MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION

Seventy-Ninth Session
April 4, 2017

The Committee on Transportation was called to order by Chairman Richard Carrillo at 3:21 p.m. on Tuesday, April 4, 2017, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Richard Carrillo, Chairman
Assemblywoman Ellen B. Spiegel, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman John Ellison
Assemblyman Ozzie Fumo
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman Michael C. Sprinkle
Assemblyman Justin Watkins
Assemblyman Jim Wheeler
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman James Ohrenschall, Assembly District No. 12
Assemblyman Paul Anderson, Assembly District No. 13

STAFF MEMBERS PRESENT:

Jann Stinnesbeck, Committee Policy Analyst
Darcy Johnson, Committee Counsel
Joan Waldock, Committee Secretary
Trinity Thom, Committee Assistant

OTHERS PRESENT:

Michael Anthony Dias, Private Citizen, Las Vegas, Nevada
John M. Terry, P.E., Assistant Director, Engineering, Chief Engineer, Director's Office, Department of Transportation
Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance Group
Maylaine Yep, Field Claims Supervisor, Auto Physical Damage, Farmers Insurance Group
Jude Hurin, CPM, Administrator, Division of Management Services and Programs, Department of Motor Vehicles
Dawn Bobbert, Senior Physical Damage Appraiser, CSAA Insurance Group
Lisa Foster, representing American Family Insurance Company and Allstate Insurance Company
Jeanette Belz, representing Property Casualty Insurers Association of America
Dan L. Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada
Terry Graves, representing A&A Midwest
Tim Waldren, President, Nevada Collision Industry Association
Jim Werbeckes, Vice President, Government and Regulatory Affairs, Employers Insurance Group
Matthew L. Sharp, Attorney, representing Nevada Justice Association
Rajat Jain, Chief, Property and Casualty Section, Division of Insurance, Department of Business and Industry
Jesse Wadhams, Attorney, representing American Insurance Association
C. Joseph Guild III, Attorney, representing State Farm Insurance Company

Chairman Carrillo:
[Roll was called. Committee protocols and rules were explained.] Today we are hearing four bills, and we also have a work session. Not all of our Committee members will be here at the same time. We will now open the hearing on Assembly Bill 364.

Assembly Bill 364: Directs the Department of Transportation, in cooperation with Clark County, the City of Las Vegas and the City of Henderson, to conduct an interim study concerning roadway traffic and safety. (BDR S-1115)

Assemblyman James Ohrenschall, Assembly District No. 12:
Thank you for hearing Assembly Bill 364. Assembly District 12 consists of parts of Henderson and unincorporated Clark County. It is pretty evident we have some big traffic problems on the eastern side of town—Sunrise Manor, or as Whitney Avenue goes down into Henderson. For a lot of my constituents—and those of Assemblywoman Carlton, Assemblyman Edwards, and Chairman Carrillo—gaining access to Interstate 515, or what most of us in southern Nevada call "95," along East Charleston is a problem in the mornings. I have seen cars lined up on Lamb Boulevard almost to Stewart Avenue trying to get onto the closest artery for all of Sunrise Mountain, which is the area where Nellis Air Force Base is located. Serious traffic accidents abound on the east side of town. Whether you look at

East Charleston Boulevard, Lamb Boulevard, or Nellis Boulevard—there are a lot of fatalities on our side of town. Bus service needs to be improved as well for our constituents who do not drive on our roads, but are trying to get to their jobs or schools by using public transportation. Bicycle safety is another issue.

Many of my constituents have come to me asking why we do not have an on-ramp or off-ramp at Sahara Avenue from U.S. 95 so that East Charleston would not be the only way for them to get to Sunrise Mountain and the neighborhoods up there. I have often wondered about that too. I know that it would involve a lot of money and engineering, but I am hoping that if A.B. 364 passes, it may be something that the Department of Transportation (NDOT), the cities of Las Vegas and Henderson, and Clark County might look at. Perhaps they would look at an on-ramp/off-ramp interchange at Russell Road and Nellis Boulevard, or at Pecos Road and Stewart Avenue. They could look at how we can make those roads safer. There are times when, as a parent, I am scared when I have my children with me and I have to cross Nellis Boulevard or drive on Nellis because a lot of people driving on Nellis treat it as the Indianapolis 500.

I am hoping that A.B. 364 will provide for this study and that when we come back next session we will have some concrete plans. I think a new interchange at those locations would be good. A lot of my constituents have told me that, but I am an attorney and a state legislator, not an engineer. I would like the study done so that we have some solid answers from the experts as to what might alleviate the traffic congestion and the danger of our roads on the east side of town. Mr. Chairman, I neglected to include the Regional Transportation Commission (RTC) of Southern Nevada as a partner that should be part of this study. If you are open to processing this legislation, I hope you would consider adding them.

Michael Anthony Dias, Private Citizen, Las Vegas, Nevada:
I have been a resident of Sunrise Manor for over 40 years. I was a member of the Sunrise Manor Town Advisory Board for approximately 30 years. When U.S. Route 95 was originally constructed, one access point at Charleston Boulevard was sufficient for the population at that time. Since then, as I am sure you are aware, the population to the east and to the north has exploded. We need two new access points as soon as possible. The Department of Transportation has a design for the intersection of Pecos Road and Stewart Avenue that was presented to the Sunrise Manor Town Advisory Board in mid-2016. We all felt it was a great design and approved it unanimously, requesting it be built as soon as possible. The interchange at that intersection will relieve the traffic on Charleston Boulevard, but will also help the City of Las Vegas because Pecos Road to the north is a fully-developed street that currently is underutilized. This would provide a new access point for the city's population to go in that direction.

Approximately three years ago, there was a design for the Sahara Avenue Interchange to be put at the original alignment of Sahara Avenue so that it would be straightened back out. That would also give Sunrise Manor a new access point to all of the subdivisions to the east. We have been told by NDOT that the problem for both of these interchanges is money.

They tell us they have great designs; they want to build them, but there are no funds right now. That is an issue that needs to be addressed as quickly as possible in order to alleviate the problem Mr. Ohrenschall expressed at the Charleston and Lamb Boulevards area.

I will conclude by saying it would be a wonderful thing if we could get these two new interchanges. Please do everything possible to help us.

Assemblyman Wheeler:
As I read section 1, subsection 2, paragraph (c), we are going to "Identify potential sources for the funding of the plans described in paragraphs (a) and (b) . . . ." The report of the study will go to the Director of the Legislative Counsel Bureau (LCB) for transmission to the 80th Session of the Nevada Legislature. Since the funds for this type of thing would be included in either the *Executive Budget* or NDOT's budget, why would the report not be transmitted to them?

Assemblyman Ohrenschall:
I am open to amend the bill to include transmitting the report to the Chief of Staff of the Office of the Governor, in addition to the Director of the LCB.

Chairman Carrillo:
I know exactly the traffic holdup that exists. It is surprising there are not a lot more crashes because people only have so much patience. Traffic can be lined up and down the road almost all the way to Stewart Avenue.

Assemblyman Watkins:
I do not know how these interim studies are paid for; I know we have an allotment of a certain amount. Why would we want to limit this study to just the eastern urban area? One of the intersections I thought of as soon as we started talking about this is Eastern Avenue and Interstate 215 (I-215), which has to be one of the worst intersections in Clark County. That would not be captured by this study. Could we broaden the study to assess any of the freeway systems in Clark County? Would that achieve the intent of your bill while possibly capturing some other problem areas?

Assemblyman Ohrenschall:
The way the bill is written, the intersection of Eastern Avenue and I-215 in Henderson could be captured in this study because the bill references the eastern part of urban Clark County. So unless I am misinterpreting the language, that area would be included. I have learned, through conversations with NDOT, that they have some ongoing studies to try to improve traffic throughout the county. While this bill might parallel some of the work they are doing, they feel there are alternatives to consider that would require separate study.

Assemblyman Watkins:
Do not forget about the people who are fighting 35th Avenue in the southwest.

Assemblyman Ohrenschall:
I will certainly not forget about my neighbors on the western side of town. I live on the east side of town, but when I head out to the west side I see those problems. I do believe that Charleston and Lamb and Charleston and Nellis have some of the highest crash rates in the state. I know in the past those intersections have been in the top ten, and I cannot imagine that status has changed. I hope we will see improvement. I want traffic to be safer and better throughout the county, but I believe the eastern part of Clark County has a significant problem which NDOT may be able to address.

Chairman Carrillo:
I would like to move on to take testimony in support of A.B. 364. Is there support in southern Nevada?

Michael Anthony Dias:
This is something that has been needed for many, many years. We have grown up without the infrastructure expanding to handle the capacity. It would truly fix the problems at Charleston and Lamb if these two other interchanges were constructed. That is my firm belief from my experience and growing up on that side of town. Sunrise Manor has always been very special to me, and I wish that it would continue to be a safe place to live.

Chairman Carrillo:
Is there anyone else in southern Nevada wanting to testify as in support of A.B. 364? [There was no one.] Is there any support for A.B. 364 in Carson City? [There was none.] Does anyone want to give testimony neutral to A.B. 364 in Las Vegas or in Carson City?

John M. Terry, P.E., Assistant Director, Engineering, Chief Engineer, Director's Office, Department of Transportation:
We did not add a fiscal note to this bill as we have ongoing studies that would cover portions of this area, but should this bill pass in its current form, we would have to do additional studies to meet the requirements in terms of a comprehensive study covering that area. We could do that within the time frame given in the bill. They are asking us to study traffic and safety on the roads which is part of what we already do, so I do not see how this would be a big addition to what we have done. I would add that the interchanges that have been talked about have been studied in the past. Improvements to the Charleston Interchange with Interstate 515 is in the environmental final design phase and will be incorporated.

Chairman Carrillo:
Are there any questions from Committee members? [There were none.] Recently there was a pedestrian safety study of Boulder Highway. What sets off these studies? Do you do them based on the number of complaints?

John Terry:
Various things trigger our studies. We have a planning section that prioritizes and has done some of these studies. Citizen input is part of it. We track all traffic and accident data, so a rise in accidents can trigger a study.

Chairman Carrillo:
The number of crashes in that area is not exceedingly high according to the bill's sponsor. Drivers are very careful in that area. We would like to ensure that area is on the radar. Is there anyone else neutral? [There was no one.] Is there opposition in southern or northern Nevada? [There was none.]

Assemblyman Ohrenschall:
This bill is significant. I do not forget my friends in the southwest part of town, but I believe that we have a very serious problem on the east side of town, a problem that means a lot of people spend a lot of time with motors running, clogging up East Charleston—not getting home to their families, not getting to work, polluting the air, and making the roads dangerous. Anyone who has spent any time in Sunrise Manor or eastern Las Vegas can see that, whether they are an engineer or not. I would be open to amending it to include the RTC as another stakeholder that could work with NDOT on the study.

Chairman Carrillo:
I will close the hearing on A.B. 364 and open the hearing on Assembly Bill 368.

Assembly Bill 368: Revises provisions governing total loss vehicles. (BDR 43-314)

Assemblyman Paul Anderson, Assembly District No. 13:
Every time I come to this Committee, I remember my freshman year in the Legislature when I sat on this Committee, and the fun times we had. Assembly Bill 368 provides cleanup language to *Nevada Revised Statutes* (NRS) 487.790 that governs the provisions of a total loss vehicle. There were changes in 2003 and again in 2011 that made it confusing to accurately and properly determine when a vehicle is considered a total loss, potentially putting cars that are unsafe to the public on the roads across Nevada. The current system causes a lot of stress and confusion for both consumers and insurance professionals. Assembly Bill 368 aims to simplify the language, hoping to make the roads safer for Nevadans. We have been through many iterations of a bill that seemed simple to clarify. It goes to point out that words matter, and that it gets confusing depending on who interprets those words. At this time I would like to turn some time over to Mr. Compan to go through the sections of the bill.

Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance Group:
I would like to thank the Minority Leader for taking on this task which seemed somewhat simple at first. I would like to thank the Legislative Counsel Bureau (LCB) for dealing with the many iterations of this bill. I would also like to thank the Division of Insurance for their input and for working with me on this, the Department of Motor Vehicles (DMV) for giving me sample language, and the Legal Aid Center of Southern Nevada for input. This bill was initially introduced through a workshop in 2003, led by the Honorable Barbara Buckley. Since then it has grown.

During the 2003 Legislative Session, changes to NRS Chapter 487.790 removed language relating to titling requirements for salvage vehicles and added a percentage and other requirements relating to salvage titling. [Mr. Compan read from his written testimony (Exhibit C).] The language included:

> 1. "Total loss vehicle" means a motor vehicle:
>
> (a) Of a type which is subject to registration; and
>
> (b) Which has been wrecked, destroyed or otherwise damaged to such an extent that the cost of repair is 65 percent or more of the fair market value of the vehicle immediately before it was wrecked, destroyed or otherwise damaged, except that, for the purposes of this paragraph, the cost of repair does not include the cost of:
>
> (1) Painting any portion of the vehicle

Then in 2011 language was added to allow for "electronic components." Since the changes in 2011, it has become very confusing and difficult to determine when a vehicle should require a salvage title. This chapter of law does not have anything to do with repairing vehicles. The chapter is a titling chapter of law—determining whether a vehicle can have a clean title or a salvage title. That is what we are trying to clarify, as this is very unclear to our claims experts in the field. I have given you exhibits to look at. I will not use all of them as I have experts from the field who can walk you through the problems they are seeing.

I would like to refer you to what I identify as Exhibit #1 (Exhibit D). The first page is a document from ACD [AutoClaims Direct] that refers to how the 50 states handle total loss formulas in terms of titling. The majority of U.S. states allow carriers to determine total loss; some states have statutory percentage requirements to determine total loss. Nevada has a very low statutory requirement—65 percent, less paint and materials, less mechanical components. Taking these figures into account makes it very difficult to determine whether a vehicle is deemed to be a total loss for titling purposes. For your reference, I gave you copies of each state's statutes.

If you look at Arizona's statute [page 5, (Exhibit D)], you will see the way most states define a salvage vehicle:

> "Salvage vehicle" means a vehicle, other than a nonrepairable vehicle, of a type that is subject to titling and registration pursuant to this chapter and that has been stolen, wrecked, destroyed, flood or water damaged or otherwise damaged to the extent that the owner, leasing company, financial institution or insurance company considers it uneconomical to repair the vehicle.

Every insurance company uses what is called "a total loss formula." If you have a vehicle that has a complete estimate of $7,000, and it has a reputable salvage bid of $3,000, you have a vehicle with an actual cash value of $10,000. If you have a $10,000 accident, for titling purposes the vehicle is a total loss. If you use the language of the statute in Nevada, you have to remove the cost of mechanical components. I looked at the proposed amendment

from body shops. Almost everything on the car now is a mechanical component so, essentially, if you remove the cost of mechanical components from the estimate, the estimate for repair now becomes $4,000. If you take the $4,000 estimate and the $3,000 salvage bid on a $10,000 value of the car, you will be required to repair it. If you have a car that has an estimate of $12,000 to $14,000, subtract the cost of components, you could have the cost of repairing it below the $10,000 actual cash value threshold, thereby requiring insurance companies to repair it.

I reached out last September to our partners, the southern chapter of the Nevada Collision Industry Association. I have tried to work with them on several iterations of this bill. I had thought this language and verbiage was more beneficial to them if we put the first portion of the amendment we sent regarding when a vehicle is deemed to be an economic total loss and for titling purposes receives a salvage title. That would have given the insurance companies the ability, if nearing that threshold, to repair it. In today's market, if the car is nearly done and the shop finds a $25 or $30 part needs to be replaced, that can put a car over the threshold so the car cannot be repaired, resulting in a salvage title. We wanted to put some clarity into the language.

During the process we went through on the salvage titling and working with the different agencies in the state, we received Insurance Industry Committee on Motor Vehicle Administration (IICMVA) model language from DMV. The Insurance Industry Committee on Motor Vehicle Administration is a regulatory body similar to the National Association of Insurance Commissioners for insurance companies. They draft model language that should be used by motor vehicle associations throughout the country. We used their language.

After 2011, we had total loss workshops provided by the Nevada Division of Insurance. They had some concerns with the ambiguous language in NRS Chapter 487. I highlighted a section [page 100, (Exhibit D)] that I will read to you:

> Notwithstanding this statute, an insurer may make an economic decision to settle a claim on the basis of the actual cash value of the vehicle rather than repairing the vehicle, regardless of the cost of repair. However, the Division has concerns with the situation when an insurer treats a vehicle as a salvage vehicle when the cost of repair does not meet the threshold set forth in NRS 487.790.
>
> The Division set forth the position that an insurer may offer a settlement and retain the vehicle. If the insurer retains the vehicle, it may obtain a salvage title and resell it, but if the claimant [a third party] insists on keeping the vehicle, the insurer may not force the insured to accept a salvage title and may not deduct the value of the salvage from the settlement.
>
> Some members of [the] industry expressed their own concerns with this position. According to some industry representatives, given all the electronic components in modern vehicles, which are excluded from the 65 percent

> determination, costs of repair have risen considerably, resulting in more situations in which the vehicle is an economic total loss but does not meet the statutory definition of a "total loss vehicle" pursuant to [NRS] Chapter 487.

That brings me back to the conversation about the vehicle that is only worth $10,000 with a $16,000 estimate, less mechanical components. Now the vehicle would have to be repaired or it would have to be issued a clean title. It is the position of the Division of Insurance that on first-party claims, the insurance company has rights under the insurance contract to either repair or replace the vehicle, whichever is more economical. The question here is regarding third-party claims. We are not going to spend $15,000 to repair a vehicle that is worth $10,000. If we cannot deduct salvage from it or issue a salvage title, we will be putting unsafe cars on the road. That vehicle will be sold; it will be repaired by a body shop that maintains poor standards and that would not repair the vehicle back to its original specifications. The vehicle on the road—with a clean title—should have been issued a salvage title.

Assemblywoman Spiegel:
Section 1, subsection 1(a) talks about repairing, rebuilding, or reconstructing a vehicle to a condition that is equivalent to its condition immediately before it was wrecked. It is my understanding that if there is damage to the frame of a vehicle, it can be repaired such that it can be driven; but, if the vehicle is in a subsequent accident, the driver and passengers in the vehicle will not have the same kind of protection as before because the vehicle cannot crumple the way it could before. It does not seem as if that repaired condition would be equivalent to the condition before the wreck. Could you speak to that?

Robert Compan:
I have several experts here from the area of repair. I can also answer from my experiences. Auto body shops must be licensed and certified under certain requirements in the state. I-CAR recommendations come from certain governing bodies that regulate, train, and teach individuals to do repairs. In certain cars, especially today's modern cars, the frame rails are made of high-strength low-alloy (HSLA) steels. They have gotten more complicated and are used in more integral parts of the cars for crush zones and things of that nature. High strength components nowadays are typically being replaced. If they can be repaired, there are stringent specifications—they have to be repaired to factory specifications. There are heat components that must be contained in them. I am sure the representative from the body shops could talk about this. I do not want to bring him up because he is in opposition to the bill. Maylaine Yep, with Farmers Insurance, is available to testify in Las Vegas. Dawn Bobbert is an expert with AAA. They can probably answer Assemblywoman Spiegel's question better than I can.

Maylaine Yep, Field Claims Supervisor, Auto Physical Damage, Farmers Insurance Group:
Regarding the concern brought up about proper repairs to a frame, most commonly there are two types of frames. For most private passenger vehicles, you have a unibody frame which is part of the vehicle itself. The exterior panels are welded to the frame. Vehicles such as

trucks have a conventional or a ladder frame. Mr. Compan was accurate in that I-CAR and other certified authorities have very stringent rules, regulations, and methodologies as far as how much heat can be applied to repair rails or to the unibody. If the frame cannot be properly restored to pre-loss condition, the original equipment manufacturers provide parts for this type of replacement. If done properly, the vehicle should be able to be restored to pre-loss condition and be able to react in a subsequent loss in the same way it did prior to impact in the first place.

Chairman Carrillo:
We are going to pause your presentation in order to have a work session on Assembly Bill 234.

Assembly Bill 234: Revises provisions governing motor carriers. (BDR 58-651)

Jann Stinnesbeck, Committee Policy Analyst:
Assembly Bill 234 was heard in this Committee on March 16, 2017. The bill requires certain motor carriers of passengers which provide paratransit services to certain persons with disabilities to ensure that each vehicle used for such services is equipped with first-aid equipment and that the driver of such vehicles receives training in first-aid and cardiopulmonary resuscitation.

There is one amendment to the bill by Assemblyman Fumo. The amendment clarifies that the company that employs the drivers is responsible for their training, will pay for the training, and will compensate the drivers for time spent in training. The amendment also changes the effective date. [Reviewed the work session document (Exhibit E)].

Darcy Johnson, Committee Counsel:
I would like to clarify a point with Assemblyman Fumo. Does the amendment that changes the effective date make the bill effective with the signing of the contract or September 1, 2019, whichever comes later?

Assemblyman Fumo:
That was the intent of the amendment in case there was a contract dispute. We did not want this to be a problem for the Nevada Transportation Authority.

Chairman Carrillo:
I will call for a motion.

> ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 234.

ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Fumo will make the floor statement.

Assembly Bill 261: Revises provisions governing motorcycle drivers' licenses and instruction permits. (BDR 43-837)

Jann Stinnesbeck, Committee Policy Analyst:
Assembly Bill 261 was heard in this Committee on March 23, 2017. It authorizes Nevada's Department of Motor Vehicles to issue an instruction permit for operating a motorcycle. The bill prohibits a permit holder to operate a motorcycle between sunset and sunrise, carry passengers, and operate the motorcycle on a controlled-access highway. The bill requires a person between the ages of 16 and 18 years who applies for a driver's license with a motorcycle endorsement to complete a certain type of driver's education or a driving course, have at least 50 hours of driving experience, and to have held an instructional permit for not less than 6 months before applying for the driver's license. Lastly, the bill waives certain requirements for a person applying for a motorcycle driver's license under certain circumstances and if the person is in compliance with the instruction permit.

There is one amendment to this bill by Chairman Carrillo which allows the substitution of an additional 50 hours of experience in driving a motorcycle if a course of motorcycle safety is not offered within a 30-mile radius of a person's residence. [Reviewed the work session document (Exhibit F)].

Chairman Carrillo:
I will call for a motion.

ASSEMBLYWOMAN BILBRAY-AXELROD MOVED TO AMEND AND DO PASS ASSEMBLY BILL 261.

ASSEMBLYMAN SPRINKLE SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblywoman Spiegel:
I have a concern about section 3, subsection 6 which talks about what the holder of the instruction permit is not allowed to do. However, the bill and *Nevada Revised Statutes* did not contemplate what would happen if someone violated that, what penalties there would be. Additionally, it did not answer the question of what would happen if someone applying for a permit inappropriately signed a parent's name to the form. For those reasons, I will be voting no.

Chairman Carrillo:
I would like to bring Mr. Hurin from the Department of Motor Vehicles (DMV) to speak to that.

Jude Hurin, CPM, Administrator, Division of Management Services and Programs, Department of Motor Vehicles:
At this point in time, DMV does not have any enforcement in place for individuals who may fraudulently obtain a parent's signature on the log book. In most cases, the parent is there to sign or the log is already signed. If fraud were detected, there are no penalties established that would give us the authority to deal with it. Regarding passengers being transported by a driver on a permit, we have statutes for 16- and 17-year-olds, but nothing for permit holders. There are penalties involved if 16- or 17-year-olds do not comply with the six-month rule to not transport anyone except an immediate family member. There is missing language for the permit holder that Assemblywoman Spiegel has brought to our attention.

Chairman Carrillo:
We will vote on the motion.

THE MOTION PASSED. (ASSEMBLYWOMAN SPIEGEL VOTED NO.)

I will take the floor statement.

We will close the work session and will reopen the hearing on Assembly Bill 368.

Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance Group:
Before I proceed with the conceptual amendments, at the pleasure of the Chairman, I will answer any questions the Committee may have.

Assemblyman Ellison:
The difference between a salvage title and a regular title is a big thing. I bought back one of my bucket trucks after it was stolen and left in a river. As there had been 50 to 60 percent damage to the truck, I had to get a salvage title. Would this bill clean anything up regarding a salvage title versus a regular title? Once you have a salvage title, can you ever get a regular title for the vehicle?

Robert Compan:
You are talking about a vehicle that was in a river. We will address that in the amendment. It is also addressed in Senate Bill 172. Vehicles that have been in water are not even salvaged with titles. If the water rises higher than the mechanical components, which is a key element of this legislation, the vehicle is usually totaled and considered nonrepairable. Once a vehicle is submerged in water, especially when it starts hitting the mechanical components, electrical components will fail. It may not happen right away; it takes time for

sensors to start to corrode. Assemblyman Paul Anderson can testify to this because he bought a flood vehicle out of Louisiana that he was able to drive for seven years. I do not know if I am answering your question.

Assemblyman Ellison:
This bill addresses water damage on page 2, line 11, if the damage is 80 percent or more of the retail value of the vehicle immediately before it was damaged. If a car has been in a river, are we moving it from 65 percent damage to 80 percent damage before it can be declared a total loss?

Robert Compan:
In our proposed amendment, we are excluding submerged vehicles. A total loss salvage title can never receive a clean title again. By statute, it could get a rebuilt title. If you take it to a licensed body shop and have the vehicle repaired, you can get a rebuilt title. At that time, the vehicle can be reinsured for driving on the Nevada highways.

Assemblyman Ellison:
Are you accepting amendments to your bill?

Robert Compan:
There is an amendment. Originally, I was working with the Division of Insurance to construct one of the first amendments we had. In the meantime, the Legal Aid Center of Southern Nevada added some conflicting language and some clarifying language. Mr. Wulz is in Las Vegas to support the legislation. He is the deputy executive director. The executive director of the Legal Aid Center is former Assemblywoman Barbara Buckley.

I can walk the Committee through the amendments, but I believe the representatives of the Division of Insurance and representatives with the Legal Aid Center can get together to come to a consensus on the amendments. We can go through the amendments now or wait until after those two groups get together with a mock-up amendment.

Chairman Carrillo:
It would help clarify some concerns if you would walk us through the amendments.

Robert Compan:
The first amendment was made with the Division of Insurance, Department of Business and Industry (Exhibit G). We wanted to remove "submerged in water" out of the language. We want to be sure that people in Nevada do not bring in submerged vehicles to be titled in Nevada—by first getting a salvage title, then having the salvage title turned into a rebuilt title. That would offer a flood of vehicles coming in from around the country—we would be welcoming cars from flooded areas into our state, which is something we do not want to do.

In section 1, subsection 1, paragraph (a), we have added "fair market" instead of "retail" value. In section 1, subsection 2, paragraph (c) of our second amendment (Exhibit H), we include language that says, "The retail value of a motor vehicle is calculated based on the

value set forth in the current edition of any nationally recognized compilation of retail values, including, without limitation, an electronic database, which has been approved by the Department." We are addressing what it would cost to replace that car if we totaled it.

In section 1, subsection 1(b) (Exhibit G), we added, ". . . in accordance with the provisions of paragraph (a) of this subsection . . ." in order to be clear. In section 1, subsection 2, paragraph (c), we struck out the language regarding 65 percent of fair market value. Inadvertently, we removed "Towing the vehicle." I do not think that should be included in any evaluation of that amendment. I would let other people speak to that.

In section 1, subsection 3, paragraph (a), subparagraph (1) (Exhibit G), we changed language to say, ". . . prevailing labor rate as compiled and published by the Department pursuant to NRS [*Nevada Revised Statutes*] 487.686 . . . ." *Nevada Revised Statutes* 487.686 refers to a rate survey that is done by the Nevada Department of Motor Vehicles (DMV) to determine prevailing rates in Nevada. In the old days, we used to do it just by insurance companies doing labor surveys. Several sessions ago [2013], this legislative body required surveys to be completed by geographical areas. Washoe County may have different labor rates than Nye County which may have different labor rates than Clark County.

We struck some language in section 1, subsection 3, paragraph (b) (Exhibit G): "(1) Current published actual retail price of original manufacturer parts; (2) Retail price of new alternative parts; or (3) Actual . . . ." We added to paragraph (b) ". . . cost of actual parts which would be used in the repair of the vehicle, if a decision to repair the vehicle were made." We struck paragraph (c).

After this amendment came out, I had discussions with members of the Legal Aid Center of Southern Nevada who came up with their amendment (Exhibit H). They are the original proponents of this legislation; Barbara Buckley is the one who did it. They looked at it and listened to our concerns regarding titling. They agreed with us that changes needed to be made. I worked with Mr. Wulz for several months, going back and forth on amendments that they have. I would like to ask if it is possible that Mr. Wulz from the Legal Aid Center could get together with the Nevada Division of Insurance to come to a consensus on an amendment for the bill. I think we could come up with language that addresses the insurance companies and the safety of drivers on the road.

I would like to address the Nevada Collision Industry Association's amendment (Exhibit I). In their amendment, they talk about labor rates and things of that nature under NRS 487.686. The chapter is germane, but not to what this bill is seeking to do. This bill is strictly a titling bill; it has nothing to do with labor rates. It just has to do with whether or not a vehicle receives a salvage title. With that in mind, I would urge the Committee to take a look at it and consider it. If they would like to do some separate legislation, we can address it. I am not prepared to answer that today or to go into that debate.

I have several experts who would like to walk you through some estimates to show you the problems we are seeing in the field. I would not want to waste the Committee's time, but this

will give you a more complete understanding of what we are trying to achieve. The information they have and the exhibits they will share will show you how confusing this is to adjusters and consumers.

Chairman Carrillo:
There is a lot of clarification that needs to be given. Could you provide testimony that would present a scenario of what the process is?

Robert Compan:
The process of the amendment or the process of the confusion?

Assemblyman Paul Anderson, Assembly District No. 13:
Could we go through one or two of the examples that show how the process works, the language that we recognize as confusing now that we are trying to clarify? Could we explain the language as it exists, and go through what is in statute and where we want to be? The proposed amendments are confusing enough. To see what this looks like out in the field and what they have to interpret will clarify how unclear this is.

Chairman Carrillo:
That is fine.

Assemblyman Watkins:
I have three different amendments in front of me. In your presentation, I could not tell which one we were operating on or if we were operating off of all three at the same time. Do we have a consensus amendment that we, as a Committee, should be looking at when we are about to talk about these examples?

Assemblyman Paul Anderson:
We have three separate amendments, some of which came in late. As we walk through the examples, the idea is to show you what the current language requires the estimators and insurance companies to go through. We have a lot of input that we need to put together in one amendment that we can present in a cohesive fashion. Does that answer your question?

Assemblyman Watkins:
I guess it will, if we are able to follow the examples.

Robert Compan:
Maylaine Yep will go through an example or two.

Maylaine Yep, Field Claims Supervisor, Auto Physical Damage, Farmers Insurance Group:
I will refer to round numbers in my example. I will speak about two vehicles I physically reinspected myself at Copart-Salvage Car Options. The estimate to repair a 2015 Dodge Charger was close to $15,000 to $18,000. Applying the statute correctly in its current verbiage, you would first establish the estimate of repairs. You would subtract all the paint,

labor, and materials that would be needed to restore the vehicle. You would also subtract any electronic components. The Charger had quite a number of air bags or safety restraint items that deployed. Under current statute, we would also subtract the cost of those parts from the estimated total of repairs. For our hypothetical, let us say that the estimated cost of repairs was $18,000. The electronic parts were approximately $3,000; paint, materials, and labor costs for painting, towing, and storage would also be subtracted. Let us assume that total is $2,000. Right now, our revised amount is $13,000. Let us assume that the actual cash value is $20,000. We would multiply that amount by 65 percent; that would give us $13,000. If the actual cash value were a bit higher, we would be forced to repair the vehicle. Under the recommended language, if we apply the 80 percent factor, we would take the $20,000 multiplied by 80 percent, which would establish a threshold of $16,000. Clearly, in that example, the amount of repairs without any adjustments—$18,000—provides evidence and support that the vehicle should be deemed a total loss.

I also had a Lexus that had been involved in a severe left rear impact. There was a lot of damage done to the left rear, but there was no air bag deployment. The damage amounted to $22,000 in repairs. The actual cash value (ACV) was approximately $35,000 to $40,000. After all of the adjustments I gave you in my first example, the revised estimate was approximately $19,000. With an ACV of $40,000, we would be forced to repair that vehicle. In both scenarios, the owners were emphatic that they did not want these vehicles returned to them.

Dawn Bobbert, Senior Physical Damage Appraiser, CSAA Insurance Group:
I want to review an example from a couple of weeks ago (Exhibit J). We had an estimate to repair a vehicle. The conversation with the insured went something like this:

> Your vehicle is considered a repairable vehicle because the cost to repair your vehicle is $17,184 minus the cost to purchase paint, paint materials, and relative tax—which is $1,172 and $89, respectively—less the $1,892 cost of the labor to refinish the vehicle, which brings your total revised estimate to $14,031. The fair market value of your vehicle is $22,172, 65 percent of that being $14,412. As you can see—the cost to repair to your vehicle, not including refinishing, is less than 65 percent of the fair market value per the *Nevada Revised Statutes*—your vehicle is repairable.

These are the real live conversations we are having with consumers every single day. As you can see, the maze of the language is very confusing and very frustrating.

The proposed language in A.B. 368 would reduce, if not eliminate, this confusing conversation. Using the same example, my explanation to the insured would be:

> Your vehicle is repairable because the repair estimate of the vehicle is $17,184, and that does not exceed 80 percent of the value of the vehicle. The 80 percent threshold is $17,738.

The vehicle owners are already under stress and possibly injured from the accident. This type of conversation leads to additional unmitigated stress.

Assemblyman Watkins:
I understand that it would be easier for you to do your job and easier for the consumer to understand if we were to implement one of these amendments. As you said, Mr. Compan, this bill deals with titles. We are not dealing with the ease of the consumer, we are dealing with whether the consumer has a salvage title or not. Can we solve the problem you have in describing this issue to the consumer and the ease with which you deal with your job by separating whether or not a vehicle is repairable versus salvageable? What exists in the statute now exists for a reason. We are talking about a salvage title, which tells everyone else in the world that this car is slightly unsafe; it has been through a wreck in a way that cannot be repaired wholly again, which is why we exclude all these little things. If we moved to a straight 80 percent, that has no nexus to whether or not that vehicle is safe. If a person chooses a salvage title, we devalue the vehicle on resale. The repairs may have had nothing to do with whether or not the vehicle is dangerous.

Robert Compan:
That is the confusing part of it. Deducting these mechanical components, paint materials, and other things is really strange. We are the only state that has almost nine pages in this chapter that are so confusing. The overwhelming majority of states do not. Existing statute does not stop vehicles that are unsafe from going out on the road. If you used the current methodology, you could actually repair a car and put it back on the road. The statute does not even take into account a salvage value on a vehicle.

Assemblyman Watkins:
I guess that is my question. Do we need to separate the conversation into what qualifies for a salvage title to the consumer versus what dictates that you must do a repair? Those two questions can be wholly independent of each other. There is an economic analysis in whether or not you are forced to repair a vehicle. There is a safety analysis in whether or not we allow something to have a salvage title.

Robert Compan:
There are procedures within statutory language that address those exact concerns. I would refer you to NRS 482.098 that talks about what is safe or not safe to be on the road:

1. "Rebuilt vehicle" means a vehicle:
    (a) That is a salvage vehicle as that term is defined in NRS 487.770, excluding a nonrepairable vehicle; or
    (b) One or more major components of which have been replaced as set forth in this subsection. For the purposes of this subsection, the requisite major components of a vehicle which must be replaced for a vehicle to be considered rebuilt are the:
        (1) Cowl assembly;
        (2) Rear clip assembly;

(3) Roof assembly;
(4) Floor pan assembly;
(5) Conventional frame coupled with one additional major component; or
(6) Complete front inner structure for a unibody.

2. The term does not include a vehicle for which the only change is the installation of a truck cab assembly.

That language already determines what is mandated to be a total loss. You have no choice at that time. This does not have all the confusing requirements. This statute determines whether a vehicle is deemed by statute as safe or not safe.

Chairman Carrillo:
Are there any questions? [There were none.]

Robert Compan:
We will have a consensus on the amendments. There are two amendments we are offering as proponents of the bill. The third amendment from the body shop is in opposition (Exhibit I). Insurance companies are not in the business of totaling vehicles. We do not want to total vehicles. We want to do what is best for the insurance for our consumers. Totaling a vehicle costs us a lot of money. Besides having to pay the actual cash value of the vehicle, we have to take the cost to move it to a salvage yard to get salvage bidders on it. Sometimes there may be 15 of the same cars in the same auction. If yours is at the end of the auction, the salvage value can be lower than anticipated. For us, the issue is not whether we want to repair vehicles or total them—we do want to repair them. The issues are safety and the confusion of the legislative language.

Chairman Carrillo:
You are adding "submerged in water." We are not in a flood area like Louisiana, the Gulf, or the Mississippi River. Why are we putting this in? Is it to ensure that we do not get vehicles from those areas? Do they try to transport vehicles here, then resell them? After these vehicles are sold, they develop problems due to corrosion. What is the purpose of this language?

Robert Compan:
Whether you buy a vehicle submerged in water from Louisiana or you buy Assemblyman Ellison's truck, the issue is not if it is going to fail, it is when it is going to fail. Obviously, vehicles submerged in salt water will fail a lot more quickly. Vehicles that are submerged in fresh water are still going to fail. The problem is that you cannot tell when they will fail. If you look at the front bumper of my car, you see sensors. Those sensors are modules. If I get hit in my car, the sensors trigger to the modules in my car to deploy the front air bags or side air bags. My car has about six of those electronic components. After my car is submerged in water, those sensors will fail. If we were to title those vehicles

under salvage title, there is no way—without tearing the car completely apart, down to bare metal—you are going to guarantee that within five or seven years that vehicle is not going to fail.

Assemblyman Paul Anderson told me he bought a truck. The windshield wipers started turning on by themselves. He did not know what was happening. That is an example of what happens to submerged vehicles.

Chairman Carrillo:
We will now take testimony in support of A.B. 368. We will start in Carson City.

Lisa Foster, representing American Family Insurance Company and Allstate Insurance Company:
Both companies support this bill along with the amendment from the Division of Insurance (Exhibit G). Both clients feel it is a good idea to modernize the law and to make it clear so that it would protect consumers better and be more cost efficient for everyone. As you heard Mr. Compan say, this bill has had input from the insurance industry, consumer advocates, and the Division of Insurance. Should the Division of Insurance amendment be accepted, my clients want to make sure that if the phrase "submerged in water" stays in the amendment, it should be defined.

Jeanette Belz, representing Property Casualty Insurers Association of America:
We have submitted a letter in support (Exhibit K), so I will not put the Committee through any further testimony. Property Casualty Insurers represents approximately 34 percent of all property casualty insurance written in Nevada, including 41 percent of all personal automobile insurance.

Chairman Carrillo:
We will now take testimony in support in Las Vegas.

Dan L. Wulz, Deputy Executive Director, Legal Aid Center of Southern Nevada:
I am here to testify in support of A.B. 368 as proposed. In conversations and emails with Mr. Compan, I have understood that he agrees with some of my amendments. I am opposed to the amendment to section 1, subsection 1, paragraph (b) from the Division of Insurance (Exhibit G).

This is an important bill. It can have public safety implications. The Committee must balance the interests of consumers, insurers, and the collision repair industry. Sometimes those interests compete.

Right now we have a statutory percentage formula to define total loss vehicles. If the percentage is set too high, very seriously damaged vehicles are more likely to be rebuilt—perhaps unsafely—and placed back on our roads and highways. If the percentage is set too low, consumers may lose cars they would rather repair and keep, insurers may unnecessarily suffer financial loss, and some in the collision repair industry may theoretically

lose business. We all want the statutory percentage formula to be neither too high nor too low. Finding that sweet spot is difficult.

Assembly Bill 368, as proposed, changes the current definition of 65 percent with carve-outs to 80 percent without carve-outs, and adds a subparagraph recognizing what insurers have been doing under their contracts—that is, treating some damaged vehicles as a total loss, regardless of the statutory percentage formula. According to the insurance industry, the 2011 amendment which I was involved in with former Assemblywoman Buckley, not only resulted in fewer cars being declared total losses, but also resulted in more instances in which the insurer found the vehicle was uneconomical to repair and, thus, a de facto total loss. I can assure you, this unintended consequence was not foreseen by either former Assemblywoman Buckley or me.

Moreover, I have recently learned that the insurance industry, with the concurrence of the Division of Insurance, believes that under an insurer's contract with its insured, an insurer can consider a vehicle a total loss, and enter into a total loss settlement, yet not obtain a title branded "salvage" for such vehicle when it did not meet the NRS 487.790 definition of a total loss vehicle. Once again, I can assure you that was not the intent when either A.B. 325 of the 72nd Session or A.B. 204 of the 76th Session, adding a carve-out for electronic components, were passed. We had no idea that by insurance contract, an insurer could find a vehicle uneconomical to repair, consider it a total loss, yet never be required to obtain a title branded "salvage." The intent was that every seriously damaged vehicle would not live on with a clean title, and would be required to have a salvage title and then a rebuilt title issued, if and when repaired, so that future consumers purchasing the vehicle would know the history of such a vehicle.

If what the insurance industry says today is true, then I now fear that, in advising former Assemblywoman Buckley in 2011 to adopt the carve-out for broadly defined electronic components, I made a mistake. If we accept the representations of insurers as true, then that change resulted in more seriously damaged cars not being declared total losses, yet they were cars that were truly uneconomical to repair.

The point just made depends on the credibility of insurers. They have given testimony about real world examples. I have asked Assemblyman Elliot T. Anderson to ask DMV for data. I am trying to ascertain whether, after the 2011 amendment, fewer or more salvage titles were issued. I do not yet have that data. It might help us determine what happened after 2011 when the carve-out for electronic components was added. If the Committee has any sway with the DMV, you can ask them for that data before the work session. That would be appreciated.

Lastly, if insurers are to retain this latitude to consider a vehicle a total loss, regardless of meeting the statutory definition, then it is crucial that such be expressed in the statute so that such a total loss vehicle will be required to obtain a salvage title. The proponents accomplished that in the bill as proposed in section 1, subsection 1, paragraph (b). The Division of Insurance gutted that in its amendment which added the phrase

"in accordance with the provisions of paragraph (a) of this subsection." I would oppose the Division of Insurance's inclusion of that phrase in section 1, subsection 1, paragraph (b), as I understand it.

Chairman Carrillo:
Mr. Wulz, are you in support and in opposition to certain parts of the bill? You signed in as being in support, and you started your testimony in support, but now you are talking about parts of the bill that you oppose.

Dan Wulz:
I am in support of the bill as proposed, specifically section 1, subsection 1, paragraph (b). I was referring to the Department of Business and Industry, Division of Insurance's proposed amendment (Exhibit G), to which I am opposed. They added the phrase "in accordance with the provisions of subparagraph (a) of this subsection."

In conclusion, I submitted written testimony, in which I had five bullet points of proposed amendments (Exhibit L). I believe Mr. Compan has agreed with me that he was going to propose those changes. One of them is to change the 80 percent to 75 percent. The others are to delete all of the "submerged in water" references. I think everyone will agree that it is unnecessary, adds confusion, and is undefined. We already have a definition of a flood-damaged vehicle, which is included in a total loss vehicle. The sponsor of the bill and Mr. Compan have indicated we will work together to put what we have agreed upon into a mock-up amendment.

Chairman Carrillo:
With all the amendments, somebody needs to have more conversations before we go further. Committee members are as confused as I am with this. I understand that not every amendment is going to be friendly, but the bill sponsors will have the ability to say yes or no to suggestions. We will get more testimony on the record.

Assemblyman Paul Anderson:
There is a need for clarity here. We had amendments come in as we walked into this hearing; some came as early as last night. I apologize for being unclear in what we are presenting here. I need to step out for a work session in the Assembly Committee on Taxation, but will leave you with Mr. Compan. He has promised to be clear and concise if you allow him back at the microphone. We will get everyone together on this, hash it out, and come back with clean and clear amendments.

Chairman Carrillo:
I would like to continue with testimony in support. Is there anyone else in support in Las Vegas? [There was no one.] Is there neutral testimony in Las Vegas or in Carson City?

Terry Graves, representing A&A Midwest:
A&A Midwest is a metal recycler in Las Vegas. It also does auto parts recycling. We were

originally in opposition because of the submerged vehicle part of the bill. That has been taken care of in this amendment. We do not have any issues with the other parts of the bill, so we are neutral at this time.

Chairman Carrillo:
We will move to opposition to A.B. 368 in southern Nevada. [There was none.] Is there opposition in northern Nevada?

Tim Waldren, President, Nevada Collision Industry Association:
[Tim Waldren read from written testimony, (Exhibit M)]. I am the owner of Paramount RV Center and Auto Body in Reno. My family will celebrate 40 years in business this year. I am also president of both the Nevada Collision Industry Association and the Northern Nevada Autobody Association. We are here today in opposition to A.B. 368 as currently written. I would like to propose an amendment from the Nevada Collision Industry Association (Exhibit I) which, if accepted, would change our industry from opposed to in favor.

The current definition of a "total loss" is very easy for collision shop owners to explain to their customers when they come in. I had a customer contact me to say, "As I understand it, this is the law. My car is not a total loss, is that correct?" I have customers that understand the law as it is written.

Mr. Compan said that NRS Chapter 487 is not the chapter for this amendment. But Chapter 487 deals with the repair of vehicles, so I believe this is the chapter for this amendment to take place.

The value of the Nevada Collision Industry Association amendment (Exhibit I) is to protect the consumer from paying any extra charges, and to help create a safe vehicle repair for consumers. Currently, there is no provision in the law to recognize a fair labor rate. The insurance company sets a rate and, in most cases, that rate is currently 8- to 10-years old. They tell their insureds and claimants that is all they are paying, and that consumers have to make up the difference. For example, the insurance company-established body shop rates in Washoe County range from $44 per hour to $55 per hour. To put this into perspective—in Washoe County you would pay $65 per hour to have your lawn mower repaired, $85 per hour to have the upholstery in your car repaired, $89 per hour to have your sewing machine repaired, and $120 or more per hour for any mechanical work. As you know, today's automobiles are much more complex in structure and repair than a lawn mower, upholstery, or a sewing machine. Furthermore, due to the artificially low labor rate, some repair shops have stooped to shortcutting the quality and safety of repairs. The requested language in our amendment will help allow shops to acquire the necessary equipment and training to properly repair vehicles safely in Nevada. Some industry surveys are reporting that 80 percent of shops are not properly equipped to reproduce the original equipment manufacturer (OEM) repair.

The 1.5 modifier language that we are asking be applied here to the DMV survey within the amendment stems from a previous session where Mr. Compan asked that this same exact formula, in regard to auto storage, be applied to the state labor rate survey. He was successful in getting this passed in the previous legislature, and the collision industry is now asking that this formula be extended to collision repair labor and the entire survey, for that matter. This will aid consumers who have purchased an indemnification insurance policy with the expectation that their vehicle will be repaired to original equipment manufacturer specification per NRS 487.688. Consumers will not have to pay out-of-pocket for further expenses. The argument has always been that a provision like this will raise insurance premiums; however, when consumers need their insurance policies the most, they are told they have to pay hundreds or thousands of dollars out-of-pocket for OEM repair. This amendment will save consumers those same dollars when they have been in an accident. *Nevada Revised Statutes* 487.68701, subsection 3 provides for a body shop to petition DMV for a hearing to establish a storage rate above the DMV surveyed amount. This provides for third-party oversight and will also protect consumers. It will also provide release for other industries that are subject to the DMV survey, such as the trucking industry and recreational vehicle repair. It provides a caveat for those business to go to the DMV to establish those rates as well.

Additionally, the Nevada Collision Industry Association's proposed amendment defines the computer programs for vehicle damage estimating be vehicle identification number (VIN) decodable and free from insurer involvement and influence. This will help ensure that the proper amount of research goes into each specific make and model of car, and will not allow for a generic computer program or a one-size-fits-all approach, and will ensure accuracy and safety for the consumer during the repair process. There are currently programs being manufactured and put out into the marketplace across the country that have not had the ability to have the detail work by VIN for make and model; it is generic. This is not good for the consumer or for the repair shop.

The Nevada Collision Industry Association would like to see the towing exemption remain, as it is an ancillary cost and not a cost of the actual repairs. Most policies have a separate provision for towing that consumers pay for in addition to liability, comprehensive, and collision damage coverage.

I will provide a little history on the electronic exemption and why we need to keep that language in Nevada statutes, as proposed in our amendment. The electronic deduction was added at the request of the Nevada Collision Industry Association in 2011. A lot of us, including the insurers, put in immense time and energy to get the exclusion in the total loss formulas. All of our original arguments to get this still apply, if not more so now. The growing complexity of the electronics in cars will continue to excel in the future through collision-avoidance systems, additional air bags, automation, telematics, and vehicle communication modules with so-called "connected cars." We have backup cameras and 360-degree cameras on cars nowadays. We have LED headlights, LED taillights, and more and more sensors added with every model, every year—all highly-expensive bolt-on parts that have nothing to do with an auto's structural integrity.

To further my point, a recent article I read [National Highway Traffic Safety Administration press release dated March 17, 2017] reported that: The National Highway Traffic Safety Administration and the Insurance Institute for Highway Safety announced, in March 2016, the commitment of 20 major automakers, representing 99 percent of all the vehicles sold in the United States annually, to making front crash prevention systems standard on nearly all models by September 2022. This is a trend that is not stopping anytime soon, and we need our statutes to allow for this. Keeping the electronic exclusion will do just that. Without it, we will have consumers losing their perfectly good, used autos over these high-dollar electrical parts, possibly creating financial hardships when it comes to a replacement vehicle.

Regarding the current 65 percent limitation with the paint deductions, the paint labor deduction at my shop for one year was 14.3 percent plus 10 percent for paint materials, making an additional 24.3 percent deduction. Even though it was at 65 percent, it allowed for vehicles to be repaired up to almost 90 percent of value. With the current structure of 80 percent of value, taking it from 90 percent to 80 percent gives more room for the electronic components so that it does not create an issue for the insurers later on.

We believe A.B. 368, without the implementation of the Nevada Collision Industry Association's amendment, will cause Nevada's consumers to have to pay more money out-of-pocket for collision repairs and possibly be at risk for unsafe repairs.

In closing, we believe that our amendment (Exhibit I) also includes the Division of Insurance's amendment wording but goes a step further. Thank you for your time and consideration in creating a dynamic and relevant law for Nevada consumers and Nevada industry.

Chairman Carrillo:
Are there any questions from Committee members? [There were none.] What are the storage rates per day?

Tim Waldren:
My rates are $55 a day for automotive, $90 a day on the recreational vehicle side.

Chairman Carrillo:
Are there any closing remarks from Mr. Compan?

Robert Compan:
We will work diligently with all of the stakeholders involved in this in order to put together a complex amendment to present to the Committee for possible consideration.

Chairman Carrillo:
Work together, even though not everyone will be happy with the result. We want to make sure that our consumers are protected.

Robert Compan:
That is the intent of this legislation.

Chairman Carrillo:
We will close the hearing on A.B. 368.

[The following written testimonies were submitted but not discussed, and will become part of the record: (Exhibit N), (Exhibit O), (Exhibit P), and (Exhibit Q).]

Chairman Carrillo:
We will now close the hearing on A.B. 368. We will hear Assembly Bill 455 next.

Assembly Bill 455: Authorizes the electronic delivery of certain notices and documents relating to policies of insurance. (BDR 57-112)

Jim Werbeckes, Vice President, Government and Regulatory Affairs, Employers Insurance Group:
Assembly Bill 455 is a modernization bill to bring the insurance industry into the twenty-first century. Assembly Bill 455 has two distinct parts. The first covers electronic delivery, which encompasses sections 1 through 11; the second covers electronic posting, which is section 12. They are two distinct items.

All 50 states have either adopted the Uniform Electronic Transaction Act (UETA) or similar laws allowing consumers to elect to receive documents electronically. However, the application of these laws to insurance transactions is ambiguous. The UETA includes provisions that specify if other laws require notices to be delivered in a particular manner, then insurance notices must be delivered in that way. Throughout the Nevada Insurance Code there are specified means of delivering certain documents and notices which breeds confusion and discourages insurers from adopting electronic delivery. Currently, 34 states have passed this piece of legislation or bulletins to allow electronic delivery. Twenty-three states have adopted electronic posting.

With your permission, I would like to walk you through this bill. Sections 1 and 2 are technical. Sections 3 and 4 are definitions of "deliver by electronic means" and "party." Regarding section 5—some carriers today are using the UETA to deliver their insurance products electronically. This provision states that nothing in this bill affects those electronic transactions until after this bill has passed and gone into effect, which would be October 1, 2017.

Section 6 states that any means of delivery is covered by electronic delivery—first-class mail to certified mail. Section 7 requires both the insurer and the policyholder to agree to the delivery. This is an opt-in provision, meaning that both parties have to consent to electronic delivery. The insurer must also provide a statement to the policyholder of the right

to withdraw, the types of notices that will be delivered, the right to have the document sent via paper, procedures to withdraw consent, and the hardware and software required for electronic delivery.

Section 8 states that, if the insurer discovers that documents are not being delivered by electronic means, the insurer must cease delivering those and continue delivery with first-class mail. Section 9 addresses the withdrawal of consent to have the documents delivered by electronic means. Section 10 addresses those policyholders who are currently receiving their documents via electronic means. It outlines notification procedures insurers must use to bring those customers in line. Companies such as GEICO currently use the UETA.

Section 11 provides protection for both insurers and policyholders, indicating the policy is not void simply because of an issue with the electronic confirmation of the policy. I have an amendment regarding this section (Exhibit R). The section currently speaks of "insurers," but should say "producers." You should have a copy of the amendment. There is no civil liability should the insurer fail to send the documents by electronic means.

Section 12 regards electronic posting. Instead of your insurance company sending you a copy of your policy and endorsements every year, they would be permitted to post the generic policies and endorsements on their web page. The insurer would then send you your personalized declaration page with all of your coverages and endorsements. This section would also require insurers to provide the policyholder and producer with the policy and endorsements to that policy as long as it is in force. They are required to retain the expired policies and endorsements for not less than five years after expiration. The policy and endorsements must be posted in a manner that allows for them to be saved and printed by the policyholder or producer. The insurer must provide the policyholder with a declarations page describing the policies and forms they have purchased. The policyholder has the right to receive a hard copy at no charge if he chooses. The insurer must provide the address of the Internet website where the policy or endorsement may be found.

The first amendment, in section 8, comes from the Division of Insurance, Department of Business and Industry. They had concerns that if we were sending out midterm anniversary cancellations, nonrenewals, and renewals that alter policy terms, there should be some type of confirmation of receipt by the policyholder. We would renumber the rest of the bill.

In the second amendment, which is the technical amendment regarding section 11, I struck "insurer" and replaced it with "producer." The Commission of Insurance pulled me aside and told me we should use "a licensed appointed producer" instead.

Chairman Carrillo:
Are there questions from the Committee?

Assemblyman Wheeler:
I understand that you are trying to be able to deliver documents electronically. I want to clarify—the customer would be given the option of whether to receive materials by snail mail or electronically?

Jim Werbeckes:
That is correct. This is an opt-in version. If you wish to receive electronic delivery of your insurance documents, you would actually sign a document indicating that you and I want to do business that way instead of through snail mail. Otherwise, you would continue to receive your snail mail.

Assemblyman Wheeler:
In section 6, subsection 2, the bill lists methods of delivery: by mail, mail with postage prepaid, first-class mail, or other forms. Would you be opposed to changing that to "certified mail," since many people do not receive their mail on time? The Chairman and I were going over some complaints recently from a person who did not receive a cancellation notice.

Jim Werbeckes:
I am not sure I understand your question. What this subsection is doing is outlining all the different methods of mail being used which could be replaced by electronic delivery. If I were to deliver by certified mail today, I would not be required to use certified mail if you and I had agreed to use electronic delivery.

Assemblyman Ellison:
Do some insurance companies do this now? You can receive your policy and your proof of insurance card electronically already, can you not?

Jim Werbeckes:
Yes, there are several companies that use the UETA statute. The Nevada Insurance Code has several different parts, especially regarding workers' compensation, that stipulate that I must send a notice to you by first-class mail. Given the fact that insurance companies are very conservative, we will send the notice by first-class mail. This bill would allow me to send you notification electronically, if you and I want to do business electronically. This bill simply would establish this provision in the insurance statute, not in the commerce statute where it is today.

Chairman Carrillo:
I would like to let our Committee Counsel ask you some questions.

Darcy Johnson, Committee Counsel:
In your amendment, is the new section 8 intended to amend the existing section 8? Or is it a brand-new section, bumping existing section 8 down to section 9?

Jim Werbeckes:
That would be a new section, dropping the rest down.

Darcy Johnson:
The term "producer" is not defined in *Nevada Revised Statutes*, but "producer of insurance" is what we would probably use. A producer of insurance, by definition, would have to be licensed.

Chairman Carrillo:
We will now take testimony in support of A.B. 455.

Lisa Foster, representing American Family Insurance Company and Allstate Insurance Company:
Both insurance companies support this bill. They have not reviewed the amendment, but they support the bill. Their thought is that most industries have continually moved to a more paperless mode of doing business. It is better for everybody when you have the ability to do that. It has been helpful for customers to be able to download their proof of insurance card to print out. It has made it less likely they will be driving without their proof of insurance, which is a violation of the law. This change will give customers the ability to review and manage documents online. That is the way business is conducted in most industries. Allstate and American Family would encourage your support of this bill.

Chairman Carrillo:
Last session, I brought a bill forward that allowed electronic proof of insurance verification to be carried on a smart phone or an iPad. Please clarify your statement.

Lisa Foster:
What I was referring to is the ability to download and print out proof of insurance, so that you can keep a copy in your car should you lose the proof of insurance sent to you by your insurer.

Chairman Carrillo:
There is no one in Las Vegas waiting to speak in support of A.B. 455. Is there anyone in opposition in Las Vegas or in Carson City? [There was no one.] Is there anyone neutral? [There was no one.] I am closing the hearing on A.B. 455.

[The following written testimonies were submitted but not discussed, and will become part of the record: (Exhibit S) and (Exhibit T).]

I will open the hearing on Assembly Bill 419.

Assembly Bill 419: Creates provisions governing casualty insurance. (BDR 57-1034)

Assemblywoman Shannon Bilbray-Axelrod, Assembly District No. 34:
The purpose of Assembly Bill 419 is to provide for the sharing of information about medical records, reports, and bills of claimants receiving treatment for injuries sustained in a motor

vehicle crash. With me is Matthew Sharp with the Nevada Justice Association. I will turn over the rest of the presentation to Mr. Sharp and his colleagues, who will walk you through the bill and answer any questions that arise.

Matthew L. Sharp, Attorney, representing Nevada Justice Association:
Assembly Bill 419 is a bill to enact what the law was previous to 2015. I will give you the background of why this law is important and why we support this bill. If your constituent is injured in a car accident, whether he retains a lawyer or not, he needs to receive compensation for lost income, medical bills, and the like. In order to be compensated, he has to go through the insurance company of the at-fault driver. He would be required to provide medical records. It is important that the insurance company gets the medical records in order to evaluate the claim. It is equally important that your constituent know the policy limit for the at-fault driver. That allows the injured party to make an informed, educated decision, knowing if the policy limit is the state minimum—$15,000 [for bodily injury or death of one person] and $30,000 [for bodily injury or death of two or more persons]—or a $100,000 policy. The problem is, under the law, unless a lawsuit is filed, that information is not available. If a lawsuit is filed, one insurance company gets the medical records, the other insurance company has to provide the policy limits. What we are trying to create is a system that is workable outside of litigation in which both sides get the information they need.

We propose what the law has been in the past—when the injured party either provides a medical records release or the medical records to the insurance company, and the insurance company provides the policy limits in exchange. That is the way the bill works. It is a solution which worked for many years. The reason the law was repealed was due to a criticism of what a minority of attorneys were allegedly doing. There are lawyers and insurance companies that may not act ethically. I think that, overall, ethical lawyers need to give information to insurance companies in order to get cases settled; and ethical insurance companies acting in their insureds' best interests want to settle legitimate cases. We are creating a workable solution to avoid unnecessary lawsuits. As matters now stand, if a client provides medical records to the insurance company and the insurance company does not provide policy limits, the result is a lawsuit, which usually is unnecessary because the case should be settled without litigation. That is how this structure works. I am happy to answer any questions you have about the bill.

Assemblywoman Monroe-Moreno:
How would this bill work with the Health Insurance Portability and Accountability Act (HIPAA) laws?

Matthew L. Sharp:
In this case, the person is voluntarily providing medical information to the insurance company. Generally, when you assert that you have been injured in a claim, there is an implied waiver so that the insurance company representing the driver who is at fault can evaluate the injury. Separately, the insurance company cannot disclose that information; the health information must be maintained as confidential. This bill is not affected by HIPAA.

Assemblywoman Monroe-Moreno:
You said there was a small number of attorneys who were acting unethically. If we revert to pre-2015 law, how do we address that small group of attorneys who were acting unethically?

Matthew L. Sharp:
There were allegations that certain attorneys were acting unethically. I am not personally aware of those practices. How do you address that? We are regulated by the State Bar of Nevada. If there is outrageous conduct occurring, anybody is free to file a Bar complaint. The point is you want a productive system that compensates people promptly without putting people who caused the accidents in a position where they are sued.

Assemblyman Ellison:
Is the standard way for an insurance company to obtain medical records by going through the subpoena process?

Matthew L. Sharp:
As things stand now, you are correct. When a lawsuit is filed, the parties have a Rule 16.1 conference [Mandatory Pre-Trial Discovery Requirements, Nevada Rules of Civil Procedure]. As part of that conference, each side has to produce the documents they have that are relevant to the dispute. One of the things that is relevant to the dispute is the amount of insurance available. Once a lawsuit is filed, the insurance company acting through its insured has to produce the policy limit information without a subpoena or a request from an attorney. The point of this statute is to create a system that is workable outside the litigation context. I can file lawsuits on behalf of 100 percent of my clients and get the policy limit information. That is not in the best interests of 100 percent of my clients, and it is not in the best interests of the insurance industry. Most of those cases are going to be settled outside of litigation. The purpose of this bill is to give both sides the ability to make an informed judgment.

Assemblyman Fumo:
Insurance companies and attorneys have the duty to deal with each other in good faith. They can go to the Nevada Bar if there is a problem. This experiment was tried for two years, and it just has not worked. I do not practice in this area of law; my expertise is criminal defense. What we have in Clark County are 32 district courts [departments] that are clogged because the only way to get the other side to give you the paperwork is to file a lawsuit. You have plaintiffs spending all kinds of money to file a lawsuit that will eventually be negotiated, while I have clients whose liberties are at issue who have to wait because the system is clogged. Although we have criminal courts and civil courts, some of the civil judges can take overflow calendars. This bill will alleviate a lot of that pressure.

Chairman Carrillo:
Are there questions from any Committee members? [There were none.] Is there anyone here in support of A.B. 419 in Carson City or in Las Vegas? [There was no one.] Is there anyone neutral in southern Nevada or northern Nevada?

Rajat Jain, Chief, Property and Casualty Section, Division of Insurance, Department of Business and Industry:
I will share with you what I shared with the bill proponent and the bill sponsor. The Division of Insurance is neutral on the bill as it is a policy decision. However, I can share with you the pre-2015 environment that my division experienced. What we saw was consumer complaints being filed against insurance companies for claim delays. In some cases, the complaints were accurate; in some cases, they were not. We could not distinguish if the delays were a result of a lack of medical records being provided so that the insurers could reimburse the claimants, or if they were genuine delays.

One of the issues that created that pre-2015 problem is in the language—which is permissive on claimants and attorneys, but is restrictive on the insurance companies. For example, if you look at section 1, subsection 2, the language says that the claimant or any attorney representing the claimant "may provide" the information and medical records. Whereas subsection 4 says that the insurer "shall, upon request, immediately disclose" information. Insurance companies are regulated by the Division of Insurance. If a complaint is filed against them, we investigate it. The problems we saw before 2015 had to do with permissive language versus required language.

Assemblyman Watkins:
In the language prior to 2015, the permissive language is what triggers the mandatory language on the part of the insurance company. Once it becomes mandatory for the insurance company, it also becomes mandatory for the claimant. It is just that the whole process begins by the permissive election of the claimant.

Rajat Jain:
The permissive language would be triggered by the initial medical bill. That triggers the restrictive language on the insurance company to provide the policy limits disclosure. The complaints we have seen are triggered by the fact that subsequent medical records are not submitted to the insurance companies because the claimant or the attorneys have already received what they needed to receive, which is the policy limits disclosure. That causes delays in claim settlement.

Assemblyman Watkins:
That is mandatory. Once the claimant has submitted the medical records and the insurance company has provided the policy limits, it is mandatory that the claimant respond and comply with subsequent requests.

Rajat Jain:
If the claimant or representative of the claimant fails to provide ongoing medical bills, then the insurance company has no liability to pay for those bills. They will not be able to reimburse for medical bills that are not submitted to them. I am not sure I understand what you mean by "mandatory submission of bills."

Assemblyman Watkins:
I was using the language you presented to the Committee. You said the problem is that one side had a voluntary, or elective, obligation and the other side had a mandatory obligation. My point was that once the obligation is mandatory on the insurance industry, it is likewise mandatory on the claimant. Once the election has been made by the claimant, both sides have an obligation to do something.

Rajat Jain:
I apologize, but I do not see that happening. I do not see that language in statute. In real practice, it does not happen. That is what prompts the consumer complaints that the Division of Insurance pursues.

Chairman Carrillo:
We will move to opposition to A.B. 419. Is there anyone to testify in Las Vegas? [There was no one.]

Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance Group:
We asked for this legislation during the 2015 session. During the 1995 Legislative Session, the Nevada State Senate discussed reciprocal pre-litigation disclosures and discovery that would eventually become *Nevada Revised Statutes* (NRS) 690B.042. The Senate heard testimony from both the insurance industry as well as representatives of the Nevada Trial Lawyers Association, now the Nevada Justice Association. The ultimate law that was enacted was a far cry from the positions being staked out by the interested parties given that the insurance industry seemed to advocate for a bill that would have allowed for a carrier to diminish the recovery of the claimant if information was not disclosed in a timely manner.

Since the inception of that bill, we have had many issues. With all due respect to Mr. Sharp and his colleagues, they did a fine job of disclosing limits prior to 2015. It was very problematic with many trial lawyers in southern Nevada before that.

The information is critical to our investigation. We get a call that an attorney is a representative. In southern Nevada, we have about a 98 percent attorney penetration rate. Per Nevada statute, we are required to set reserves on claims. These reserves are necessary in order to show solvency of our company, as required by NRS and by the Nevada Division of Insurance. Without proper documentation, these reserves cannot be set properly. It is not uncommon for our claims representatives to only receive one piece of documentation during the whole claims process, and after we have provided our policy limits prior to the statute of limitations tolling—which is two years in bodily injury cases—then we may receive a demand for $100,000 for a very minor injury accident ten days before the statute of limitations runs out.

In 1995, when the law was enacted, I was in claims management. I developed the language that is still used today by our claims adjustors and is sent out to the plaintiff's attorney every 90 days:

> I am in the process of updating our information on the above claim. Please provide me an update of your client's treatment, copies of wage loss information, medical reports and bills in your possession, or with an authorization form in accordance with NRS 690B.042. Also, I am willing to discuss settlement options with you at any time. Please advise if this claim is at a point where settlement discussions can begin.

The fact falls upon the duty of determining what is required to place this back into statutory language. Mr. Sharp said that we have the ability to file a complaint with the State Bar. The State Bar does not usually take up these cases. I am not going to propose an amendment today. We will have further discussions. I would refer the Committee to Senate Bill 162 of the 78th Session, as proposed. It was giving us a remedy. Under section 1, subsection 4, it says:

> If the party or the insurer or attorney of the party does not receive all medical reports, records and bills concerning the claim as provided in this section, the party or the insurer or attorney of the party may, upon petition, obtain an order from a court of competent jurisdiction requiring the claimant or any attorney representing the claimant to meet the requirements of this section. In lieu of or in addition to any other sanction, a judge may require the claimant or any attorney representing the claimant to pay any reasonable expenses or attorney's fees incurred by the party or the insurer or attorney of the party because of the failure of the claimant or any attorney representing the claimant to comply with the provisions of this section or any order issued pursuant to this section.

It is a matter of public policy for us to represent our policyholders. I have heard that prior to this law's removal in 2015, there have been seminars about consequences of not supplying the limits, setting up for bad faith. I have been doing research on this since we saw this bill come to light. If we receive a claim, we need to have the injured party's information. If there is a major accident, obviously we are going to tender our minimum policy limits. I think it is the responsibility for somebody to be able to say the information must be provided. We send out our letters every 90 days, and we are not receiving medical records. I see them, and I saw them prior to 2015.

We are not going to propose an amendment right now; we are in opposition. While the plaintiffs' bar does not feel this is working, I think we have a responsibility to our policyholders. I want to remind this Committee that these are not our policies. I represent Farmers Insurance, but when we sell a policy to the insured, the policy is theirs. I think we have a responsibility to them to tell them that we are being requested to release the policy limits to a claimant's attorney. If anything, we have the responsibility to ask them if we can

release that information. We owe it to them, as public policy. There are cases in California that have been cited in which insurance companies have been sanctioned because they have not asked their policyholders for permission to provide policy limits information.

Lisa Foster, representing American Family Insurance Company and Allstate Insurance Company:
In 2015, when S.B. 162 of the 78th Session was introduced, it was agreed by the leaders of both parties in the Nevada State Senate that the current law was not working. The insurance industry believes that it has been a positive change for their insureds. This bill reinstates the language that was not working previous to 2015. It allows plaintiffs' lawyers to know the policy limits of Nevada consumers. My clients feel this can lead to an inflation of claims and overtreatment of injuries at times, simply for financial purposes and not for the true treatment of injuries. This bill allows an attorney to send one medical record or a bill to an insurer, and then demand the policy limits of the person against whom they are making the claim—whether it is the insured's fault or not.

This is a violation of privacy in a number of ways. To allow a lawyer the right to know your policy limits is like knowing your personal assets or net worth before any court has rendered a judgment against you. The present bill has no penalties in place if a consumer or insurer cannot obtain all the medical records that are supposed to be provided. It simply allows the discovery of policy limits without having to file a lawsuit. If there were a lawsuit, discovery rules would lead to penalties if medical records cannot be obtained. The way the law presently exists is how it is done in most U.S. states. In 2015, when they made the switch, Nevada law became like the law in most of the states. We would respectfully ask that you oppose A.B. 419.

Jesse Wadhams, Attorney, representing American Insurance Association:
We are opposed to A.B. 419. You have a letter from the Property Casualty Insurers Association of America (Exhibit U). You have also heard from Mr. Compan and Ms. Foster. I think they have made many of the points we would make. I would note that it has not even been two years since the repeal of NRS 690B.042. Clearly, our friends in the trial bar believe that something has changed in that time. Maybe it has—if so, we need to get to the bottom of that. For those reasons, at this time we are opposed to the bill as written.

C. Joseph Guild III, Attorney, representing State Farm Insurance Company:
We oppose A.B. 419, with all due respect to my good friend, Mr. Sharp. I want to emphasize one point, not repeat the points the others who spoke have made. This is an important private property, personal information issue. The information this bill would require to be disclosed, if it became law, is the private information of the insured. The policy is not State Farm's policy, it is the insured's policy. As we all know, in this day and age it is becoming more and more important that a person be able to control his or her own personal information and not have it be released without consent.

Chairman Carrillo:
Is there anyone else opposed to A.B. 419? [There was no one.]

Assemblyman Watkins:
You mentioned that this is a matter of personal privacy from the perspective of the insured. When I file a lawsuit, you have to give me the insurance policy—it is in Rule 16.1. Is that correct?

Robert Compan:
That is true. In the discovery period it must be supplied. Once a lawsuit is filed, it seldom goes to court; they settle out of court. When a lawsuit is filed, our policyholders are notified of the lawsuit pending, at which time they are involved. It triggers our having to provide the policy limits and protect the interests of our insureds.

Assemblyman Watkins:
What is the difference between our putting it in NRS rather than in the Nevada Rules of Civil Procedure (NRCP)? If it is not a privacy issue for it to be in the Nevada Rules of Civil Procedure 16.1, why would it be a privacy issue for it to be in NRS?

Joseph Guild:
It seems to me that is the point. A person gets involved in a lawsuit voluntarily. While in that endeavor as a claimant, you are governed by the Rules of Civil Procedure. You can agree, as a defendant, to settle to the policy limits without ever revealing what those policy limits are. But if the law of the state requires you to do that, I see a distinction. I think the law should not compel somebody to do something involuntarily.

Assemblyman Watkins:
If that is the case, we have many laws on the books we need to look at. Most defendants do not voluntarily get into lawsuits, yet their insurance policy must be disclosed without the plaintiff or the claimant even asking, through NRCP 16.1 (b). You are required to give it to them. We have people who file lawsuits just for the purpose of getting that information and clogging up the courts, just to find out that the claim could have been settled in the first place. Many cases do not even go to trial—the claimant just needed to know what the policy limits were in order to settle. Under the current situation, what is the incentive for the claimant to give you any information, any medical records, help you set your reserve in any way, if there is no knowledge of the policy limits being dealt with? Why would the claimant not just want to go to court?

Robert Compan:
The incentive is to settle the claim. You have a client that has been in an accident resulting in substantial injury, but the insured has a minimum limits policy. The incentive is to tender those limits and settle the claim, then it can go against the uninsured motorist or underinsured motorist insurance. Under the current statute, the incentive is to provide the medical records to present the claim.

Or you have a claimant that is in a minor parking lot accident and no medical specials are provided—maybe there was one visit to an emergency room. Two years down the road, we have no documentation, but the insured has a high limit policy—a $250,000/$500,000 limit,

with a $1 million umbrella. Without having any medical records in front of us, ten days before the statute of limitations tolls we receive a letter demanding $150,000 with doctor's recommendations for lumbar spinal fusion surgery. If we had that information early on, we could have done an engineering report on the car to see what kind of impact occurred. We could have done independent medical examinations to see if the claimant had preexisting injuries. That is the problem we were facing under the old statute.

Assemblyman Watkins:
I would like to make two points. First, I am not sure you answered my question. Second, we already know there is jurisprudence on the issue of time limit demands. A ten-day time limit demand before the statute of limitations would not be held reasonable. The court has said that a 20-day time limit demand is not reasonable. I do not think it is fair for you to use a hypothetical that the court has already said is improper.

You said the incentive is to settle the claim, which is why a claimant will give you medical records. Why settle a claim if the policy limits are not known? A claimant in that case would not know what he or she is dealing with. Why give you any medical records? Why not hold all of them back, and file a lawsuit? Once I file a lawsuit, you have to give me the insurance policy information, and I have to give you the medical records. Why not just do that at the beginning so that we do not clog up the courts?

Joseph Guild:
I will attempt to answer the question posed by Assemblyman Watkins. I do not think the policy limits of an insurance contract should drive the claim. What drives the claim should be the amount of damage, which could be less than the policy limits. If you know the policy limits and you are the claimant, that gives you an incentive to add to the claim and possibly not settle the lawsuit. The logical extension of that premise is that the lawsuit goes on a longer time, insurance consumers in the state pay more, and we have more lawsuits. That is the position of State Farm on that issue.

Assemblyman Fumo:
What is the insurance policy for?

Robert Compan:
The insurance policy is mandated by law and is there to protect the policyholder.

Assemblyman Fumo:
The purpose is to protect the policyholder, so the insurer can pay out when the policyholder violates the law and causes an accident, is that correct?

Robert Compan:
Yes.

Assemblyman Fumo:
I hear you talking about privacy information. When you disclose information, are you giving out Social Security numbers and date of birth, things like that? Or, are you just giving out policy limits?

Robert Compan:
We give out just the policy limits.

Assemblyman Fumo:
So then, we are not really worried about privacy issues regarding HIPAA regulations or giving away sensitive information that could be used adversely. We are just giving away a number. Is that correct?

Robert Compan:
Correct.

Assemblyman Fumo:
In your logic, you claim this extends litigation—if there is a $100,000 policy limit, it will increase the amount of treatment a person receives. I think your logic is flawed. Does it not also work the other way? If you have a $15,000 policy, the case will be resolved without litigation—it will cause more settlements. Is that fair to say?

Joseph Guild:
I guess I could flip that around, with all due respect, Assemblyman. If I am the insured and am required by state law—in statute, not in the Rules of Civil Procedure—to reveal information that I may not want to be revealed but am compelled to by law, who is really benefiting from the release of that information? It is the claimant, the plaintiff in the lawsuit. If it benefits the plaintiff, the plaintiff gets negotiating leverage that the defendant does not have. That is State Farm's position on this.

Assemblyman Fumo:
With all due respect, it avoids litigation. I heard you say your public policy is to protect your client. But, really, public policy is to avoid litigation. This trading of information will avoid lawsuits and unclog the court system. I have clients whose life or liberty is at issue. When lawsuits are filed, a trial date is set, so I have to wait in line before some of these frivolous lawsuits are settled. What I hear you saying is that all you want is a fair advantage. Not everybody hires an attorney to file a claim; some people file these on their own. It is the poor and the disenfranchised who are adversely affected if we keep the law the way it is. We tried it for two years and it failed. I just do not see your point.

Chairman Carrillo:
Are there any further questions from Committee members? [There were none.] Mr. Wadhams, would you clarify what you meant regarding the law from before 2015? Are we going backwards? Are we going forwards? Senate Bill 162 of the 78th Session passed. How does this bill change things?

Jesse Wadhams:
Up until S.B.162 of the 78th Session was in place, we had NRS 690B.042, which I believe is exactly the language in A.B. 419. In the 2015 Session, over the course of a number of Committee hearings and discussions with our friends in the trial bar, some amendments were proposed to try to even out some of the considerations for both sides. There was no workable solution that either side liked, so the compromise solution was to repeal NRS 690B.042. Now there is no law in place that looks like this.

Chairman Carrillo:
Sometimes these things will work themselves out. If they do not, someone comes and submits a bill. If the bill sponsor would like to come up, we will hear closing remarks.

Assemblywoman Bilbray-Axelrod:
We will answer a few questions that have come up and make some clarifications.

Matthew Sharp:
I would like to provide a brief history. The bill that we propose was existing law before 2015. In our view, S.B. 162 of the 78th Session was attacking a problem that did not exist. After two years, it has been shown to be an unworkable solution because cases that should be settled are not being settled, and lawsuits that are unnecessary are being filed.

Let me address two of the points that have come up. The first was from the so-called "neutral" testimony of the representative from the Division of Insurance, which I think is tied in with the insurance industry. In effect, he said there are many lawyers out there who are using the policy limits for unethical reasons. I will not question that experience, but it is not my experience. Let me raise a couple of points. First, I do not know how this law, as it exists—having no requirements that records be provided or that policy limits be disclosed—is giving any solution to the insurance industry's concern, which I understand to be to adequately reserve cases. The way in which cases are adequately reserved is to create some kind of working relationship with the claimants or the attorneys and the insurance industry.

Second, with regard to the privacy issues, I have litigated against insurance companies for many years. I have worked on this bill and, when it was a statute for many years, I never once heard an insurance company say that a policy limit is a privacy issue. The fact is that an insurance company, under paragraph (e) of subsection 1 of NRS 686A.310, has a duty to effectuate a prompt, fair, and equitable settlement when liability of the insurer is reasonably clear. That is a duty that not only exists for the claimant, but for the public at large. The reason for that language is we do not want unnecessary lawsuits; we want people compensated; and we want to move on with legitimate cases. That can only be accomplished if policy limits are disclosed. The only way we are going to get the entire industry to disclose policy limits is to enact A.B. 419.

Let me leave you with a rhetorical question. Let us say your constituent has a minimum insurance policy of $15,000/$30,000 or $25,000/$50,000 and causes an accident that results

in several hundred thousands of dollars in damages. Maybe he works hard every day and feels badly about having caused the accident. The insurance company can either disclose the policy limits to the claimant and get the case settled, or a lawsuit can be filed, which will be on his record for the rest of his life. He may have to explain it on credit applications. I think that any one of us would say to give the policy limits and settle the case. That is all we are saying.

Chairman Carrillo:
I do not see any further questions. We will close the hearing on A.B. 419.

[The following were submitted but not discussed, and will become part of the record: (Exhibit V) and (Exhibit W).]

We will move to public comment in Las Vegas. [There was none.] Is there public comment in Carson City? [There was none.] This meeting is adjourned [at 6:08 p.m.].

RESPECTFULLY SUBMITTED:

_____
Joan Waldock
Committee Secretary

APPROVED BY:

_____
Assemblyman Richard Carrillo, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is written testimony submitted and presented by Robert L. Compan, Manager, Government and Industry Affairs, Farmers Group, Inc., regarding Assembly Bill 368.

Exhibit D is material submitted and presented by Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance Group, consisting of the following:

1. A document titled "Exhibit #1" regarding the handling of total loss formulas in other U.S. States.
2. A document titled "Exhibit #2" regarding economic total loss formula.
3. A document titled "Exhibit #3" regarding estimate of repairs and market valuation summary for 2015 Dodge Charger SE RWD.
4. A document titled "Exhibit #4," Appendix C, Model Salvage Vehicle Titling Legislation.
5. A document titled "Exhibit #5" regarding the applicability of *Nevada Revised Statutes* 487.790 to auto insurance claims settlement practices.

Exhibit E is the Work Session Document for Assembly Bill 234, dated April 4, 2017, presented by Jann Stinnesbeck, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit F is the Work Session Document for Assembly Bill 261, dated April 4, 2017, presented by Jann Stinnesbeck, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit G is a proposed amendment to Assembly Bill 368 by the Division of Insurance, Department of Business and Industry, presented by Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance Group.

Exhibit H is a proposed amendment to Assembly Bill 368 by Legal Aid Center of Southern Nevada, presented by Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance Group.

Exhibit I is a proposed amendment to Assembly Bill 368 by the Nevada Collision Industry Association, presented by Tim Waldren, President, Nevada Collision Industry Association.

Exhibit J is a redacted estimate for automobile repairs presented by Dawn Bobbert, Senior Physical Damage Appraiser, CSAA Insurance Group.

Exhibit K is a memorandum dated April 4, 2017, in support of Assembly Bill 368, to Chairman Carrillo, Vice Chair Spiegel, and members of the Assembly Committee on Transportation, authored by Mark Sektnan, Vice President, Property Casualty Insurers Association of America, presented by Jeanette Belz, representing Property Casualty Insurers Association of America.

Exhibit L is written testimony, prepared and presented by Dan L. Wulz, Esq., Deputy Executive Director, Legal Aid Center of Southern Nevada, regarding Assembly Bill 368.

Exhibit M is written testimony regarding Assembly Bill 368, presented by Tim Waldren, President, Nevada Collision Industry Association.

Exhibit N is a letter dated April 3, 2017, regarding Assembly Bill 368, to Chairman Carrillo and members of the Assembly Committee on Transportation, authored by Catalina Jelkh Pareja, Government Affairs Representative, LKQ Corportation.

Exhibit O is a letter dated April 3, 2017, in support of Assembly Bill 368 to Chairman Carrillo and members of the Assembly Committee on Transportation, authored by Sandy Blalock, Executive Director, Nevada Automotive Recyclers.

Exhibit P is a letter dated April 3, 2017, in support of Assembly Bill 368 to Chairman Carrillo and members of the Assembly Committee on Transportation, authored by Christian John Rataj, Senior Director of State Affairs, Western Region, National Association of Mutual Insurance Companies.

Exhibit Q is written testimony dated April 4, 2017, submitted by Sophia Romero, Legal Aid Center of Southern Nevada, regarding Assembly Bill 368.

Exhibit R is a proposed amendment to Assembly Bill 455 presented by Jim Werbeckes, Vice President, Government and Regulatory Affairs, Employers Insurance Group.

Exhibit S is a memorandum dated April 4, 2017, in support of Assembly Bill 455, to Chairman Carrillo, Vice Chair Spiegel, and members of the Assembly Committee on Transportation, from Mark Sektnan, Vice President, Property Casualty Insurers Association of America.

Exhibit T is written testimony dated April 3, 2017, in support of Assembly Bill 455, authored by Christian John Rataj, Senior Director of State Affairs, Western Region, National Association of Mutual Insurance Companies.

Exhibit U is a memorandum dated April 4, 2017, in opposition to Assembly Bill 419, to Chairman Carrillo, Vice Chair Spiegel, and members of the Assembly Committee on Transportation, from Mark Sektnan, Vice President, Property Casualty Insurers Association of America.

Exhibit V is a 2016 document titled, "Vehicle Accidents on the Rise in Nevada," published by the Property Casualty Insurers Association of America.

Exhibit W is written testimony dated April 3, 2017, regarding Assembly Bill 419, authored by Christian John Rataj, Senior Director of State Affairs, Western Region, National Association of Mutual Insurance Companies.