

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Eighth Session
April 16, 2015**

The Senate Committee on Transportation was called to order by Chair Scott Hammond at 8:31 a.m. on Thursday, April 16, 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 Richard Carrillo, Assembly District No. 18
Assemblyman Jim Wheeler, Assembly District No. 39

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Mark Trafton, Vice President/General Counsel, Whittlesea Bell Companies
Bill Bradley, Nevada Justice Association

Chair Hammond:

We will begin the hearing on Assembly Bill (A.B) 175.

ASSEMBLY BILL 175 (1st Reprint): Revises provisions relating to the use of safety belts in taxicabs. (BDR 43-703)

Assemblyman Jim Wheeler (Assembly District No. 39):

The intent of A.B. 175 is to make sure all factors in a traffic accident are considered in a court of law. Whether or not a passenger was wearing a seat cannot be considered in a court of law.

Nevada law states every passenger must wear a seat belt and taxicabs have signs posted that the seat belt must be worn. In the past, people have sued and won cases even though they were partially at fault for not following Nevada law. I would like to turn over the presentation of A.B. 175 to Mark Trafton in Las Vegas.

Mark Trafton (Vice President/General Counsel, Whittlesea Bell Companies):

I have been practicing law in Nevada representing taxicab companies since 1999.

One of the main lessons that all young law students learn is the tort law. Tort law is the study of personal injury law. One of the concepts in tort law is that every person is responsible for their own action. The "reasonable person standard" is the standard that all people are governed by in every activity that we conduct throughout our daily lives. The foundation of tort law is the analysis of whether the person acted reasonably.

This comes into play in the courtroom when the question is asked if the taxicab driver acted reasonably. The jury is allowed to consider all of the facts of how the driver acted in a particular circumstance including the driver of another vehicle. However, *Nevada Revised Statute* (NRS) 484D.500 does not allow the jury to consider whether the passengers in the taxicab acted reasonably if they chose to violate Nevada law by not wearing their seat belts.

Nevada Revised Statute 484D.500 is different from the other passenger vehicle laws concerning seat belts. The taxicab companies are required to post notifications throughout the vehicle that specifically state Nevada law requires a passenger to wear a seat belt. Unless there is a legitimate safety concern, the taxicab driver is not allowed to state he or she will not transport a passenger unless the seat belt is worn. The taxicab driver has to transport the passenger

even if he or she does not wear the seat belt. Assembly Bill 175 will allow a jury to consider when a passenger chooses to violate Nevada law.

I have presented on this type of bill previously and one of the main questions I have received is, "How is this going to impact the negligence of the taxicab driver?" I do not believe there will be an impact at all. In cases where the taxicab driver goes through a red light and an accident occurs and the passengers are injured, the primary focus in the courtroom is going to be the action of the driver and as to whether the passengers acted reasonably.

Assembly Bill 175 allows the jury to consider if the passenger acted reasonably should the passenger sue the taxicab company. The focus is not being taken away from the driver.

Chair Hammond:

You are talking about the responsibility of the taxicab driver and the responsibility of a reasonable passenger. If a taxicab driver runs a red light, there is a crash and the passenger sustains injury, the jury needs to be able to reach a conclusion as to how much of the injury was a result of the driver and how much was the result of the passenger not wearing a seat belt. The jury needs to consider how much of the injury could have been avoided if the passenger had been wearing a seat belt.

Mr. Trafton:

Yes, that is correct.

Chair Hammond:

If this is common sense, why has this not been done earlier?

Mr. Trafton:

I do not have an answer. This is the third session that I have attempted to get this legislation passed.

When NRS 484D.500 was changed to require the taxicab companies to put the signage in the taxicabs, I tried to change the law to allow within the discussion to juries whether or not passengers chose to wear their seat belts. Unfortunately, the Legislature at that time was not convinced.

Chair Hammond:

Are taxicab drivers required by law to make sure the seat belts are out and visible to passengers?

Mr. Trafton:

Yes, it is required. The taxicab drivers are required to inspect the vehicle every day prior to going out on the road. They are to make sure the vehicle is in good working order. The Nevada Taxicab Authority (NTA) does random testing on the vehicles to be sure all the equipment is working and in proper order. This is not to say there could be a circumstance where a passenger could not find the seat belt. If we were able to discuss seat belts in a jury trial, then that information would be brought forward. A jury would be able to consider if a passenger's testimony were credible. As it is now, we cannot even talk about seat belts in a courtroom. The judges admonish the trial lawyers before the case starts due to the law.

Senator Manendo:

I appreciate the testimony on the public safety measures that the taxicabs are required to take to keep the public safe. If a passenger chooses not to buckle up, does the taxicab driver still have to transport that passenger?

Mr. Trafton:

Yes, the taxi driver is required by law to transport all passengers. Taxicab drivers cannot discriminate unless there is legitimate concern for their own personal safety.

Senator Denis:

Do any of the taxicab drivers verbally inform their passengers of Nevada law requiring them to wear seat belts, or do they only rely on the signage?

Mr. Trafton:

Whittlesea Bell Company has an internal policy that after the initial greeting, our drivers inform their passengers of the Nevada law to buckle up, but law does not require the drivers to verbalize the wearing of the seat belts to the passengers. Section 4 of A.B. 175 contains the current requirement for the cab companies to post the signage in the vehicles.

Senator Denis:

Is the signage in other languages?

Mr. Trafton:

At this time, it is only required in English.

Senator Denis:

How would that affect a court of law if the passenger does not know how to read English?

Mr. Trafton:

This could happen in the courtroom. All of these issues typically are litigated prior to the jury hearing the case. The judge discusses the facts of the case, what happened and what types of laws are applicable. In a hypothetical situation where a passenger does not speak English, the lawyer could argue that fact and the seat belt law would not apply. The judge could also instruct the jury of the law in Nevada to wear a seat belt, but the person could not read or speak English and did not understand. The other side could argue that ignorance is not an excuse for not knowing the laws. It is the responsibility of the traveling person to know the laws of any jurisdiction visited. This would be open for the jury to consider in some form.

At this time, seat belts cannot be mentioned in a courtroom with respect to taxicabs. Should A.B. 175 be approved, it will give the judge the discretion to determine whether or not a jury should hear about the seat belt. Evidence rules state that if the risk of confusion outweighs the risk of relevance, the judge will keep the evidence out of court. By approving A.B. 175, you give the judge the option for the jury to consider the seat belts as part of the evidence.

Senator Denis:

Do other states have this type of legislation?

Mr. Trafton:

I believe there are ten states that have laws consistent with A.B. 175. The laws are starting to catch up with allowing people to consider this legislation, and there are enough cases with people testifying that if the passenger had been wearing a seat belt, the injury would not have happened.

Senator Manendo:

If a taxicab driver is pulled over for a rolling stop, and the passenger does not have on a seat belt, would the ticket go to the driver or the passenger?

Mr. Trafton:

I believe the driver would be cited for rolling through the stop sign. It is my understanding that the passenger would be cited for not wearing the seat belt.

Senator Manendo:

Does law enforcement believe it is the passenger's responsibility?

Mr. Trafton:

Yes, that is my understanding.

Assemblyman Wheeler:

In response to Senator Denis' question concerning a passenger not being able to read English, A.B. 175 is asking for parity wherein all factors are presented to the judge or the jury.

Bill Bradley (Nevada Justice Association):

The Nevada Justice Association (NJA) is in opposition to A.B. 175.

Mr. Trafton and I have been arguing about this bill for the last three sessions. The problem is there are many times a passenger chooses not to wear a seat belt. This could be due to the seat belt not being available. A defective seat belt might unbuckle during a rollover.

I would like to give a different perspective to A.B. 175. Twenty-five years ago, there was a case in Elko. A young man was driving down the Ruby Valley Road in a Jeep CJ5. The young man was a habitual seat belt user. He lost control of the Jeep and it rolled over, the young man was ejected and badly injured.

One of the problems in allowing seat belt evidence during a trial is that experts are hired to testify what would have happened had the young man had on his seat belt, and other experts are asked to testify as to what would have happened if he were not wearing his seat belt.

This was the case in *Jeep Corp. vs Murray*, 101 Nev. 650, 708P.2d 297 (1985). The judge listened to all the evidence and made the decision the jury would not hear the seat belt evidence because it was too contradictory. This created the legal precedent that seat belts would not come into evidence. The NJA is concerned that A.B. 175 changes the focus from who caused the accident to who caused the injury.

A perfect example would be a case I just resolved involving one of the large taxicab companies in Las Vegas. In this case, the taxicab driver did not speak English and could not communicate with the passenger.

The client had her seat belt on when the taxicab lost control at approximately 40 miles per hour and hit a large tree. The force of the crash fractured her ribs, chest and left side. I thought the injuries were caused by the impact with the seat belt. If A.B. 175 were in place, it could create an argument between two biomechanical engineers as to whether the seat belt did or did not cause the injury. Biomechanical engineering is not an exact science. Injuries caused by the impact of a seat belt are injuries that could also be caused if the passenger were not wearing a seat belt.

The NJA is concerned that if this evidence is allowed, it will cause a battle of experts based on unreliable and junk science that would drive up litigation costs, prolong trials and cause confusion for the juries.

The other issue about taxicabs is they have a different duty than the passenger. The taxicab is referred to as a "common carrier" because of being paid to safely transport people. Taxicabs have a higher duty under the tort law to drive people safely than people have to act reasonably. This is called the common carrier duty. Assembly Bill 175 would balance the responsibility between the taxicab and the passenger, and this is contrary to the law of common carrier. The NJA does not believe this is fair when the taxicab is being paid to transport the passenger.

The issue of inaccessible and defective seat belts is also important. The taxicab drivers do inspect the cabs when first leaving the launching area. After the first initial inspection, there is no inspection of the taxicabs.

The NJA has been critical of the requirement of having to pick up every passenger. This is not a Nevada law, but a regulation that is set by the NTA. The NJA has encouraged the NTA to reconsider this regulation.

The other interesting issue is the requirement of seat belts in the back of taxicabs. Seat belts are not required in school buses, party buses or limousines. I believe the taxicabs are being targeted because the studies from school buses and other instances show injuries that are caused by wearing seat belts can be equally as bad as those sustained when seat belts are not worn.

Chair Hammond:

Some of the newer school buses not only have seat belts, they have foldout seats for children who require a booster. It is just a matter of time before all vehicles will require seat belts.

Mr. Bradley:

The other issue the NJA has is with the Assembly amendment that removed "not" from section 1, subsection 3, paragraph (c) from NRS 484D.500. I believe the intent is to invoke the doctrine of comparative negligence. Misuse and abuse is a defense that only applies in product liability cases. This does not apply in a negligence case. When the language in the amendment states, "May be considered as misuse or abuse of a product or as causation in any action brought to recover damages for injury to a person or property resulting from the manufacture, distribution, sale or use of a product." Those defenses apply to the first three nouns manufacture, distribution and sale. When talking about the use of a product, misuse is negligence and misuse has no place in a negligence action. As stated earlier it becomes an issue of comparative negligence. The NJA believes the unintended consequence of this language is that lawyers will state the person abused the product by not wearing his or her seat belt and should not be allowed to recover any money.

Chair Hammond:

Is this part different from what was processed in the Senate Committee on Judiciary?

Mr. Bradley:

I do not recall. I will verify and report to you.

If the language ended at manufacture, distribution and sale, it would eliminate the issue of never meaning to be a complete bar, but to be taken into consideration in a negligence action. Clearly, if the passenger were bringing a product liability action as part of his or her claim, in addition to the negligence action of the driver, it would be considered a product liability action but not a negligence action.

The NJA understands why taxicabs drivers want A.B. 175, but it is difficult for the NJA to understand why the government wants to pass another regulation about what people do in the back of taxicabs.

Chair Hammond:

I believe the reason is for public safety. If seat belts are in the taxicab, they should be used. As adults, passengers can choose not to use the safety belt, but that choice would have a consequence.

Senator Manendo:

Would you please explain the common carrier duty?

Mr. Bradley:

Common carrier is a long-standing concept in the area of tort law. If we are traveling together as friends, you owe a duty of reasonable care and I owe a duty of reasonable care because no money is being exchanged. Once the relationship changes from a friendly social trip to paid safe transport, the law recognizes the increased duty, the highest duty, under tort law to transport you safely. This highest duty is higher under tort law than the duty of a passenger to act reasonably. Assembly Bill 175 tries to eliminate the high duty, by stating the passenger only has to act reasonably. The NJA does not believe it is fair to lower the duty of the taxicab from the common carrier duty to the reasonable standard. It is long-standing tradition in tort law that the common carrier duty applies for every person being transported from one place to another at a cost.

Senator Manendo:

Mr. Chair, could we have the Research Division provide the Committee some information on this?

Would the common carrier law apply if I take Senator Denis for a ride, and he says he will give me \$5 for gas?

Mr. Bradley:

This would not be a common carrier duty. The common carrier duty applies to a company that is in the business of transporting people for a fare.

Chair Hammond:

The Committee will look into a couple of the questions concerning the differences between A.B. 175 and a similar bill, Senate Bill 304.

SENATE BILL 304 (1st Reprint): Revises provisions relating to the use of safety belts in taxicabs. (BDR 43-774)

Assemblyman Wheeler:

Thank you for hearing A.B. 175. In response to Mr. Bradley concerning the intricacies of Tort Law, I would be willing to look at a friendly amendment drafted by Mr. Bradley and Mr. Trafton.

As far as the NTA requirement to wear a seat belt as not being law, to a taxicab, the NTA requirement is law. Concerning the battle of the experts, this is why we have a court system. The jury makes the decision based on the opinions.

Chair Hammond:

Is this bill written to give more discretion to the judge to hear or not hear the evidence concerning seat belts?

Assemblyman Wheeler:

Yes, that is correct.

Senator Manendo:

Did it come up in the Assembly that if there were a problem with a seat belt, it would come up in a hearing?

Assemblyman Wheeler:

Yes, it did come up in the Assembly, and it was clear that these facts should be brought up for the judge to decide.

Chair Hammond:

The hearing on A.B. 175 is closed. I will open the hearing on A.B. 188.

ASSEMBLY BILL 188: Revises provisions governing certain equipment for motor vehicles. (BDR 43-626)

Assemblyman Richard Carrillo (Assembly District No. 18):

Thank you, Mr. Chair and Committee members, for the opportunity to present A.B. 188.

I would like to address what is and what is not street legal in aftermarket headlights. For example, what would be used for a car show and not for actual use on the road?

The color temperature of light can reduce the visibility of pedestrians at night and on roadways that are not well lit. With the ever-increasing pedestrian fatalities in Nevada, A.B. 188 will create a standard for aftermarket headlights and assist in decreasing pedestrian fatalities and vehicle crashes.

Before getting into the specifics of A.B. 188, I would like to give a presentation on high-intensity discharge (HID) lights ([Exhibit C](#)).

An HID light is an electrical discharge lamp that produces light by means of an electric arc between two tungsten electrodes housed in a translucent or transparent fused quartz or fused alumina arc tube. This tube is filled with both gas and metal salts.

The color temperatures of the lights are shown on slide 3 of [Exhibit C](#). The visible light spectrum is divided into characteristics called color temperature. Color temperature is defined by the temperature of an ideal black body radiator that radiates light equal to its surface temperature. A black body is an object that absorbs all light and emits light dependent on its surface temperature. In simpler terms, color temperature is the color code given to a particular light source based on how it is perceived by human eyes. This code is stated in units of absolute temperature and is measured in kelvin (K). The K is similar to degrees of temperature noted in Fahrenheit and Celsius.

The sun's color temperature on an overcast day is a blue-white temperature and is approximately 7,000K, as shown on slide 3 of [Exhibit C](#). On a day with direct light, it will fluctuate between 4,300K and 6,500K. The lights in this Committee room are approximately 5,000K.

Many people believe that color temperature of HID light is based on how bright it is. The higher the kelvin temperature, the brighter it gets. This is false. The higher the Kelvin temperature rating, the more blue-violet the light becomes and there is less usable light. Slide 4 of [Exhibit C](#) shows the color spectrum as it applies to actual vehicle lights ranging from 3,000K to 12,000K. Higher color temperatures, 5,000K and up, are known as the cool colors. These produce the bluish white to violet light. The low temperature colors, 5,000K and below produce a yellowish white light and are known as the warm colors.

Slide 5 of [Exhibit C](#) shows that as the kelvin temperature gets higher, the output of light gets lower. As you look left to right, it shows how a 3,000K,

which is a yellow light, gives a lot more of an area to see as compared to the right, which decreases, as the kelvin gets higher. At 12,000K the light throughout the controlled area is not as well lit. If a vehicle were going 80 miles per hour in the rural areas, that area will close a lot faster and you would want to have the light that will keep up with the speed that is being driven. In an urban area if colored lights were being used, the light would be at a higher kelvin and would reduce the ability to see pedestrians. If a lower kelvin were used, the visibility would be better due to the white light.

Slides 6 through 11 of [Exhibit C](#) are examples of the different spectrums from 3,000K, a bright yellow light, to 30,000K, which is a greenish color light. Assembly Bill 188 will create a standard for safety in regard to getting the best output of lighting instead of having all the different colors of the rainbow and will increase visibility for the safety of pedestrians and the motoring public.

Chair Hammond:

The basic reason for A.B. 188 is for public safety, and the headlights above 6,000K have less visibility, especially at night.

Is there anything on the books now to make the aftermarket headlights with the higher kelvins illegal, and is it the intent of A.B. 188 to make sure aftermarket HID headlights are not put into cars that were not manufactured with them?

Assemblyman Carrillo:

There is nothing in statute at this time for aftermarket headlights. The only statute states the headlight beam must shine a certain distance ahead of the car. Assembly Bill 188 is for the aftermarket headlights and not for the vehicle manufacturers.

Chair Hammond:

Are there any cars at this time where the factory standard is an HID light?

Assemblyman Carrillo:

Yes, the high-end cars such as BMW have HID factory lights.

Chair Hammond:

Do any of these factory-installed lights go above 6,000K?

Assemblyman Carrillo:

No, they do not.

Chair Hammond:

In order to get above 6,000K, a person would have to put in an aftermarket HID light. Do the factory installed BMW HID lights meet the requirements for visual distance?

Assemblyman Carrillo:

Yes.

Chair Hammond:

Could the aftermarket-HID lights be detrimental to vehicles that are not equipped for them?

Assemblyman Carrillo:

I have been told there have been instances that the refractory of the aftermarket lights tends to scatter more than what is considered a normal light for that application. If an HID light is put in a vehicle not equipped for them, you could have an issue of a person adjusting the headlights higher to compensate for poor visibility. Having the headlights adjusted higher could blind oncoming traffic and could be grounds for law enforcement to give them a "fix-it" ticket.

There are many applications for the HID headlights. Assembly Bill 188 would create a standard for the white light instead of all the different colors.

Chair Hammond:

In section 1, subsection 4, it states, "The provisions of subsection 3 do not apply to the extent preempted by federal law." Has the federal government, or any other state, addressed this issue and do you know of any legislation in process at this time at the federal or state level?

Assemblyman Carrillo:

Section 1, subsection 4 was included in A.B. 188 so as not to hinder any federal statute or cause confusion for the Special Equipment Manufacturers Association.

Chair Hammond:

Are there any other states contemplating this legislation?

Assemblyman Carrillo:

Yes, many states have passed legislation concerning HID lights. The last state I am aware of is Ohio.

Senator Denis:

Do the visibility and focus decrease as the HID light goes above 6,000K?

Assemblyman Carrillo:

The higher the kelvin temperature, the output decreases due to the refracting of the light. When there is too much refracting, the focus of the light decreases. The HID lights with the lower kelvin of 5,000K to 6,000K or white light are the best to put light on the road for visibility.

Senator Denis:

Is the HID light precise as opposed to the halogen lights that tend to spread out?

Assemblyman Carrillo:

As shown on slide 5 of [Exhibit C](#), the light has a high and low point. The problem with the higher kelvins is that the intensity of the light is not there.

Senator Denis:

Is there any data that shows the higher kelvin lights are not as safe?

Assemblyman Carrillo:

The only data I have found states the HID lights have decreased visibility. It comes down to common sense; if you have more light in front of the vehicle, the better the visibility.

Senator Denis

Could the higher cost of kelvin lights cause less data because people are not purchasing them?

Assemblyman Carrillo:

The data available is for halogen lights. The HID lights are more expensive and last longer. There is not a lot of data stating that HID lights are better as a whole. Users of HID lights state they are better and have more light in front of the vehicle. The problem is the spectrum going from yellow to green. Assembly Bill 188 will limit the HID lights to a white bright light for the safety

of the pedestrians and the motoring public. The different colored lights do not give the visibility needed.

Senator Gustavson:

How do the HID kelvin figures compare to candlepower? In NRS we reference beam intensity at 300 candlepower.

Assemblyman Carrillo:

The measurement is in lumens and I believe it is 1.2 candlepower to every lumen. Assembly Bill 188 is addressing the color temperature of the light itself not the output of the light, but I will get that information to the Committee.

Senator Gustavson:

Would law enforcement have to have a meter to detect the brightness or type of light?

Assemblyman Carrillo:

There is no device to measure the intensity of the light. It would be up to the discretion of law enforcement, which mostly does visual assessments. If a case went to court, the burden would be on the driver to prove his or her lights were legal.

Senator Gustavson:

Do the HID lights come in a high and low beam or are they just one beam?

Assemblyman Carrillo:

The high and low beams are the same intensity. The lightbulb has a servomotor that adjusts the light up and down when using the high beam. There is no brightness or dimness. There are two types of HID lights, one that is strictly low beam all the time, and if the high beam is needed, the light is put to the higher intensity of the actual halogen light. This depends on if the car has one or two lights on each side or just one headlight. If it is the single headlight, the headlight has an actual halogen bulb accompanying the existing HID light. In this case, the high beam would be the halogen light, and the low beam would be the HID light.

Chair Hammond:

Is there an increase in the risk of fires by putting an aftermarket HID into the housing unit for a factory headlamp where the heat causes a problem?

Assemblyman Carrillo:

In all the blogs and information that I have found, there has been no mention of fires being caused by defective headlights. The lights are encased in a glass tube and they have heat intensity to a certain degree. If there is a malfunction with the actual headlight, there could be the potential for a fire.

Chair Hammond:

Have you found any information in your research on how the lights from oncoming traffic affect a person's eyes?

Assembly Carrillo:

There is information regarding the effects on the older community. The higher kelvin lights and the colors seem to affect the eyes of older people in our society. I will get that information to you.

Assembly Bill 188 was created to set a standard for the HID lights for the safety of pedestrians and the motoring public as a whole.

Remainder of page intentionally left blank, signature page to follow.

Senate Committee on Transportation
April 16, 2015
Page 17

Chair Hammond:

The hearing on A.B. 188 is now closed. There being no public comment, the meeting is adjourned at 9:54 a.m.

RESPECTFULLY SUBMITTED:

Tammy Lubich,
Committee Secretary

APPROVED BY:

Senator Scott Hammond, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	4		Attendance Roster
A.B. 188	C	11	Assemblyman Richard Carrillo	Presentation