MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eighty-First Session
March 29, 2021

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:03 a.m. on Monday, March 29, 2021, Online. 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Rochelle T. Nguyen, Vice Chairwoman
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Lisa Krasner
Assemblywoman Elaine Marzola
Assemblyman C.H. Miller
Assemblyman P.K. O'Neill
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Jill Dickman, Assembly District No. 31

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Ashlee Kalina, Assistant Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Bonnie Borda Hoffecker, Committee Manager
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

John Sande IV, representing Blockchain Center Foundation
Nick Spanos, Chair, Blockchain Center Foundation
Brittany Kaiser, Board Member, Blockchain Center Foundation
Regan Comis, representing Blockchains, LLC
William H. Henning, Commissioner, Uniform Law Commission
Keith A. Rowley, Commissioner, Uniform Law Commission
Adam Barrington, Private Citizen, Reno, Nevada
Sandy O'Laughlin, Commissioner, Division of Financial Institutions, Department of Business and Industry
Mary Fechner, Private Citizen, Reno, Nevada
Jimmy Lau, representing Nevada Credit Union League
Paul Armentano, Deputy Director, National Organization for the Reform of Marijuana Laws Foundation
John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office
Scot Rutledge, representing Chamber of Cannabis
Holly Welborn, Policy Director, American Civil Liberties Union of Nevada
Jim Hoffman, representing Nevada Attorneys for Criminal Justice
Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office
Dwaine McCuistion, Fatal Detective, Las Vegas Metropolitan Police Department
Shaun Meng, representing Nevada Self-Insurers Association
Jeremiah Merritt, Safety Director, Sierra Nevada Construction
Kevin Linderman, Vice President, Q&D Construction LLC
John T. Jones, Jr., representing Nevada District Attorneys Association
Alexis Motarex, Government Affairs Manager, Nevada Chapter Associated General Contractors
Paul J. Enos, Chief Executive Officer, Nevada Trucking Association
Tonya Laney, Administrator, Division of Field Services, Department of Motor Vehicles
Donald Plowman, Lieutenant, Nevada Highway Patrol, Department of Public Safety
Tonja Brown, Private Citizen, Carson City, Nevada

Chairman Yeager:
[Roll was taken. Committee rules and protocol were explained.] We will move on to our agenda this morning. We have three bills. It is my intent to take them in the order in which they are listed. I will be presenting the second and third bills, so I will hand it over to the Vice Chairwoman to conduct the meeting at that time. We will go to our first bill on the agenda and open the hearing on Assembly Bill 324.

Assembly Bill 324: Revises provisions relating to digital assets. (BDR 10-981)

Assemblywoman Jill Dickman, Assembly District No. 31:
I am here this morning to present Assembly Bill 324. The original language of A.B. 324 defines digital assets and virtual currency in the *Nevada Revised Statutes* (NRS). It establishes the authorization for financial institutions to provide custodial services for digital assets. It also allows for the establishment of best practices by regulation and provides for property tax exemption so digital assets are treated like their more established counterparts among many other things.

Over the past week, we have worked with several interested parties, and we have an amendment in the works. We are confident that our amendment will satisfy their concerns, and we thank them for working with us to make this a better bill for everyone. Those testifying after me will discuss the finer points of the amendment.

The intent of this bill is to establish ownership and private property rights for Nevadans who hold digital assets. We are not only trying to promote business in Nevada, but we are also helping our individual constituents who have determined that holding digital assets is a good investment for them. I am bringing A.B. 324 before you today because I believe we must make sure Nevada's economy is open and ready for the changes that are taking place in finance and technology. We definitely do not want to be left behind.

John Sande IV, representing Blockchain Center Foundation:
I am excited for this opportunity to be here to start your week with what I think is a tremendously fascinating conversation that is taking place where law and technology are intersecting. The technology we are talking about is not all that new. Its origins can be traced back to the early 1980s. However, with the rapid expansion of personal computing and the power of computers throughout the world, the applications of blockchain technology have manifested themselves much more. We can talk about applications, finance, real property transactions, movie tickets, and all kinds of different opportunities to use this technology to the benefit of commerce. It is always the applications that confuse people about what blockchain is.

I have done some research trying to educate myself on everything about blockchain. I came across this TikTok with a professor who really simplified it for me and gave me my "Aha" moment. It is that blockchains offer trustworthiness. Our current system is a "trust but verify" system with heavy emphasis on "verify." For example, my wife and I recently refinanced our house. I have to be honest that I think my arm is still sore from signing all the

documents the bank required us to sign for a relatively simple transaction. You should be able to go to the recorder's office to check the records for ownership, but the banks know those records are fallible. They are capable of being changed and mistakes can happen. There are a number of things that make banks hire title companies, insurance companies, lawyers, notaries, and you name it just to get a simple transaction completed.

What blockchains offer is the ability to create trustworthiness in the system where individuals transact amongst each other, and when one person says they own something, the other person can know that that is the truth. We are addressing digital assets and currencies to provide in law what ownership means and how ownership can be proven. These are the foundations and the building blocks from which we will—over the course of several sessions—craft and incorporate blockchain technology into our everyday systems of commerce.

I hope you are all as excited as I am to get into the nuts and bolts of this. It is a fascinating conversation. I have been privileged to talk with individuals such as Senator Ohrenschall, former Assemblywoman Shea Backus, and the legal experts they brought in. The Commissioner of the Division of Financial Institutions, Department of Business and Industry, was very gracious with her time. These people incorporated their thoughts, and we are very encouraged that we will come back with a strong, comprehensive bill that will move us forward. We are very excited.

Nick Spanos, Chair, Blockchain Center Foundation:
I opened the first cryptocurrency exchange 100 feet from the New York Stock Exchange in 2013. I am an activist. I did not know anything about exchanges, but I understood it over time because I am also a computer programmer, and I consider myself an inventor. At one point, I had 30 percent of all blockchain patents, including blockchain voting and blockchain paper ballot voting, multi-branch blockchain, and much more. I have been educating people from all walks of life in many places—I am in Dubai right now where we are educating members of the sheikh's office—and will be in Abu Dhabi in a couple of days, also Sri Lanka, Belarus, and all over the world. We have been going back and forth.

Blockchain is a difficult thing to understand. To bring it to a simple place, it is DNA for data and the private key is the password. If you believe you own your data or you own your property or you own the right to sign for it, you would have the password. Somewhere it says you should not have the password, that only banks should have a password. That would not go well with people who own things such as property, cattle, commodities—the way commodities are traded—and futures. With blockchain technology, the underlying asset is so easily transferable that even livestock would have its own password if the system were set up that way for the computer to move around that asset. It does not have to be a human remembering to type it in, but the computer would move the asset around. The owner would need to have the private key for it.

If it looks like there has been a mistake, we are working to fix that to codify property rights in the state of Nevada. I think we are on the right track. There is a little way to go. There

has been some work with the Uniform Law Commission to get the language better and to get everything where we can have an incredible, amenable, transparent future.

Brittany Kaiser, Board Member, Blockchain Center Foundation:
Thank you to everyone who has helped bring this forward, as well as the Uniform Law Commission (ULC) commissioner who spent hours with us over the weekend looking at and revising this bill.

I have been an activist in the digital asset space since early 2018. I have specifically been working with the state of Wyoming to write and pass what are now 20 laws on digital assets and blockchain technology. These laws have brought tens of billions of dollars back to the United States via companies that were formerly run by Americans all over the world who felt that, if they started a blockchain technology company in the United States, there was not enough regulatory certainty for them to know how to run their business and to feel safe that they could continue to own and control their assets and to run their companies the way they needed to.

For the past three years, we have seen thousands of companies either starting in the United States or repatriating to the United States, which is incredibly exciting. I currently sit on multiple subcommittees of the Wyoming Congressional Standing Select Committee on Blockchain, Financial Technology and Digital Innovation Technology. They have more bills about to go through and should become law this summer, which we are really excited about. I have also spent a lot of time with 12 different states that are looking to pass legislation similar to Wyoming, as well as 20 other countries that are passing legislation similar to Wyoming, as the blockchain industry and digital assets gain global mass adoption.

In addressing A.B. 324, we have already been significantly revising this bill because the letters we have received bring up concerns and questions about the bill. We have spent the last week ensuring that all those questions were addressed, especially spending this Saturday with the ULC ensuring everyone on their team was completely comfortable with what we are trying to do. There is nothing in the bill that would unjustly affect industries for which we do not seek to create further definition. Although you may not have access to the revised version of the bill yet, I think the amended bill is succinct and to the point. It helps to protect not just individual rights, but also the rights of companies in a widely growing industry bringing tens, if not hundreds, of billions of dollars into the United States. That is exciting and something the state of Nevada will want to be a part of.

What is most important about this bill are the sections we kept in our amended version. First, in section 11, subsection 1, paragraph (c), we are codifying "virtual currency" and clarifying that it is intangible assets and intangible personal property. Section 12, subsections 1 through 6, are extremely important since we are allowing, for the first time, for loans to be taken off digital assets to perfect security interest. Speaking to the ULC members over the weekend, they were extremely excited about that as well. When we came to an agreement on that point, we decided to edit this bill to make sure that was possible because they saw that as something that is important to the industry, and they did not need to compromise on

something we could completely agree about. While most big financial institutions are using Bitcoin and other virtual currencies to create financial instruments and loans—and an entirely new industry out of it—it is not surprising that individuals would like to take advantage of the personal digital assets. To use an example that was used earlier, if someone wanted to take a mortgage out on their house to lien on their digital assets, it would be important for people like me and anyone else who holds digital assets to be able to do so.

In section 12, it is important that we have defined "control" of the digital asset to allow people to transfer control if they were to become a debtor. They do not have to give away their private key, which is their password. They could enter into an arrangement that is both legal and technical that would give up control and implement the process to transfer back full control if for some reason anyone was to default.

In section 21, we are exempting digital assets, such as Bitcoin and other intangibles, from property taxation in Nevada. Nevada already has incredible laws in this sector, which is why we have so many friends and colleagues who have set up their businesses there already. They are looking forward to their digital assets being treated in that manner.

In section 23, we are exempting peer-to-peer virtual currency platforms that do not use any fiat currency or legal tender. They do not act as custodians and, therefore, should not need a money transmitter's license that is both for the platforms and businesses themselves, as well as individuals. In fact, this entire legislative process was kicked off when a colleague of mine, Caitlin Long, found out she needed to have a money transmitter's license to donate to her alma mater in Bitcoin. She was just trying to donate to her university to create a fund for female engineers when she found out she needed to change the law to do so. We believe Nevada should extend the same rights that we now have achieved in Wyoming.

I want to thank everyone who has worked so hard on this to ensure Nevadans and the existing industry here have clear, legal rights under the law for digital asset ownership and are able to perfect security interests. We understand that A.B. 324 is in the refinement process. We have done everything we can to this point to ensure that we are not impeding upon other industries but are clearly defining the industry for which we seek to provide rights. We made huge gains towards codifying this and ensuring people can make transactions in virtual currencies without the need of an intermediary. It is great that Nevada is hearing this bill.

Chairman Yeager:
You mentioned there are edits being made to the language in A.B. 324. I do not know if you can answer this, but is there an amendment that is being presented at this time, or is it still being worked on?

Brittany Kaiser:
I believe it was circulated this morning. Assemblywoman Dickman, do you know if that is accessible by the Committee?

Assemblywoman Dickman:
I believe we are still working on the amendment.

John Sande:
We have it drafted, but we have not had an opportunity for further discussions with the individuals we want to look at it. We will distribute it once they have had a chance to look at it. We have solicited their feedback, but it is still in the works.

Chairman Yeager:
Is there anyone else to present or is this the time for questions? Mr. Sande is indicating it is time for questions.

This is an area of law in which I do not practice, although I do remember secured transactions in Article 9 of the *Uniform Commercial Code* (UCC) from the bar exam. I notice in the bill in a couple of places it talks about the secured party filing a financial statement with the Secretary of State. Is that something that happens already? Are those types of statements filed with the Secretary of State now, or does this bill set up a new procedure where the Secretary of State would have to come up with some infrastructure to be able to do that?

Brittany Kaiser:
That is one of the parts we have removed from the bill. We do not want to put undue strain on any government agencies that do not currently have capacity for this. It was there when we were trying to go further into digital securities, but we decided to focus on virtual currencies instead to make sure we are making narrow definitions and that we are able to push forward without controversy and to provide rights without impeding on any other industry.

Chairman Yeager:
I have a version of the amendment, but it may not be the one you want to advance. In section 12, subsection 4 of the original bill, it talks about a two-year waiting period where the transferee would take the asset, and if they do not have notice of an adverse claim, they own the asset free and clear. Is that two-year period going to stay in the bill once it is amended? If so, how did you come up with that period of time?

Brittany Kaiser:
Section 12 of the current bill has become section 7. We have kept the two-year period. It is the same as what we passed in Wyoming and what other states are considering at this time. That is why we decided to keep it uniform to make sure states will be in agreement upon achieving federal laws in this area.

Chairman Yeager:
I will take some additional questions.

Assemblywoman Cohen:
My understanding is that there is no agreement between the American Law Institute (ALI), the ULC, and you at this point, but that the ALI and the ULC have been working on this for a while. There are some uniform laws between the states on this topic for the benefit of businesses, so they have some clarity. Instead of trying to push this through this session, would you be willing to work with them over the next two years to come up with something more uniform so businesses throughout the country that want to deal with Nevada know what they are getting into?

John Sande:
We look forward to working with the Uniform Law Commission during the interim. They extended an offer to participate in some of their committees and subcommittees, and we are excited about that opportunity. Our hope is that we can start the ball rolling with what we are looking at. There are other states that are getting a head start on us, but there is a possible opportunity—I do not want to speak for the ULC since they will be testifying, and you can ask them directly—for noncontroversial points that we want to explore this session.

Assemblywoman Cohen:
I want to express my concerns about instability, that we are changing creditor priorities, and the choice of laws that every state but Wyoming is following. I am very concerned that businesses will find that unstable and untenable.

Assemblyman Wheeler:
In section 10, subsection 3 of the original bill, you define any type of cryptocurrency as not being recognized as legal tender by the United States government. I wonder if you are limiting yourself in that and if there are plans to have any type of cryptocurrency recognized, just as some precious metals are.

Brittany Kaiser:
We would like to leave that decision up to the federal government. From all public reports, it looks like the Treasury might be producing one or two possible versions of what a digital dollar would look like this summer, which would be virtual currency on the blockchain that is intended to be digital legal tender. We are not looking for any of the current virtual currencies to become legal tender under a federal definition. Of course, that is up to the agencies that regulate it. We will continue conversations with them to see if anything changes. For now, the intangible personal property definition makes the most sense for commerce to continue.

Assemblyman Wheeler:
I understand that. I also understand that, as you said, the federal government is looking into recognizing digital currencies. That is why I believe you are limiting yourself. If they make that change, there are some things not in your law, and some cryptocurrency will not be exchangeable in Nevada since it will not fit the definition.

I have a question for Mr. Sande. Do you have an idea how much business the state would lose if we waited two years to go through more negotiations instead of passing this bill, and then negotiating and coming back in two years to make the necessary changes for more uniformity?

John Sande:
I wish I could tell you. The only things I can point to are the experiences Wyoming is having right now. You heard Ms. Kaiser reference the amount of investment and money in start-up businesses that are coming to that state because of their recognition of digital assets as personal property. There is tremendous opportunity, especially with the new industries that have already started coming and those that want to come. I would be concerned that two-year sessions are good in some fashions, but they do not allow for expedited reviews in others. We want to be at the forefront of this, and there is an opportunity to be consistent and uniform in working with other folks.

Assemblyman Orentlicher:
I think Ms. Kaiser—or maybe it was Mr. Sande—said she hoped to advance the noncontroversial parts of the bill. Does that mean when you come back with an amendment, it will be agreed upon by you, the ULC, and all representatives?

John Sande:
That is our hope. Again, I do not want to speak for them, but having participated in a very robust and deep conversation with the experts in secured transactions, I believe we have a lot more in common than we do not. As far as intent goes and what we are hoping to accomplish, there was a lot of agreement. There may be some disagreement on how we get there, but we are working on crafting language that allows everyone to come to the table holding hands.

Assemblywoman Krasner:
I cannot find the amendment you are speaking of, but one of the first things you said is that you are defining this as a tangible asset. However, section 20 says this will be intangible property that is not subject to taxation. What is your intent regarding taxation when cryptocurrency is used?

Brittany Kaiser:
First, I want to make sure I did not misspeak before. We are intending for digital assets to be defined as intangible personal property. Therefore, it would fall under the same exemption that some forms of digital securities fall under in Nevada, which is a property tax exemption. That is what we seek to move forward with. As soon as that law was passed in Wyoming, there were hundreds, now thousands, of companies that moved to the state to work under those laws. That worked well because Wyoming was already an attractive state, just like Nevada. I believe Nevada has a huge opportunity to attract business, not just from other states in the United States, but also from Americans who have built their companies abroad and have been waiting to move back. Some businesses that seek to work under these state laws specifically are already worth billions of dollars, or tens of billions of dollars. In the

state of Wyoming, there are some companies that are ready to list on the Nasdaq for exponentially more of that. By moving forward with these definitions in Nevada, you will see an exponential amount of commerce come into the state instead of waiting two years when there will probably already be federal decisions in this area.

Assemblywoman Krasner:
If it will be intangible property, section 21 says that all intangible property will be exempt from taxation. Would any transaction be exempt from taxation by both the state and federal governments?

Brittany Kaiser:
We are seeking for that to be a state exemption. Of course, there are other types of business taxes that would still apply to these assets, which would be helpful to the state's economy. On the federal side, we are still waiting for definitions. Most federal agencies are still debating on their definitions. We expect all of these to fall under federal taxation and other different tax laws within Nevada for businesses that deal in virtual currencies.

Chairman Yeager:
Are there any additional questions before we move to testimony? Seeing none, I will open testimony in support of Assembly Bill 324.

Regan Comis, representing Blockchains, LLC:
Blockchain technology has the ability to simplify transactions and give individuals the ability to control their personal information and digital assets. While we have not been able to review the proposed amendment discussed today, we are generally in support of the intent to provide clarity around the individual's digital asset rights.

Chairman Yeager:
Is there anyone else in support? [There was no one.] I will close testimony in support and open it for opposition testimony.

William H. Henning, Commissioner, Uniform Law Commission:
I am a professor at Texas A&M University School of Law, but more importantly, I am here representing the Uniform Law Commission (ULC), which has already been discussed this morning. I am a life member of the organization, a former executive director, and I am on the drafting committee that is working on amending the *Uniform Commercial Code* (UCC) to deal with virtual currency and digital assets in general.

I drafted a letter that was sent to the Committee expressing our concerns [Exhibit C]. While I am the person who signed the letter, it was the consensus of some of the members who have worked on this project to express our concerns about upsetting existing transactions and expectations created by the UCC in its current form.

We are not opposed to the aspects of the bill other than those dealing with the UCC. We are not in opposition to Nevada doing something that is nonuniform in this space, nor are we

concerned that it promotes blockchain technology. Our concern is technical and has to do with preserving the very important stabilizing regime established by the UCC.

I am at a loss this morning because of some of the previous discussion. I know there was a very constructive meeting Saturday morning that I had hoped to attend. Professor Keith Rowley of the University of Nevada, Las Vegas (UNLV), who is also a commissioner, attended that meeting and is here to talk more specifically about it. Several members from the ULC and several of the folks who testified this morning were present. We would like any proponent of the bill to work with us on our project. It is an open project, and everyone has a seat at the table and a say.

Regarding the revised bill that has been discussed, we have not seen the language. While the testimony was going on, I sent a quick email to everyone involved in Saturday's meeting and to the leadership of the ULC. No one in a leadership position has seen the language, so we are not able to approve the language. I understand some work was done over the weekend, and we are willing to continue that work with the proponents and to bring as much expertise as we can to the process. Whether that will lead to language that does no harm to the existing UCC regime remains to be seen. I do not want to speculate on what the new language may do, but I want to make it clear that we have not reviewed the language carefully and have not given our approval. I have this from the chair of the drafting committee, the executive director of the ULC, and everyone within the ULC who was a party to the meeting on Saturday morning.

I want to be positive and constructive, and again, we are very willing to cooperate and work with the proponents. I understand everything was positive about the Saturday morning meeting, and I appreciate that.

Chairman Yeager:
I do not expect you to comment on language that we do not have yet. I want to thank you for your willingness to continue to work with the sponsors. Professor Henning has a wealth of experience in this realm, so I would ask you to continue conversations with him.

Keith A. Rowley, Commissioner, Uniform Law Commission:
I am a professor at UNLV William S. Boyd School of Law, where I have taught commercial law for the last 20 years, having previously taught it elsewhere. As Commissioner Henning said, I am also a ULC commissioner. I am part of the Nevada delegation. That has caused me to be more involved in the legislative process than I was prior to becoming a commissioner. When several amendments and revisions to other articles of the *Uniform Commercial Code* were being circulated in the early 2000s, former Senator Care and former Senator Amodei reached out to me and asked for advice and counsel on what Nevada should do regarding this, although I was much younger then than I am now. I was not yet a Uniform Law commissioner or a member of the American Law Institute, which I am now.

The reason I am here as a representative of the Uniform Law Commission is, in part, because I am a commissioner, but I am also here for the sake of Nevada law. I have taught more than 1,500 practicing attorneys in Nevada who have graduated from the William S. Boyd School of Law, several of whom are now in the Legislature, and some who are on the bench. I am concerned that we get Nevada law right. The bill, as it was originally drafted, created a significant number of very serious complications. Based on the productive conversation we had Saturday morning with my friend and colleague Juliet Moringiello, who is the vice chair of the UCC and Emerging Technologies drafting committee—and to whom Professor Henning was referring; Ben Orzeske, who is chief counsel of the ULC; and the various speakers who have spoken and will speak, everyone on our side, if you want to characterize it that way, came out of the meeting hopeful. There was a lot of discussion about cooperation and trying to work up a product that serves the primary goals of the proponents of A.B. 324 without hitting all the trip wires in the UCC that the original version of the bill was triggering.

Like Professor Henning, I have not seen the revised version, so I cannot opine on whether the things we were most concerned about have been addressed. While I take on good faith the representations of Ms. Kaiser and, to a lesser extent Mr. Sande, I could be mistaken that this new version—whenever we see it—will have extracted from the original version the things about which we expressed our concerns that implicated the UCC. My first take is that it cannot be true because we just had a conversation between the Chairman and Ms. Kaiser about the take free provision in what was section 12, subsection 4, regarding the two-year period after acquiring the asset take free of all claims that you do not have actual notice. That is a commercial law proposition that fundamentally changes the way the title works and the way filings—back to another prior question—with the Office of the Secretary of State works, which is the only way right now to perfect the security and interest in digital assets since they are deemed to be general intangibles under the UCC.

I think there is still a good chance we can work out the issues we are concerned with. I think the proponents of the bill are acting in good faith, although overstating exactly what we have agreed to, perhaps, and how much consensus we have reached. There is consensus that we ought to work together to make this a bill that serves the purposes that the proponents seek without causing problems in the commercial law area and a shared general enthusiasm for these new technologies. I was on the drafting committee for the Uniform Regulation of Virtual-Currency Businesses Act and testified on it two years ago. There are some common themes in that act and in portions of this bill that deal with the use of virtual currencies and prudential regulation.

Professor Henning and I will try to answer questions you may have but speaking to particular issues is going to be difficult, not knowing what the revision looks like.

Chairman Yeager:
I do not think it is going to be too productive to ask questions at this point given we do not know where the language may land. Thank you for your willingness to work with the

sponsors, and we will ask everyone involved with this bill to keep us updated on whether consensus can be reached, which remains to be determined.

Adam Barrington, Private Citizen, Reno, Nevada:
There is all this talk about diversifying the state economy and how we need to make the state economy appealing for blockchain and other corporations. We hear this from Nevada's politicians all the time. This continues to make Nevada an attractive, hot carcass for the vultures to come pick the bones clean. Nevada politicians continually talk as though Nevada has not already made itself an extremely attractive state for predatory businesses like Tesla. Nevada bends over backwards to make sure . . . .

Chairman Yeager:
Will you please speak to the bill in front of us if you have concerns or opposition to the bill?

Adam Barrington:
Yes. This has to do with the innovation zones. This has to do with the fact that Blockchain and other corporations are going to be able to potentially establish their own government.

Chairman Yeager:
This is not the innovation zone bill. That is a different bill that we may hear. Limit testimony to this particular bill, which has to do with virtual currencies, Article 9 of the UCC, and secured transactions.

Adam Barrington:
Then I yield my time.

Chairman Yeager:
So that everyone is clear, this is not the so-called innovation zone bill. This is an Article 9, UCC secured transactions bill. Is there anyone else wishing to give opposition testimony? [There was no one.] I will close opposition testimony and open neutral testimony.

Sandy O'Laughlin, Commissioner, Division of Financial Institutions, Department of Business and Industry:
I am here today to testify in the neutral position on Assembly Bill 324. We have met virtually with the requesters of the bill and Stephen Wood of Assemblywoman Dickman's office to discuss the bill. There are several items that need further clarification, and the requesters are working on those items. We are anticipating amendments to the bill and look forward to reviewing those and continuing to work with the stakeholders.

Mary Fechner, Private Citizen, Reno, Nevada:
I am registered as neutral. My concern is if this bill is a work-around for the marijuana industry to be able to have a way to store money. I do not know much about it, but my understanding is they cannot bank the money they have because marijuana is against federal law. If this is a work-around for marijuana companies to be able to conduct business in this state, I would be interested in knowing that. I would also wonder about the exemption from

state taxes. The marijuana industry brings in a lot of money. Would this exempt them from being taxed?

What is the nature of the businesses moving into Wyoming? What type of businesses are flooding Wyoming? Is it more drug and marijuana businesses saying they are functioning and based in Wyoming?

Chairman Yeager:
I would encourage you to reach out to the sponsor of the bill to get some of those questions answered. I do not want to speak for them.

Jimmy Lau, representing Nevada Credit Union League:
The Nevada Credit Union League is neutral at this time. We are supportive of the concept of further establishing a regulatory framework for digital assets in Nevada. I would like to ensure all financial institutions, including credit unions, are afforded the ability to participate under the provisions of this bill. As more consumers adopt the use of emerging technology, it is important for all financial institutions to have clear guidance on how they may interact with the assets and provide services to the consumers.

We thank the Assemblywoman and the bill proponents for working with us to ensure credit unions are specifically included and look forward to moving our position to support should the bill be amended to include our members.

Chairman Yeager:
Is there anyone else for neutral testimony? [There was no one.] I will close neutral testimony and hand it back to our bill sponsor for concluding remarks.

Assemblywoman Dickman:
I would like to take the time to acknowledge everyone who has worked so hard on this. We have had so much help; it has been great. I believe it is critical for Nevada to keep up with economic changes. The fact of the matter is that when technology advances, our economy evolves, and we as a legislative body need to do our best to stay ahead of it. We must ensure that our safe, legal framework does not leave those whom we represent out in the proverbial cold as the free market advances. As you heard during the hearing, this technology has brought billions of dollars in assets back to the United States. Let us make sure that Nevada is a leader in this effort.

John Sande:
First, to address the caller's concerns, she is more than welcome to reach out to me. This is not solely intended to apply to marijuana companies. I believe marijuana is still illegal in Wyoming, so those companies are not going to Wyoming for that. It is more of the fintech companies that we are attempting to attract and that are currently going to Wyoming.

I hope I did not misstate. Obviously, my optimism comes from the conversation. It was a very interesting conversation, intellectually and otherwise, and I really enjoyed it.

My intent was not to speak for others. I try to go out of my way to say that my perception of the meeting was what it was. I will guarantee, and put on the record, that we look forward to working with them, and they will see the amendment as soon as we can get it to them. From our perspective, the important parts are to define digital assets and the property rights people can obtain, and that those assets can be transmitted without using an intermediary. Those are the main issues we are hoping to address in a more scaled-back fashion.

Brittany Kaiser:
We are looking forward to working with the Uniform Law Commission and anyone else that is interested in playing a part in how this bill develops. We believe that our amendment is going to be not just amenable, but also very interesting and positively impactful for this state.

To specifically speak on Professor Henning's and Professor Rowley's comments, I want to thank them for being open to working with us, especially for being available on a Saturday. The biggest concerns that came out of Professor Rowley's letter and some of the ULC's comments were things that we specifically sought to remove, such as the definitions of consumer digital assets, which could accidentally disrupt the shadow paper industry, so we decided to take out all the fat. Going too far into digital securities where there is not a lot of agreement on those laws—and that is where some of the Secretary of State registrations came out of the bill—so if that is required under Nevada's UCC for perfecting of a security interest, we are very happy to put that back in, of course, to make sure the perfection of the security interest and to make sure we can take out debts or liens on our digital assets. That is what we agreed upon on Saturday, which I was very excited about. Everyone wanted to work together to make sure those provisions were in agreement. That is what we decided to keep and pursue and, in the end, what our bill amendment allows us to do to ensure that we are passing a bill codifying digital asset property rights, that we are allowing individual ownership, perfection of security interests on those intangible personal property tax exemptions, and transactions without an intermediary. If we can all work together on that, we will bring something forward that will be great for the state of Nevada's economy and also be able to show thought. Leadership for the state, as with many other states, is starting to look at passing these laws. Two years from now, most of them—if not federal—will have already passed.

Chairman Yeager:
I will close the hearing on Assembly Bill 324. Before I hand the virtual gavel over to the Vice Chairwoman, I did receive a bill draft request (BDR) while we were in the hearing. In front of me, I have BDR 14-376, which revises provisions relating to the issuance of certain citations. I believe this bill came out of one of the interim committees, so we will vote on it to get it introduced to become a bill and potentially come back for a hearing. At this time, I am looking for a motion to introduce BDR 14-376.

BDR 14-376—Revises provisions relating to the issuance of certain citations. (Later introduced as Assembly Bill 440.)

ASSEMBLYMAN WHEELER MOVED TO INTRODUCE BILL DRAFT REQUEST 14-376.

ASSEMBLYWOMAN NGUYEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

With that behind us, I am going to hand over the gavel to our Vice Chairwoman, as I will be presenting the next two bills. I will do that virtually, and I will go to the virtual presentation table. [Assemblywoman Nguyen assumed the Chair at 9:18 a.m.]

Vice Chairwoman Nguyen:
At this time, I will open the hearing on Assembly Bill 400.

Assembly Bill 400: Revises provisions relating to prohibited acts concerning the use of marijuana and the operation of a vehicle or vessel. (BDR 43-485)

Assemblyman Steve Yeager, Assembly District No. 9:
I am pleased to present Assembly Bill 400 for your consideration. In 2017, the Legislature, with bipartisan support, changed the cannabis driving under the influence (DUI) laws with the passage of Assembly Bill 135 of the 79th Session. For those of you who were not with us in 2017, three medical students from Touro University discovered through medical research that Nevada's DUI law was not supported by science, and they asked me to help fix it.

At the time, Nevada law allowed for the testing of certain cannabis compounds, known as metabolites, through urinalysis to determine cognitive impairment. However, the students discovered that the only compounds in urine that can be tested do not have psychoactive effects and, therefore, cannot cause impairment. Although someone's urine will indicate that a person may have consumed cannabis recently, it cannot indicate actual impairment. Assembly Bill 135 of the 79th Session removed from Nevada statutes the specified amount of cannabis and cannabis metabolite in a person's urine, thereby providing that the amount in a person's system can only be measured through a blood test. Like Assembly Bill 135 of the 79th Session, the bill before you this morning, Assembly Bill 400, asks you to consider the science.

In today's hearing, I will first give you some background on Nevada's DUI law, and then I will circle back and talk about the science of detecting impairment. I also have an expert with me, Paul Armentano from the National Organization for the Reform of Marijuana Laws (NORML), who probably knows more about the science behind this than anyone I have ever spoken with on this topic.

By way of background, many of you are familiar with alcohol DUIs. In every state, it is illegal to drive with a blood alcohol concentration, or BAC, of 0.08 or higher, with the exception of Utah that recently lowered its to 0.06 or maybe 0.04. Generally speaking, the higher your blood alcohol content, the greater the impairment. This is well established,

based on a scientific relationship that has developed over decades of study and has provided the basis for laws prohibiting driving with a BAC of 0.08 or above.

Currently, the way we treat cannabis DUIs in Nevada law is that we have a per se, or presumed illegal standard, for those arrested for DUI with cannabis or cannabis metabolites in their system. Under that existing per se standard, the driver commits a DUI offense if his or her blood contains 2 nanograms per milliliter or more of active THC or 5 nanograms or more of a certain cannabis metabolite. What this means in practice is that you have little to no ability to defend yourself against DUI charges if your blood test comes back with results above those numbers. Your only defense is that you were not the one driving or that the blood tested was not, in fact, your blood. You are not able to make any argument that you were not impaired due to a built-up tolerance or a history of heavy usage, even for medical purposes. Simply stated, if you are above those levels, you are going to be guilty of a DUI.

One study—and this is on the Nevada Electronic Legislative Information System (NELIS) as a slide [Exhibit D]—shows that heavy cannabis users with high body mass indexes can have more than the 2 nanograms of THC in our law more than 48 hours after they stop consuming cannabis.

Let me talk about how we treat prescription drugs with respect to DUIs. A driver can be arrested if he or she is under the influence of other substances, including lawfully prescribed drugs, but there are no per se levels in the law for those substances, meaning that a prosecutor has to prove impairment beyond a reasonable doubt without being able to lean on a per se level to conclusively establish guilt. I have seen those prosecutions when I used to practice in criminal court. I remember when one of my clients was charged with a DUI based on Xanax even though she had a lawful prescription. Law enforcement officers in this state are already trained to recognize the signs of impairment due to drug usage, illegal or otherwise. They do this by interacting with the driver and by conducting field sobriety tests. Of course, there must be something about the driving itself that led to a traffic stop. Nothing in this bill will change those things.

During the last interim—which I will acknowledge was a very interesting interim for the Legislature due to the pandemic—I chaired a committee to conduct an interim study on this issue. I invited Dr. Norbert Kaminski from Michigan to join us at our meeting. The reason I invited him is that he was a commissioner for Michigan's Impaired Driving Safety Commission. He is also a professor in the department of pharmacology and toxicology at Michigan State University, as well as a number of other titles. He is more than qualified to opine on this topic. The commission in Michigan was directed to establish a per se standard for marijuana in that state. However, after extensive research, the commission concluded that there is no blood level value for Δ-9-THC that can determine impairment. I am going to read a quick takeaway from that Michigan report [page 6, Exhibit E], which you can find on NELIS:

> Due to the initial rapid elimination phase of Δ-9-THC followed by the long terminal elimination phase, blood-plasma concentrations of Δ-9-THC are

> indicative of exposure, but are not a reliable indicator of whether an individual is impaired . . . [page 15]. Therefore, because there is a poor correlation between Δ-9-THC bodily content and driving impairment, the commission recommends against the establishment of a threshold Δ-9-THC bodily content for determining driver impairment and instead recommends the use of a roadside sobriety test(s) to determine whether a driver is impaired.

Despite the charge to that commission, the commission did not recommend a per se level for the state of Michigan, but instead recommended the use of roadside sobriety testing to determine impairment. If the bill in front of you, A.B. 400, were to pass, that is functionally what would happen here in the state of Nevada.

I will touch briefly on a couple of other studies, and Mr. Armentano will talk about this also. The American Automobile Association (AAA) Foundation for Traffic Safety stated that a per se limit is arbitrary and unsupported by science; that was from 2016. The National Highway Traffic Safety Administration observed that, "The poor correlation of THC level in the blood . . . with impairment precludes using THC blood . . . as an indicator of driver impairment." That was from 2017. Likewise, the Governors Highway Safety Association stated that marijuana per se limits are not supported by science and the result is that impaired drivers could go free while unimpaired drivers could be convicted, and that is from 2020.

Let me quickly go over the bill. There are three main provisions, and it is straightforward. Sections 1 through 3 and 5 through 17 remove the per se levels in the law and otherwise make conforming changes. What you see is that the 2 nanograms and the 5 nanograms would be removed from Nevada state law. Sections 11 and 14 remove the mandatory 12-hour hold in jail when someone who is arrested is over those existing per se limits. In practice, I do not think this provision is often used because blood tests are almost never available within 12 hours of an arrest. Typically, they take months. We are removing that as a conforming change and would ask anyone to correct me if I am wrong, but I do not think it is used in practice.

Section 17 makes a conforming change to our workers' compensation laws because those laws are tied to the per se levels that currently exist in our statutes. This means employers would no longer be able to rely on the arbitrary numbers in law to deny workers' compensation claims. Instead, they would need to prove the person's workplace injury was a result of actual impairment. I am still in discussions with individuals about this, and I am open to further discussions that might address concerns that I have heard from employers. You will hear from them, mostly in opposition.

In conclusion and before I hand it over, opponents of this bill—and there are many—will state that they need the per se standard to prosecute and hold impaired drivers accountable. This strict approach facilitates prosecution, but it is not based on science. Let me be clear, nothing in this bill would prevent prosecutors from charging and securing convictions against drivers who are actually impaired from cannabis. The consequences of not fixing Nevada's per se standards are that impaired drivers may not be detected due to blood tests for THC and

drivers whose THC blood levels are higher in general, such as medical marijuana users, could be convicted even when not impaired. Passing A.B. 400 is a matter of equity, fairness, and enhancement of public safety.

I will turn this over to Mr. Armentano to provide more technical and scientific information before we are available for questions.

Paul Armentano, Deputy Director, National Organization for the Reform of Marijuana Laws Foundation:
I am here to testify in support of Assembly Bill 400, which as explained removes Nevada's arbitrary and unscientific per se standards for THC and for THC's metabolite [Exhibit F].

For over 25 years, I have worked professionally in the field of marijuana policy with a particular emphasis on the science specific to the effect of cannabis on driving performance and traffic safety. My work on this issue has been highlighted in the peer-reviewed scientific literature, and I am the author of numerous papers in the scientific literature and in other various academic anthologies. I have presented on this issue at numerous academic and legal symposiums.

I am a court-certified expert on issues pertaining to cannabis and psychomotor performance. I have attended numerous accredited educational forums on this topic, including those sponsored by the American Academy of Forensic Sciences; the Society of Forensic Toxicologists, Inc.; The International Council on Alcohol, Drugs and Traffic Safety; and the National Institute on Drug Abuse. I have also previously testified before lawmakers in Nevada on this topic, having first done so before the Advisory Commission on the Administration of Justice's Subcommittee on the Medical Use of Marijuana in 2014.

I currently serve as the deputy director for the National Organization for the Reform of Marijuana Laws, or NORML, a public interest advocacy board based in Washington, D.C., although I reside in California.

The official position that NORML takes on this issue is clear. We oppose the act of driving under the influence of any controlled substance, including cannabis, and we support evidence-based laws, tools, and other legal efforts to discourage this behavior and to provide law enforcement with the ability to better target these drivers and remove them from our roads. That said, NORML also adamantly opposes the imposition of per se limits for the presence of THC or its metabolite because such thresholds are not evidence-based and because they inadvertently could lead to the prosecution of non-impaired drivers as if they are legitimate traffic safety threats [Exhibit F].

It is well established by the leading experts in this field that neither per se limits for THC nor its metabolite are consistent or appropriate predicters of driving impairment. In fact, there is no legitimate scientific debate on this issue. Specifically, the premier traffic safety agency in the United States, the National Highway Traffic Safety Administration, or NHTSA, is clear and consistent on this issue going all the way back to their groundbreaking study on

marijuana and actual driving performance. That was performed 40-some-odd years ago. It was concluded by this study, where researchers actually administered cannabis to drivers and had them drive on the road in real-world traffic situations and measured their blood and urine to see if there was any correlation between these drivers' performance and the level of THC or its metabolite. They found that "It is difficult to establish a relationship between a person's THC blood or plasma concentration and performance impairing effects. . . . It is inadvisable to try and predict effects based on blood THC concentrations alone, and currently impossible to predict specific effects based on THC-COOH [metabolite] concentrations."

Again, that is not my position. That is not NORML's position. That is the position of the National Highway Traffic Safety Administration. They have repeated this position on more than one occasion. Another NHTSA study concludes that, "One of the program's objectives was to determine whether it is possible to predict driving impairment by plasma concentrations of THC and/or its metabolite, THC-COOH, in single samples. The answer is very clear: it is not. Plasma of drivers showing substantial impairment in these studies contained both high and low THC concentrations; and, drivers with high plasma concentrations showed substantial, but also no impairment, and even some improvement."

As was mentioned by the Committee Chairman, a 2016 study conducted by AAA makes a similar conclusion. They determined, "There is no evidence from the data collected, particularly from the subjects assessed through the DRE exam"—that is the drug recognition evaluation exam—"that any objective threshold exists that established impairment, based on THC concentrations." I will make it clear that AAA is no friend of marijuana legalization. In fact, as an organization, they typically tend to take an opposition position when it comes to the legalization of the adult use of marijuana. On this issue of traffic safety, they are clear that per se standards for THC are not evidence-based.

A May 14, 2019, Congressional Research Service report titled *Marijuana Use and Highway Safety* similarly determined, "Research studies have been unable to consistently correlate levels of marijuana consumption, or THC in a person's body, and levels of impairment."

Two recent state-appointed task forces on drunk driving—one in Michigan, as was just mentioned, and another in California—have reaffirmed this position in their recommendations to lawmakers. In California, the recommendations of a task force led by the California Highway Patrol concluded, "Drugs affect people differently depending on many variables. A per se limit for drugs, other than ethanol, should not be enacted at this time as current scientific research does not support it." Similarly, in Michigan, the conclusions from the state's Impaired Driving Safety Commission determined, "Because there is a poor correlation between Δ9-THC bodily content and driving impairment, the Commission recommends against the establishment of a threshold of Δ-9-THC bodily content for determining driving impairment."

I want to be very clear on this last point. This is not a matter of, We need more studies, or We have not done the studies. Again, if you look at this original NHTSA report dated 1993,

these questions have been asked and answered for over four decades. This point was best summarized recently by Dr. Marilyn Huestis, who has spent over 25 years studying this issue at the United States National Institute on Drug Abuse. She is one of the leading scholars in the world on this issue. She is the sort of person I would like to see testify in future hearings to discuss these matters. She said, "There is no one blood or oral fluid concentration that can differentiate impaired and not impaired. It's not like we need to say, 'Oh, let's do some more research and we will give you an answer.' We already know. We've done the research."

Why are per se limits inadvisable for cannabis? There are several reasons. First, we know that THC possesses unique pharmacokinetics, or nonlinear absorption patterns, in the body after it has been consumed. For example, when THC is inhaled, THC blood levels rise to maximal levels almost instantly, well before the onset of acute impairment. These levels then begin to decline precipitously during the acute impairment phase. In other words, a person's THC blood levels are at their highest prior to the onset of impairment. When they are actually most likely to be impaired—which is generally 20 to 60 minutes following inhalation—their THC levels are falling rapidly. Then, as you heard, during the terminal elimination phase when the person is no longer under the influence, their residual THC levels plateau and residual levels may be detected for hours, days, and even more than a week after they ceased their cannabis use. This nonlinear relationship is exactly the opposite of the relationship we see with alcohol. That is why we have per se standards for alcohol, but we do not generally have accepted per se standards for controlled substances other than alcohol, including numerous substances that we know also impact driving behavior, such as benzodiazepines, sleep aids, opioids, and many other substances.

By contrast, the pharmacokinetics of THC when it is consumed orally as opposed to smoking are entirely the opposite. When someone consumes THC orally, there is no rapid spike in their THC levels. In fact, their THC blood levels rarely rise at all, so someone could be under the influence of THC having taken it orally and never trigger a per se standard because their THC blood levels seldom rise at all.

Second, because THC is lipid or fat soluble, trace quantities of it can remain present in blood for days after past exposure, long after the intoxication has worn off. Specifically, scientific studies have documented the presence of residual quantities of THC in the blood of more frequent cannabis consumers at levels exceeding Nevada's existing standards for a period of time exceeding seven days. I do not think anyone here today would argue that someone who consumed cannabis a week ago is impaired to drive a motor vehicle one week later.

At present, there exists no technology that can differentiate between cannabis exposure that occurred within the last several hours versus exposure that may have occurred within the past several days.

Third, a subject's response to THC is far more variable than it is for alcohol. For example, experienced cannabis consumers who consume it daily, such as those patients legally protected under Nevada's medical cannabis access law, tend to display little to no change in psychomotor performance following cannabis administration, while more naïve subjects do

experience changes in reaction time, brake latency, trouble maintaining their lane position, and a number of other changes. Several papers in the scientific literature affirm this phenomenon of cannabis tolerance. In fact, one recent literature review said, "Patients who take cannabinoids at a constant dosage over an extensive period of time often develop tolerance to the impairment of psychomotor performance so that they can drive vehicles safely."

You do not have to take my word for it, we can look at what the United States Food and Drug Administration (FDA) says about taking THC and driving. Since 1985, dronabinol, oral synthetic THC, has been available by prescription. When one goes to the FDA web page to see what it says with respect to taking a prescription for oral THC and driving, it does not say to never drive after taking dronabinol. Instead, what it says is that patients who take dronabinol over time will become acclimated to the effects of oral THC to the point that they are able to tolerate the drug and perform such tasks safely. That is the position of the FDA.

I also want to mention that police, as was said earlier, already possess a number of tools that allow them to identify drug driving and to remove drug drivers from the road, and to provide enough evidence for prosecutors to prosecute these drivers. We have field sobriety tests. We have drug recognition evaluators. We have different programs to train law enforcement officers with respect to how to identify these drivers. We have the drug recognition expert (DRE) program. We also have the Advanced Roadside Impaired Driving Enforcement (ARIDE) program. In virtually all these cases of drug driving, there is evidence of impaired driving at the scene that leads to the driver being pulled over and eventually arrested. Even in cases where toxicology tests are performed, they are only performed postarrest. That means police already at their disposal need to have enough tools to warrant a drug driving arrest and make such an arrest before a toxicology exam is even performed.

Finally, it should be acknowledged that Nevada's arbitrary and unscientific THC thresholds were enacted absent any scientific input at that time. None of the expert agencies that I have cited today were called upon to testify. None of the scientists whom I have cited today were called upon to participate in that legislative debate. In fact, my recollection of the debate was that the thresholds that are currently imposed were decided upon solely based upon the lower limit of quantification (LLQ) available at that time, and an LLQ simply refers to the lowest amount of an analyte in a sample that can be quantified with acceptable precision and accuracy. This was not about setting a standard that if someone was above it, they were impaired and if they were below it, they were not impaired. The standard was set based on the available technology at that time, how accurate that technology was, and to set a standard where if someone was above it, the court would not challenge the accuracy of the test. That is what the debate was about. It was not about science. It was not about impairment.

To be clear, these limits have nothing to do with either science, accurately determining impairment, or with promoting public safety. These arbitrary limits were enacted at a time when Nevada imposed a blanket prohibition on the possession and use of cannabis for any purpose. This is not the case any longer and has not been for some time. Today, marijuana

is available at retail for both state-qualified patients as well as for adults over the age of 21, and the traffic safety laws ought to evolve and be amended to reflect this reality.

In conclusion, the existing per se thresholds are not evidence-based and are opposed by experts in the field. They are entirely inconsistent with separate state statutes that legally permit the consumption of cannabis in private. I would also add that they are entirely out of step with what other states are doing with this issue. Nevada is one of only five or six states in the country that impose these arbitrary limits. For the majority of qualified patients prescribed medical cannabis to be consumed either daily or nearly daily, it is probable that most, if not all, of this patient population is vulnerable to criminal prosecution under Nevada's existing per se statute anytime they operate a motor vehicle absent any evidence of behavioral or psychomotor impairment. Most adult users, including those who only consume cannabis occasionally, are also equally vulnerable to prosecution under this statute. Accordingly, I urge lawmakers to advance Assembly Bill 400 to repeal these arbitrary and unscientific standards.

Vice Chairwoman Nguyen:
Assemblyman Yeager, do you have any follow-up before we start taking questions?

Assemblyman Yeager:
We are ready for questions.

Assemblyman Wheeler:
Here in Nevada, we are looking at federal law that still has marijuana as a Schedule I drug. As we look at this, have we done any analyses to see if this would put highway funds in jeopardy if we were to enact this law? The way I read this versus federal law or Department of Transportation regulations, would we have a problem issuing commercial driver's licenses (CDL) if we put this into effect? Have there been any studies on that? You have quoted a lot of studies.

Paul Armentano:
Nevada is only one of a handful of states that impose these statutes. The majority of states, about 45 or so, do not, including the majority of states that have legalized marijuana for either adult use or medical use. None of those states have run into any problems with the loss or the threat of loss of highway funding. I do not believe that is an issue. It has not been an issue in practice.

With respect to CDL drivers, yes, you are correct that they are subject to federal drug testing guidelines and standards. Those standards prohibit individuals who possess CDLs from using cannabis even if they are in a jurisdiction where the use of cannabis would be legal under state law. The individuals who possess those licenses remain under the federal guidelines, and punitive action is and can be taken against those individuals if they use cannabis and test positive for the presence of cannabis.

Assemblyman Wheeler:
I am not sure what you said. It seemed to move around the issue. Would we be put in jeopardy of the issuance of CDLs if we were to put in the wrong type of standards? Would we be allowing someone to use marijuana and drive an over-the-road truck? Would the feds not allow us to issue CDLs in this state?

Paul Armentano:
No, because they are under a federal standard and it is clear.

Vice Chairwoman Nguyen:
Do you have any other questions? Assemblyman O'Neill had to step out, and he indicated you were going to ask a question. Is that the question he intended to ask?

Assemblyman Wheeler:
Yes, that is one of them.

Vice Chairwoman Nguyen:
I have a piggyback question. This does not make it lawful for someone to consume marijuana, be impaired, and drive, correct?

Assemblyman Yeager:
Impaired driving will continue to be illegal in our state. It does not matter what substance it is. You can be impaired on anything, like prescription drugs, alcohol, or cannabis. Nothing changes that in this bill. This bill simply says that a prosecutor cannot rely on a number in the blood test to conclusively prove impairment like other driving under the influence cases. They would have to prove impairment beyond a reasonable doubt. How would they do that? They would do that by talking about why they stopped the vehicle. They would do that by talking about their observations of the driver. Did the driver have bloodshot eyes? Was the driver tired? Was the driver falling asleep? Did the driver seem confused? They would do that by referencing the results of a field sobriety test. How did the driver do on a field sobriety test? They could still take a blood test to show the presence of THC or a metabolite, and that would be admissible as well. A judge and jury would be able to look at that. What this bill does is to say that you cannot just assume someone is impaired if they are over a specified, nonscientifically supported level that exists in the law.

Hopefully, that shed a little light. Like Mr. Armentano, I do not want impaired drivers on the roads. I drive on these roads every day and the last thing I want is impaired drivers. What this bill will do is capture some people who are impaired but do not test over the levels because they should not be on the roads. It will also prevent us from prosecuting and convicting drivers who are in fact not impaired but happen to be over the arbitrary level that is set in law.

Vice Chairwoman Nguyen:
I sat on a panel where you described some of the other areas and industries with different levels, specifically what the acceptable levels for THC were for Ultimate Fighting

Championship (UFC) fighters. I know we currently have 2 nanograms per milliliter as our per se limit. Do you remember what it was for UFC fighters?

Assemblyman Yeager:
I do not remember the exact quantity, but I do remember there was a prohibition against THC or metabolites in their blood. If you tested over those limits, you would be sanctioned and have to forfeit the match. At some point, they increased it several thousandfold of what we have in our statute. Even the UFC, which cares about the integrity of the matches they put on, has realized that you cannot look at 2 or 5 nanograms and use that as an indication that someone is actually impaired at the time they were fighting. A lot of other professional sports organizations are taking a second look at this and saying that they do not want to penalize individuals for use of the substance as long as they are not impaired when they are performing their athletic endeavors. I analogize this in the same way. We do not want to penalize drivers for something they did two weeks ago when they are not impaired at the time they are driving. I can find those numbers, but it is an ever-evolving science. We are not at the forefront of this; we are following at the tail end. A lot of organizations are well ahead of Nevada on this topic.

Vice Chairwoman Nguyen:
Currently, our law enforcement officers receive upward of 40 hours of training on examining and looking at impairment during basic training. Right now, our police officers must determine impairment for things such as Soma, Xanax, or certain types of opioids. They receive the recognition training that they use in the field.

Assemblyman Yeager:
This will be fleshed out somewhat by some of the callers. Essentially, there are three levels of training. There is the standard field sobriety training, and every officer gets that as part of their training. That is your walk and turn test, the stand on one foot, and the horizontal test where they put the light in your face. Everyone gets that training. Then there is the drug recognition protocol. That is more advanced, very time-consuming, and expensive training. There are not a lot of drug recognition experts in our state due to the cost. The good news is that there is training in the middle, which is the ARIDE program that Mr. Armentano described briefly. My understanding is that the training is currently, or will be, made available to all officers in the state. I confirmed that with the Department of Public Safety. Hopefully, we will have that middle-ground, stepped-up drug recognition training, although not the full-fledged DRE training. I would encourage anyone calling in to correct me if I am wrong.

Assemblywoman Summers-Armstrong:
I would like to respond to Assemblyman Wheeler before I ask my question. In my other life, the organization I work with has drug policies and procedures—because we receive federal dollars—that our employees, even if they have a prescription, cannot use this substance since it could put those dollars in jeopardy. I believe that is a commonplace policy in all the organizations that receive federal funds. This is a federally prohibited substance. You do not have to worry, and you can get confirmation of that across the board.

My concern is the sobriety test when it comes to workers' compensation situations. If there is someone using machinery and they become injured on the job, how do we now apply the standard in that case? For instance, if someone is working with machinery and gets hurt, there is not necessarily someone on the spot at their place of employment who can administer a test that would check their sobriety. When they go to the hospital for their injury, they will get a blood test and the numbers will come back. How do we address that, so the employee is not unlawfully prohibited from bringing a claim—if they do not work in a Department of Transportation situation—also, so the employer knows whether the employee was using the machinery incorrectly because of intoxication? That is a concern for me.

Paul Armentano:
I would stress that the issue of workplace impairment is determined post-accident and is very different from the per se standard that we are talking about for traffic safety. It is a bit of apples and oranges. With that said, you do identify one of the great limitations: the significant lag time in testing. Whether we are talking about traffic safety or the workplace, there is a significant lag in the time between the focal event and when the test is performed. In many cases, hours could go by between these two events. As I mentioned, the absorption patterns of cannabis are very unusual, particularly if it has been inhaled, since the levels spike quickly and fall quickly. When we receive blood test results that occur when the blood was drawn hours after the event in question, those numbers become even less meaningful. We are testing the person's blood at a time when much of the THC has already been metabolized or broken down into other substances because that is the way the absorption patterns of this drug work. That is why workplace safety normally opines in favor of performance testing. These are tests that actually measure a person's cognitive and physical performance and establish a baseline of performance. Then individuals who are suspected of being under the influence will be run through the same battery of tests to see how they perform at that time compared to their baseline standard of performance.

There are products on the market that address this issue. Alert meters are one such product. Another product is known as "Druid." These are handheld technologies that use evidence-based, validated measurements of drug impairment, such as testing reaction time, short-term memory, different types of cognitive measurements, that have been identified as being influenced when one is under the influence of certain controlled substances, including marijuana. We prefer that, if the goal is to identify if someone is impaired, we use actual validated measures that detect and determine impairment, not that we go on a fishing expedition to try to detect the presence of certain compounds in the blood or urine that has no correlation between either impairment or recency of exposure.

Assemblywoman Summers-Armstrong:
I understand your position, Mr. Armentano, but I think immediacy is still an area that needs to be addressed when it comes to workplace issues. I believe many of the policies and procedures of workplaces use the same levels to determine intoxication for workplace injuries and accidents. I know they use the same standards for judging whether someone is considered intoxicated. If we are going to get rid of the standard for driving, there has to be something in its place to help with workplace safety.

Paul Armentano:
I have been an expert in workers' compensation cases, so I would say they are judged on a case-by-case basis. We are not talking about getting rid of standards. The standard that is in place is simply an LLQ, the lowest level of detection. It is not a standard of impairment. It is a floor under which the technology is no longer sensitive. It is not a standard of impairment. No one makes the case that it is. Even in a workplace situation, if we have a blood test result, that is often brought in as evidence of past exposure. It is not brought in per se as evidence of impairment. If we get rid of this threshold per se standard for driving, we are still going to have toxicology tests being performed to determine if someone had exposure to THC and other drugs. In the drug recognition evaluation 12-step protocol, the twelfth step is a toxicology exam. Regardless if this per se standard is on the books, these same tests are going to continue to be performed. The same threshold that is in place is going to continue to be the same LLQ regardless of the situation. The difference is that, in a prosecution for drug driving, the prosecutor will have to consider the totality of the evidence of drug driving, which will include a toxicology result, but they would not be able to rest their entire case on the toxicology results.

Assemblywoman Hardy:
How does this affect an employer's liability if, in the course of their job, the employee drives a lot and makes deliveries?

Assemblyman Yeager:
Obviously, this bill came up quickly, and we are hearing it quickly, so I am still having discussions with lots of folks on the employment side who are interested. You will hear from some of them in opposition today.

I want to make a couple of things clear. Nothing in this bill will prohibit an employer from adopting a drug-free workplace policy. If you test positive for anything, they could terminate you. They have the right to do that—at least private employers. The liability side of it would not change for an employer because of the change in this bill. The employer is only liable if they have notice beforehand that an employee is engaging in reckless or dangerous driving behavior. An employer cannot be held liable for what they do not know. On the other side, if someone is driving for an employer and they are impaired, it is likely beyond the scope of their duties. The employer would be able to defend on the fact that it is not in the scope of the employee's duties.

I do not want to say much more because I do not want to get us twisted and turned around. Some of the testifiers in opposition will probably shed light on some of their concerns in that regard. We are working on a solution that accomplishes the objective—which is not to wrongfully prosecute drivers who are not impaired—but also accommodates some of the concerns of employers.

Assemblywoman Hardy:
That would be my concern. If we do not include employers, how would they say, "I did not know" or be asked why they did not know. I appreciate your being willing to work with employers. That could be a sticky and costly situation if that were to happen.

Assemblywoman Hansen:
Assemblywoman Hardy and I are probably the two on the Committee who pay insurance premiums for our employees and the vehicles they drive. We can talk a lot about impairment levels and if it is still in their system. That is a different conversation, and I get where you are going with that, but the thing that makes me nervous about this bill is that you need to convince the insurance companies what impairment is and what those levels are. Until they are convinced, businesses are going to pay tremendously for this. I do not know if you are aware of how much we pay right now because rates are high. Getting business owners comfortable with this legislation—I am sure AAA is fine because they can pass the cost on to those of us who must pay this by law—will not be easy.

Talking about these studies, are there studies in other states that show what the insurance premiums were before and then after recreational or medical marijuana was legalized? Have we shown the impact on insurance rates for those businesses?

Assemblyman Yeager:
I will make a couple of points. First, the legalization has already happened, so I do not expect anything in this bill to change anything in general on car insurance rates. If an adjustment was made, it would have already been done given where we are.

Second, our workers' compensation laws do not have to be tied to these per se laws. That was a decision that was made before any of us arrived at the Legislature. That is a discussion we can have to untether these two. Workers' compensation looks at the per se level, but it does not have to be that way. There could be a different standard in workers' compensation, so that is a potential option.

On the last point, we have the same problem with prescription medications. There are no per se levels in the law. You might have an employee who has a lawful prescription for hydrocodone or OxyContin, which are strong substances, but there is no per se level. As an employer, you do your best to ensure drivers are not impaired. Are you going to be perfect in that? Of course not. You are relying on your drivers to be honest and cautious. I do not see a huge change in terms of insurance rates for employers because of this. I would analogize this to a different prescription drug. You cannot be prescribed this because of the federal Schedule I classification by the government, but it is lawfully used for medical and other purposes. I look at it that way. I know employers will weigh in on this, and they can opine to that as well, but I do not see this as a significant shift in insurance coverage. It is just a shift in the way we are analyzing impairment and how we are dealing with workers' compensation issues, which do not have to be tied together as they are currently.

Assemblyman Orentlicher:
It seems clear that just measuring someone's marijuana level is not predictive if you have a random stop of drivers on a weekend evening and you tested everyone. You would get a lot of people who would fail the test who were not impaired and a lot of people impaired who passed the test. I am curious though, if you applied these tests to a population of people whom you have already identified as impaired, are the tests more predictive in that population, which is the population we want the test to be used on? Would we, therefore, be able to give the courts more precise guidance? Since the evidence would come in on the toxicology tests, are there ways to narrow the discretion of the court as it uses this test with threshold levels that might be more predictive in a population of people who are impaired while driving?

Assemblyman Yeager:
I will hand that over to Mr. Armentano. He probably has a better basis to answer that based on his knowledge.

Paul Armentano:
One of the fundamental problems with the per se levels as they are is that one cannot introduce that conversation in court because, with the per se levels, if someone is over the level, they have simply violated the law. These issues should be taken on a case-by-case basis. There are instances where individuals are prosecuted for drug driving, and they have THC levels above that standard. At that time, that should be weighed with the other evidence. What we should not do is look at this one piece of information that has such a poor predictive value. That says we are weighing this information much greater than any other evidence. Absent any demonstrative evidence of driving impairment, if someone has the presence of this compound in their blood above this arbitrary amount, we are saying they are guilty of violating traffic safety laws. We are saying they are, in effect, impaired when the standard in place does not provide any substantiation for drawing that conclusion.

[Exhibit G and Exhibit H were submitted by Mr. Armentano but not discussed and are included as exhibits.]

Vice Chair Nguyen:
With that, I am going to take testimony in support, opposition, and neutral of A.B. 400. I would encourage everyone to feel free to submit their comments in writing. Please try to do that within 24 hours of today's meeting. I will open testimony in support of A.B. 400.

John J. Piro, Chief Deputy Public Defender, Legislative Liaison, Clark County Public Defender's Office:
I am testifying in support of Assembly Bill 400. In 2017, the National Highway Traffic Safety Administration (NHTSA) report showed a poor correlation of THC in the blood to be indicative of impairment [Exhibit I]. Setting per se limits like those currently in Nevada law are not meaningful and criminalize people who may not be impaired while using marijuana, especially medical marijuana users.

It can also lead to equal protection issues because there are people who use their normal prescriptions at a therapeutical level being treated differently from people who are not using medical marijuana within therapeutic levels. This issue is also important to veterans when medical marijuana is being used in that community to reduce the number of pills they take to cope with post-traumatic stress disorder and to help them get to sleep.

Nothing in this bill will remove officers' ability to test for impairment; however, we need evidence-based methods, but the current per se limits in Nevada law are not evidence-based. We are in support of this bill and ask that those limits be removed.

Scot Rutledge, representing Chamber of Cannabis:
The Chamber's membership is a diverse group representing all aspects of Nevada's cannabis industry, focused on strengthening commerce and diversifying the industry while advocating for social equity, medical cannabis users' rights, and cannabis law reform [Exhibit J].

In 2016, when Nevada's voters approved Question 2, they did so with the understanding that legalizing cannabis—referred to as "marijuana" in the initiative language—would decriminalize a substance that many view as being safer than alcohol and that has provided countless Nevadans pain relief through medical cannabis programs. Since the legalization of adult-use cannabis, Nevada has benefited from a well-regulated industry, has provided a new source of jobs and tax revenue, and is providing Nevadans with a safer and far superior product than what is available on the illicit market. With the creation of the Cannabis Compliance Board during the 2019 Session and the implementation of the agency during the past year, Nevadans should feel confident that the industry is improving and that our state will continue to lead as the gold standard in cannabis regulation.

While our industry continues to seek improvement and consumers are better informed about the effects of cannabis, our cannabis per se laws still unjustly criminalize consumption. As has been discussed today, Nevada's current per se law on cannabis metabolites places all consumers of cannabis in jeopardy of DUI given the length of time these metabolites stay in the blood. This is not a trustworthy or science-based indication of impairment. Additionally, workers who choose to use cannabis while at home should not be at risk of being declared impaired at work based on Nevada's per se law.

I would like to share some information from the National Conference of State Legislatures' website. An article dated November 9, 2020, titled "Drugged Driving | Marijuana-Impaired Driving" stated:

> Testing for drug impairment is problematic due to the limitations of drug-detecting technology and the lack of an agreed-upon limit to determine impairment. The nationally recognized level of impairment for drunken driving is 0.08 g/mL blood alcohol concentration. But there is no similar national standard for drugged driving. Drugs do not affect people consistently. Drugs such as marijuana can also stay in the system for weeks, thus appearing in roadside tests while no longer causing impairment.

In conclusion, the Chamber supports Assembly Bill 400 because eliminating cannabis per se limits is the correct and just thing to do. We respectfully ask the Committee to vote in the affirmative.

Holly Welborn, Policy Director, American Civil Liberties Union of Nevada:
I am testifying in support of A.B. 400 to limit criminalization of individuals who are not, in fact, impaired while driving. As I have stated to this Committee and several other committees, marijuana laws, including marijuana impairment laws, are disproportionately enforced against Black and Brown Nevadans. Although marijuana is used in roughly equal amounts among Black and white people, Black people are 3.73 times more likely to be arrested for a marijuana offense. Impairment laws based on faulty science lead to racial profiling and, therefore, civil rights lawsuits throughout our country. For example, the American Civil Liberties Union of Georgia filed a lawsuit against a law enforcement agency for utilizing and arresting under the marijuana impairment law in a racially biased manner. This bill will bring our marijuana impairment laws into the twenty-first century, and we encourage your support.

Jim Hoffman, representing Nevada Attorneys for Criminal Justice:
The Nevada Attorneys for Criminal Justice (NACJ) supports A.B. 400. As we have heard, there is no link between the presence of marijuana and metabolites in a person's blood and their level of impairment. This is not actually something that impairs public safety. Assembly Bill 400 keeps the existing prohibition of driving while impaired in place. The passage of the bill will leave public safety exactly as protected as it currently is. The existing per se limit is not protecting anyone's safety. We are prosecuting people for the sake of prosecuting people. This practice is an outdated relic of a time when science understood less about this area. The NACJ supports removing this relic from statute.

Kendra G. Bertschy, Deputy Public Defender, Washoe County Public Defender's Office:
As a Nevadan, I can say that no one wants impaired drivers on our roads. We strongly urge your support of this bill. We appreciate Chairman Yeager for continuing to spearhead legislation that reforms our laws grounded in evidence-based scientific research. The scientific research states that our per se standard is arbitrary and punishes individuals who are not impaired and vulnerable citizens who are using medications as prescribed under the guidance of physicians. By punishing our citizens for using cannabis under per se statutes, we are not punishing those who are actually impaired, but rather those who are just surviving and using medications as necessary. As a policy matter, we should not continue allowing a law to trap innocent users and to make Nevada inequitable.

The DUI charges are treated extremely seriously, as they should be, with significant punishment and collateral consequences. We should use the studies we have that indicate cannabis should not be treated the same way as alcohol because there is no established lineage between blood levels and impairment. We urge this Committee to follow the research from the American Automobile Association Foundation for Traffic Safety, the NHTSA, and all the others that indicate we should delete the requirement for having

a per se level for cannabis. It is time we join the numerous other states in eliminating the per se limits for cannabis from our laws. We urge your support.

Vice Chairwoman Nguyen:
There is no one else wanting to testify in support, so we will close support testimony. It is 10:27 a.m., and we will give equal opportunity for testimony in opposition. We will open opposition testimony.

Dwaine McCuistion, Fatal Detective, Las Vegas Metropolitan Police Department:
I work in the fatal section for traffic for the Las Vegas Metropolitan Police Department (Metro). I have been with Metro for 15 years. I was a motor officer for ten years and have been a fatal detective for the past three years. I am trained in field sobriety tests, the ARIDE program, and I am a DRE. I am an instructor for those lessons for officers around Nevada. I am a court-certified expert about impaired driving, especially for marijuana impairment.

Assembly Bill 400, as I read it, removes the per se for marijuana impairment of drivers. If passed, it would not be fair to the other driving community that we share the roads with. I will relay a recent case we had. As a fatal detective, most of my subjects are either no longer with us or they are very critically injured, so I do not have the opportunity to administer field sobriety tests to these people. We had a lady who was driving a Camaro down the road at 100 miles per hour. Speed is the number one violation for cannabis-impaired drivers because cannabis-impaired people typically cannot multitask. They can only focus on one thing or another. The driver was focused on maintaining her lane and not on her speed. She was going over 100 miles per hour, passed a school bus, and entered a school zone, striking a car that was conducting a left-hand turn. It killed the kids inside the car. The driver of the Camaro was transported to the hospital where we were able to get a blood draw that revealed levels of cannabis in her system. If we were to remove the per se that we have now, there would be no way for me to prosecute this case. What would I tell the family members at that point, that I am sorry I cannot prosecute the person who killed your family member? I am sorry that Nevada law prevents me from bringing you justice? I do not think that would be fair to the innocent people who were killed in this particular case. That is only one of many, many cases that I have seen in my years on fatal detail. It could be the cannabis-impaired pedestrian who walks out in front of traffic. It could be the cannabis-impaired driver who strikes the pedestrian, et cetera.

Changing the law, in my opinion, is premature, and science is trying to keep up with the legalization. The per se level that is in place today is fair to the driving community as well as our cannabis users. To remove the current per se level would increase fatalities, critical injuries, and the overall accident rate that we have in Nevada.

Section 9, subsection 6, of the bill in front of us, which has been scratched out, says, "If the presence of marijuana in the blood of the person is in issue, the officer may request the person submit to a blood test." Basically, if the law is amended, I would not be able to get a blood test from drivers and be able to prosecute them for impairment of a DUI.

Dr. Marilyn Huestis—I had the pleasure of watching one of her presentations—spoke about the per se levels. She mentioned that below 2 nanograms per milliliter is too low, but she also said above 2 nanograms per milliliter is too high of a level. This means that, if you make the level too low, you will arrest too many people, but if you put it too high, there are too many impaired people driving on our roadways, and we would not be able to prosecute them.

Vice Chairwoman Nguyen:
I need you to wrap this up, and I would encourage our Committee members to reach out to you if they would like to speak with you outside the Committee. We have quite a few people in line to testify in opposition, and I want to ensure everyone has a chance to testify.

Dwaine McCuistion:
I believe the 2 nanograms per milliliter is a fair and just level for impairment. I believe the law should read as it is today and not be amended to strike out the per se levels.

Shaun Meng, representing Nevada Self-Insurers Association:
Members of the Association are Nevada employers and are governed by the Nevada Industrial Insurance Act, which is contained in *Nevada Revised Statutes* (NRS) Chapters 616A to 617. I am a State Bar of Nevada-certified specialist in workers' compensation, and I run a law firm in Nevada that specializes in litigation of workers' compensation claims throughout our entire state.

Simply put, there are serious concerns about the effect of this law on the Nevada Industrial Insurance Act and the workers' compensation system we currently have in place. Just removing the "or 4" in section 17 of the bill, subsection 1(d) of NRS 616C.230 leaves employers without a mechanism for denying claims when an employee has injured himself or herself while impaired or under the influence of marijuana. Many of these workers are operating heavy machinery, conducting hazardous jobs, and endangering the safety of their coworkers and employers by being under the influence.

There are almost never police or trained individuals around to conduct a field sobriety test as has been insinuated by prior comments. I do not believe there is anything in this bill that suggests there would be a system in place for giving the ARIDE training or certification to general employers in Nevada.

The problem we face by eliminating this mechanism and standard that is set forth in NRS 616C.230 is that we have no way to heighten the requirements of someone who is found to be under the influence of marijuana and to establish a valid workers' compensation claim in Nevada.

One of the prior comments suggested that policies, such as an employee handbook, adopted by an employer would in some way handle the issue at hand and the danger that this bill provides the Industrial Insurance Act. However, through case law and statute, simply having a policy in place does not trump the provisions of the Industrial Insurance Act. Since the

standards remain in NRS 616C.230 for alcohol-related accidents, the vacancy of a standard for marijuana-related workers' compensation would suggest that a policy is insufficient to cover an employer for that. In addition, an employer who has a policy violation is unable to discontinue temporary wage replacement benefits in a case such as the one we just suggested, or that an individual is under the influence of marijuana, since current statute requires gross misconduct be proven. Since the current bill omits the standards from the workers' compensation act, that would not be gross misconduct.

What we propose is that, if the bill moves forward, any evidence of marijuana metabolites in the injured worker's system simply triggers the heightened standard set forth in NRS 616C.230. The way it sits right now, removing the standard removes the mechanism for an employer to require an employee to prove a little more than what they are required to prove if they have a normal on-the-job injury. Also, for an injured worker who tests positive or who has evidence of marijuana in their system at the time of an accident, an employer cannot deny benefits because it is in their system because it is a policy violation since having a policy in place does not take an individual outside the course or scope of their employment.

We would further ask that the Committee take our comments and use them in any work group on this bill. There needs to be much, much more done on this bill regarding industrial accidents than has been put into it. It appears that the Legislative Counsel Bureau (LCB) has made a mark because of the reference in NRS 616C.230, and we would ask that this Committee spend a significant amount of time in analyzing the effects of what is going on with this bill on Nevada industrial insurance and the employers in Nevada who will be significantly impacted.

Jeremiah Merritt, Safety Director, Sierra Nevada Construction:
Regarding the driving aspect, we believe there is a lack of clarity between the proposed legislation and the related statutes regarding the impact of marijuana on driving. This is a concern for those of us who work in an industry where there is a substantial amount of vehicle use. Undefined levels of impairment create a danger to those on the roadways and for those working in industries such as construction. Ambiguity of what constitutes impairment is concerning. Marijuana was legalized in Nevada, but we cannot create these types of broad changes to impairment or to DUIs without standardized tests for impairment. Without such standards, we risk putting Nevadans and those traveling to and from our state in harm's way.

Regarding workers' compensation for industries such as construction with hazardous environments, if not controlled, the presumption of sobriety is concerning. This leaves the employer with the untenable situation of having a workplace accident and not being able to determine if someone was injured as a result of marijuana use. The employer has the duty to protect its employees, but how can we do this if employees can be impaired by a drug while in an environment that risks that person's safety as well as their colleagues and the traveling public? Therefore, until there is a standardized test for levels of impairment for marijuana, these bills are premature and will put the traveling public and workers in the

industry like construction in danger. If we want to treat marijuana legally, similar to alcohol, we need to have the same expectations of impairment.

Kevin Linderman, Vice President, Q&D Construction LLC:
We oppose the proposed legislation based on what we have heard today, as well as our concerns for workers' compensation law changes and our ability to defend ourself against accidents that may have been caused by marijuana use in the workplace. Q&D has a safety-first approach to everything we do. Reading through not only the driving part of this but also the workers' comp part, we see no way that this makes the road a safer place. It could possibly make our work areas less safe as well. We oppose this bill and urge the Committee to go back to the drawing board until we get a more standardized test. One of the things that has been brought up by the Committee's expert is that there are several potential ways to determine impairment. Many of those are things not readily available to the industry, and it would be far-fetched to obtain them in a timely manner.

John T. Jones, Jr., representing Nevada District Attorneys Association:
We are in opposition of A.B. 400. I will start off by saying that over the past several sessions, we have been engaged in efforts to review our DUI marijuana laws. Law enforcement supported Assembly Bill 135 of the 79th Session, and as Chairman Yeager indicated, with the help of Touro University doctoral students, we updated our DUI per se marijuana laws to include specific compounds that directly relate to impairment. If you go back and listen to those Touro students during that testimony and other medical professionals, the Δ-9-THC and the 11-hydroxy-THC compounds that we added into statute are indicative of the subject being under the influence. Virtually everyone who testified at that hearing agreed that both Δ-9 and 11-hydroxy are psychoactive.

During last session, we also supported efforts to establish a committee to look at this issue during the interim, but as was indicated, due to the COVID-19 pandemic, they were not able to complete their work. The district attorneys encouraged this committee to complete that work prior to passing A.B. 400.

This bill, as currently written, would hinder our DUI marijuana prosecutions as indicated by the Metro detective, especially where the impaired driver was involved in an accident, or worse, caused bodily injury. In our most violent crashes, we do not have the ability to make all of the physical observations and perform all the physical tests necessary to prove a DUI beyond a reasonable doubt in the absence of blood results. This could be due to the injuries to the suspect driver or disorientation resulting from the crash, such as hitting their head.

Finally, we have major concerns with not training our officers to the most exacting drug detection standards if you were to adopt A.B. 400. The defense attorneys will have a field day in court pointing out that ARIDE-certified officers have not received the same level of training that DRE officers have. Again, we are in opposition to A.B. 400 and look forward to working with Chairman Yeager on potential amendments.

Alexis Motarex, Government Affairs Manager, Nevada Chapter Associated General Contractors:
We represent the commercial construction industry in northern Nevada. We are opposed to A.B. 400 for many of the reasons already stated. Our members have drug-free policies and test their employees, but no policy is foolproof. To presume sobriety when an employee tests positive for marijuana when there has been a workplace accident and injury is too great a liability on employers. We welcome the opportunity to discuss our concerns in more detail with the sponsors and stakeholders.

Paul J. Enos, Chief Executive Officer, Nevada Trucking Association:
We are in opposition of Assembly Bill 400, specifically section 2, which deals with NRS 484C.120 and commercial motor operators. Since January 2020, because of the new drug clearinghouse with the Federal Motor Carrier Safety Administration (FMCSA), we have eliminated 34,018 drivers who have tested positive for marijuana. We believe this would put the state of Nevada in noncompliance with the Federal Motor Carrier Safety Administration. They audit all of our laws and regulations to see if we are doing it right, and we could potentially lose funds that we use to enforce motor vehicle safety programs, such as the Nevada Highway Patrol. Last year, we received $2.6 million and could potentially lose that and our ability to issue commercial driver's licenses (CDL). That would be huge. Therefore, we oppose this bill.

I would ask to be included in a working group with the sponsor and other interested parties as we try to move forward. I understand there are some issues with the per se task, and we need to find a better way to do it. I think this law has a number of unintended consequences that can harm Nevada's ability not just to get federal funding and issue CDLs, but to potentially lose highway funds.

Vice Chairwoman Nguyen:
It is 10:51 a.m., and I have given 22 minutes to opposition testimony. I am going to go to neutral testimony next. Then I will ask the sponsor to be open to questions based on the testimony. I will open neutral testimony on A.B. 400.

Tonya Laney, Administrator, Division of Field Services, Department of Motor Vehicles:
We are neutral on A.B. 400 but need to make the Committee aware that the Department of Motor Vehicles (DMV) is subject to decertification of the state CDL program. Under 49 *Code of Federal Regulations* (CFR) 384.405, conditions considered in making decertification determinization, paragraph (b)(2), says, "The state does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles." The FMCSA makes it clear that marijuana, including a mixture or preparation containing marijuana, continues to be classified as a Schedule I controlled substance by the Drug Enforcement Administration. This can be found in 21 CFR 1308.11. Under the FMCSA regulations, a person is not physically qualified to drive a commercial motor vehicle if he or she uses any Schedule I controlled substance such as marijuana. This can be found in 49 CFR 391.11, paragraph (b)(4) and 49 CFR 391.41, paragraph (b)(12). Accordingly, a driver may not use marijuana even if it is recommended by a licensed medical practitioner. Legalization of

marijuana use by states has not modified the application of U.S. Department of Transportation drug testing.

Donald Plowman, Lieutenant, Nevada Highway Patrol, Department of Public Safety:
I am the motor carrier safety assistance program coordinator for the Nevada Highway Patrol, Department of Public Safety. I will be testifying in neutral for A.B. 400, but I would like to share some concerns on this bill as they relate to commercial motor vehicle (CMV) safety.

The impairment standards for CMV drivers are a lot stricter than they are for non-CMV drivers. Currently, our laws encapsulate that due to the size and weight of a CMV. The likelihood of a serious injury or fatality occurring when a CMV is involved in a crash is much more likely than a non-CMV.

We have adopted the federal standards, which you heard about from the DMV. One of the standards that we adopted is 49 CFR 392.4, Drugs and other substances. Paragraph (a) states, "No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs . . . ," which they deem as Schedule I. Because patrol still sees marijuana as a Schedule I substance, they cannot use it, possess it, or be under the influence of it, so this would affect us on roadside because we would not be able to take any kind of enforcement action unless they were showing outward signs of impairment. For safety purposes, they should not have any amounts on them.

Also, 49 CFR 383.51 would eliminate our ability to disqualify those types of drivers for those offenses because there would no longer be a standard to convict and get them off the road, making safety a concern for future drivers. Then, 49 CFR 350.305 gives variances to the states to make their own laws for hours of service, size and weight, et cetera, but they do not allow variances for contradictions of federal laws. There is no variance for alcohol or drug use, testing, and convictions.

Finally, under 49 CFR 350.309, every year we rely on a federal grant to conduct commercial motor vehicle safety, and it is a very successful program. However, this would put us out of compliance and would, therefore, have an impact on us getting federal funding in the future to provide CMV safety for the citizens. I ask that the provisions of this chapter not include CDL drivers or the operation of commercial motor vehicles, or leave the current ones intact for CDL drivers.

Vice Chairwoman Nguyen:
Do we have any more testifiers for neutral testimony? [There was no one.] I know we had extra long testimony and concerns regarding the presentation of this bill, so I allowed for a little more information. With that, we have questions from members about the opposition testimony.

Assemblywoman Kasama:
Based on some of the testimony I heard, if a person is in an accident and the person who is presumed to be impaired is so severely injured that they are transported to the hospital

precluding roadside testing for impairment, is there always a blood test done that would be admissible in court in those cases?

Assemblyman Yeager:
Typically, there is a blood test done by the hospital staff because they want to see what is going on with that person. Besides the law enforcement angle, if there is not a court-ordered or law enforcement blood test, the issue becomes whether the blood test the hospital does can be obtained by law enforcement or prosecutors, and will it be admissible. As you might imagine, that is the subject of litigation quite often when parties go to court and have to say that there is a blood test but this is why we were not able to get one. That does happen, and if the circumstances merit it, law enforcement officers can get a warrant for an additional blood draw at the hospital, but that would depend on the facts and circumstances of the case.

Assemblywoman Kasama:
I understand there is a problem with the per se testing and after hearing the testimony, it seems there are too many unresolved issues from employers, workers' compensation, and insurance. I am asking the Chairman to work with them because we cannot leave them hanging out there. Since they do not know how to handle the issues in the workplace, this leaves it open for litigation. I am asking for consideration in dealing with these people.

Assemblyman Yeager:
I am certainly willing to do that. The employers have been around longer than I, but my understanding was that the workers' compensation law was tied to the DUI law in this fashion because there was a desire at the time to update the laws as science updated. They correctly assumed DUI laws would be where science would update the quickest. This change does have some implication on workers' compensation laws, so I am willing to have that discussion. Those two areas do not have to be tied together; that is just the way it is done in statute. I am happy to continue having those conversations. My main concern with this bill is to ensure drivers who are not actually impaired are not being unfairly convicted of impaired driving.

Vice Chairwoman Nguyen:
Do we have any other questions? Some of them may have been answered. Seeing none, I will turn this back over for concluding remarks.

Paul Armentano:
This has been a long hearing, and I appreciate having the time to present final remarks. I want to emphasize that, were this legislation to pass, it would be just as illegal to drive under the influence of cannabis in Nevada the following day as it is today. We do not need a per se standard to prosecute drug driving. As I mentioned, most states do not include a per se standard, including states that have legalized marijuana for medical or adult use. Michigan and California do not include a per se standard. Law enforcement and prosecutors in these states successfully prosecute DUI cannabis cases without such a standard. In Nevada, there is no per se standard for prescription drugs, like opioids, Ambien, and benzodiazepines, yet Nevada prosecutors successfully prosecute DUI cannabis cases.

If Assembly Bill 400 were to pass, it would not stop the use of toxicology. As I mentioned, any DRE can administer a toxicological test. Following accidents, toxicological tests are administered. The data gleaned from those results would still be admissible. It would still be part of the prosecution. The difference is that it would be only one piece of the evidence in the prosecution. It would not be the sole basis for determining a guilty conviction.

I would conclude by saying, even though throughout this hearing we heard testimony that these are impairment standards, they are not. These are detection standards. They were never meant to be impairment standards, and there was never any legislative debate or scientific discussion of whether these thresholds were indicative of impairment. These were lowest levels of detection standards that were put in place. This would be analogous to Nevada imposing a 0.01 per se standard for alcohol, not because of any evidence that someone above 0.01 is impaired by alcohol, but simply because technology allows us to accurately test for alcohol at that trace presence. That is what the current statute does. This is not about impairment or keeping our roads safe. It is about having an evidence-based policy that does not inadvertently prosecute individuals for driving under the influence who are not under the influence and when there is no evidence that they are under the influence.

I am happy to follow up with any of you individually who might have additional questions.

Assemblyman Yeager:
I have five very quick remarks I would like to make. First, I do not understand the consternation about CDL and federal funding because 35-plus states do not have a per se law on the books, and they are not at risk for federal funding or their CDL program. I do not understand those concerns and think they are unfounded based on what this bill is trying to do and on a misunderstanding of how the bill will be enacted.

Second, with respect to employers, I would note that they have the same issue every day with prescription drugs, with hydrocodone, Xanax, and other pain medications. This is not new territory for employers. I do not discount the fact that these are tricky issues, but our employers here in Nevada have shown the ability to figure this out. I will continue to have those discussions.

Third, I want to stand up for LCB. There was a remark about their being lazy in their drafting or something to that effect. The LCB drafted the bill that I asked them to draft. They referenced the workers' compensation law because these two things are tied together. That is why it is in there. I want to stand up for our drafters. They gave me the bill I asked for, and we are considering it here.

Fourth, I certainly want to respect the difficult job that our law enforcement agencies have, particularly responding to fatal crashes. That is obviously something that is very difficult, but with all due respect, I have to disagree with the Metro individual who testified that somehow this bill would leave them unable to prosecute someone driving 100 miles per hour, illegally passing a school bus, and crashing into the back of a car. There are a lot of traffic infractions there, and they would still be able to get a blood draw and prosecute that case.

This would be a felony offense even without drugs being involved as it was described. I do not want to leave the impression that this will somehow tie hands.

I want to say one last thing, and I am going to quote someone else since I cannot say it any better. I am looking at a September 7, 2014, *Las Vegas Review-Journal* article, and the title of the article is "D.A. wants state's marijuana DUI law changed." This is a quote from Clark County District Attorney Steve Wolfson: "Everybody recognizes there needs to be a review of the law with regard to driving under the influence of marijuana. Right now, the law is vague with regard to whether a person has ingested marijuana and whether that by itself means that a person is impaired." I could not agree more, and that is what Assembly Bill 400 does.

Vice Chairwoman Nguyen:
I will close the hearing on Assembly Bill 400 and will turn the virtual chair back to Assemblyman Yeager to close out the meeting. [Assemblyman Yeager reassumed the Chair.]

Chairman Yeager:
Thank you, Madam Vice Chairwoman, for running the hearing. Committee members, you will note that we have another bill on the agenda, Assembly Bill 402, but we are not going to get to that bill this morning given the time. That bill will be rolled to a future agenda. We will try to hear that bill sometime this week. Having gotten through the other bills on the agenda, we will go to public comment. By way of a reminder, we reserve 30 minutes for public comment, which is a time to provide comment of a general nature. It is not time to testify on a bill that has already been heard and closed.

Tonja Brown, Private Citizen, Carson City, Nevada:
I am an advocate for inmates and the innocent. I know that you just announced that you are going to place Assembly Bill 402 in another meeting this week. I am not sure if I will be able to attend that meeting, but I want to say that I may have found a loophole to this bill and want to bring it to your attention in the event that I am right, hopefully not.

With everything that has been going on with our country dealing with police brutality, it is more likely than not that a person will start filming from the moment an officer arrives on the scene, especially when mental health issues and those who are in crisis are involved. I would like you to consider adding to section 1 of A.B. 402 to read, "A person who is under arrest and under civil protective custody, who has been transported to a hospital or mental health facility, is no longer under the physical custody of a peace officer, does not, by that status alone, forfeit the right to have any such recordings, property, or instruments maintained and returned to him or her." By doing this, I believe it will strengthen section 2 from a peace officer obtaining a recording device and deleting it.

For those who do not know what a "CPC" is, it is civil protective custody. It means you are not under arrest but are being taken in for your own protection because you may be too drunk to take care of yourself, may have mental health issues, or things like that. If a police officer

was doing something wrong, and the person who was filming it has been taken into CPC, something valuable to him on his recording could be lost by way of this bill if we do not include CPC.

Chairman Yeager:
Is there anyone else for public comment? [There was no one.] I will close public comment. Is there anything from members of the Committee? [There was nothing.]

It was an interesting morning. We went from secure transactions to cannabis DUIs. As far as the rest of the week, we have an agenda to start at 8 o'clock tomorrow and have three bills. We might add the fourth one that we did not hear today. We will see. We will have Committee meetings every day this week at 8 o'clock. We are working on the agendas, and you will see them soon. With all of this behind us, I will see you tomorrow morning at 8 o'clock. This meeting is adjourned [at 11:13 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a letter dated March 26, 2021, submitted by William H. Henning, Commissioner, Uniform Law Commission, in opposition to Assembly Bill 324.

Exhibit D is a copy of a table of THC levels that was part of a PowerPoint presentation presented on January 17, 2020, submitted by Assemblyman Steve Yeager, Assembly District No. 9, regarding Assembly Bill 400.

Exhibit E is a report dated March 2019, titled "Report From the Impaired Driving Safety Commission," submitted by Assemblyman Steve Yeager, Assembly District No. 9, regarding Assembly Bill 400.

Exhibit F is written testimony presented by Paul Armentano, Deputy Director, National Organization for the Reform of Marijuana Laws Foundation, regarding Assembly Bill 400.

Exhibit G is a fact sheet regarding Per Se Thresholds for THC, submitted by Paul Armentano, Deputy Director, National Organization for the Reform of Marijuana Laws Foundation, regarding Assembly Bill 400.

Exhibit H is an article published by *Humboldt Journal of Social Relations*, Issue 35, 2013, titled "Should Per SE Limits Be Imposed For Cannabis? Equating Cannabinoid Blood Concentrations with Actual Driver Impairment: Practical Limitations and Concerns," authored and submitted by Paul Armentano, Deputy Director, National Organization for the Reform of Marijuana Laws Foundation, regarding Assembly Bill 400.

Exhibit I is a report dated July 2017, titled "Marijuana-Impaired Driving, A Report to Congress," written by the National Highway Traffic Safety Administration, U.S. Department of Transportation, submitted by Assemblyman Steve Yeager, Assembly District No. 9, regarding Assembly Bill 400.

Exhibit J is written testimony presented by Scot Rutledge, representing Chamber of Cannabis, in support of Assembly Bill 400.