no law enforcement officer on the scene, how is it confirmed that the owner or operator of the vehicle decided to change the location of where to take the vehicle? These questions can be directed to the sponsor.

**Mr. Scherer:**

Assembly Bill 385 prohibits the vehicle from going to an alternative storage lot, and Quality Towing has a concern with this issue. A tow company storage lot may be more convenient and easier for the owner or operator of the vehicle. The owner or operator may not have alternative transportation to the storage lot, and if the storage lot is in a distant location, the owner or operator may want the vehicle to go to a closer storage lot.

**Chair Hammond:**

Yes, but this would be an issue that the owner or operator should take up with his or her insurance company. If the insurance company states it will only have the vehicle taken to certain lots, and it is not a convenient location, the owner needs to talk to the insurance company and request the company increase the number of lots. From the testimony that has been heard, a company can choose

more than one lot, and again, this was put on the record. Is this a preference list or a convenience list? It sounded like it was convenience, for the tow operator to choose whatever lot was closest.

**Mr. Scherer:**

Insurance companies can have multiple sites, but it is not required. The owner or operator of a vehicle may only have liability and not collision coverage for the vehicle. Mr. Compan has stated that under its arrangement, Farmers Insurance provides the negotiated price to its customers even if they do not have collision coverage. This might not necessarily be the case for all the insurance companies, and this is not required by the language of the bill.

Quality Towing is stating that the insurance company cannot take over the vehicle and do whatever it wants. The owners or operators of the vehicles are losing all their rights paying the bill themselves.

The last concern Quality Towing has is the definition of "good faith." This was brought up during the Assembly hearing, and the language is not included in the amendment. I do not know if it presumed to be included by omission. There was a discussion of requiring the tow car operator to search the vehicle to look for proof of insurance. Quality Towing is concerned about potential liability, claims and the time it would take, leaving the vehicle blocking traffic. The Assembly committee agreed that this would not be required, and I do not see that language in the first reprint. Quality Towing wants to ensure there is not a requirement to search a person's vehicle looking for the insurance coverage, and that such a search would not be part of the good faith effort.

The second part of the good faith effort Quality Towing is concerned about, is if the tow operator is viewed as not acting in good faith because the owner or operator has been injured and an officer is not available. This is the biggest concern of Quality Towing.

An accident scene is chaotic. There may not be an ability to ask the owner or operator of the vehicle about his or her insurance provider. The tow operator may not be able to get this information from the officer either, especially if the owner or operator has been injured. This is the greatest concern of Quality Towing. Therefore, how is good faith defined?

If a tow company is going to be hammered by the penalties simply because someone decides that the actions the tow operator took at the accident scene did not rise to the good faith standard, not knowing what the standard is makes it hard to train the tow operators to know what is expected of them. Quality Towing would like more clarity as to what is actually expected of the tow operators and what kinds of effort must be taken to comply with the bill before they are subject to these particular penalties.

As a point of information, the tariffs for storage range from \$20 to \$50 per day. Usually \$50 is for inside, climate-controlled storage, and \$20 is for outside unsecured, and then approximately for \$30 to \$35 for outside secured storage. It is not hundreds of dollars a day. The average tow bill is around \$340 including the towing and the storage. This will give you an idea of the magnitude of the dollars being discussed.

**Chair Hammond:**

If you tow and store the vehicle for 1 day, is the cost approximately \$300?

**Mr. Scherer:**

It is typically 2 days of storage, and the average cost is approximately \$340 a day. The penalties in A.B. 385 will certainly get the attention of the tow companies. It would not be worth diverting a vehicle for \$350; even if it is \$500 in revenue, it would not be worth diverting the vehicle. At Quality Towing, we want to be in compliance, but we want to make sure the law is clear enough and tailored to the circumstances that are seen at accident sites so it allows us to stay in compliance.

**Chair Hammond:**

Assemblywoman Kirkpatrick do you have any final comments?

**Assemblywoman Kirkpatrick:**

I want to respond because I was present only at the end of the hearing in the Assembly Committee on Transportation. I worked with the Chair to address some of the issues. The bigger issues were the penalties. Section 16, subsection 4, which also includes the amendment, addresses the issue of the owner or operator having the final say as to where the vehicle goes.

I am perplexed on how to define "good faith." If you start defining such terms as good faith, the legislative intent will create many loopholes for the long term.

Typically, if the accident is egregious, a family member is there and there is an opportunity for documentation. As Mr. MacKay stated, tow operators would have an opportunity to state their cases during investigations. We have an investigative board to determine if an operator acted in good faith. Defining good faith is not the issue and the legislative record is clear on the concerns that were brought up.

If there is any further clarification the Committee would like, I am happy to get that for you. I am also happy to meet with Mr. Scherer to discuss any issues requiring work. I do believe A.B. 385 and the amendment put teeth and clarity into the legislation passed previously.

**Chair Hammond:**

Thank you, after you meet with Mr. Scherer, please notify me and we will proceed from there with A.B. 385.

**Senator Manendo:**

This piece of legislation shows that we are making sure there are strong laws on the books, proper regulations and proper regulatory enforcement for the transportation industry. People really do care and are watching, and we cannot take this legislation lightly. Thank you for bringing A.B. 385 to the Committee for its consideration.

**Assemblywoman Kirkpatrick:**

Thank you. Chair Hammond, I would like to have an answer to you no later than 6 p.m. today.

It is important to our constituents that we move forward and have an answer one way or another. Either we agree to disagree or we amend one more thing. I will try to get this off the Committee's plate by this evening.

**Chair Hammond:**

I will close the hearing on A.B. 385. Before you leave, I have checked with Committee members with regard to A.B. 383 and will entertain a motion.

Senate Committee on Transportation  
May 5, 2015  
Page 29

SENATOR MANENDO MOVED TO AMEND BY REMOVING THE  
REFERENCE TO THE REPUBLIC OF CHINA AND DO PASS AS AMENDED  
A.B. 383.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED. (SENTOR FARLEY WAS ABSENT FOR THE  
VOTE.)

\* \* \* \* \*

The remainder of this page intentionally left blank. Signature page to follow.

Senate Committee on Transportation  
May 5, 2015  
Page 30

**Chair Hammond:**

There being no public comment, the meeting is adjourned at 10:14 a.m.

RESPECTFULLY SUBMITTED:

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Tammy Lubich,  
Committee Secretary

APPROVED BY:

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Senator Scott Hammond, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	6		Attendance Roster
A.B. 176	C	6	Assemblyman Derek W. Armstrong	Presentation
A.B. 176	D	2	Assemblyman Derek W. Armstrong	ADECA Form
A.B. 176	E	1	Assemblyman Derek W. Armstrong	RTCSN Letter
A.B. 385	F	1	Lorne Malkiewich / E & E Vehicle Solutions	Proposed Amendment
A.B. 385	G	1	Lorne Malkiewich / E & E Vehicle Solutions	NTA Letter