

**HEARING ON ASSEMBLY BILL 368  
ASSEMBLY COMMITTEE ON TRANSPORTATION  
APRIL 4, 2017**

**PREPARED TESTIMONY OF DAN L. WULZ, ESQ.  
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.  
ON BEHALF OF LOW INCOME NEVADA CONSUMERS**

Good afternoon Chairman Carrillo and members of the Committee. I am Dan Wulz, an attorney with the Legal Aid Center of Southern Nevada, Inc. I am testifying as a concerned citizen and an attorney who has represented consumers in matters involving AB 368. I also know the history of this law. I do appreciate the opportunity to comment.

Allow me to state some history because it will give the Committee some perspective and hopefully insight in making decisions on this bill.

In 2003, I worked with Speaker Buckley to comprehensively re-write NRS Chapter 487. (AB 325, 2003). The Speaker brought together the interested parties: insurance companies, the collision repair industry, and DMV. Speaker Buckley paid attention to the interests of consumers as well. In AB 325 (2003), a “total loss vehicle” was defined as one damaged to the extent that the cost of repair exceeded 65% of its fair market value. An exception was made for vehicles 10 years and older with specified minimal damage. The bill passed with the interested parties generally happy as I recall.

In 2005, I again worked with Speaker Buckley to tweak the exception for vehicles 10 years and older to clarify it. (AB 249, 2005) My memory is this was done at the request of the collision repair industry.

In 2011, I again worked with Speaker Buckley to change the definition of a “total loss vehicle” at the request of the collision repair industry. (AB 204, 2011) This time a significant change was made. The definition was changed to say that for purposes of calculating the 65% cost of repair, electronic components, painting and towing would not be counted in calculating the 65% threshold. And “electronic components” was broadly defined.

Recently, Legal Aid contacted a trusted, knowledgeable expert in this field who expressed that exceptions or carve-outs---such as for electronic components, or tires, or whatever---to a percentage formula should be disfavored. Carve-outs make the estimate to repair more layered and complex. They potentially introduce opportunities to manipulate the numbers. They make the decision whether to repair, on virtually every seriously damaged vehicle, tougher for insurers. It would be best for policy-makers to draw a percentage line, and stick to it.

But even more importantly, according to the insurance industry recently, the 2011 amendment not only resulted in fewer cars being declared a total loss, but also resulted in more instances in which the insurer found the vehicle was uneconomical to repair and thus a *de facto* total loss. I can assure you this unintended consequence was not foreseen by Speaker Buckley and myself.

Moreover, I have recently learned that the insurance industry, with the concurrence of the Division of Insurance, believes that under an insurer's contract of insurance, an insurer can consider a vehicle a total loss, and enter into a total loss settlement with its insured, yet not obtain a title branded "SALVAGE" for such vehicle when it **did not meet the NRS 487.790 definition of a total loss vehicle**. Once again, I can assure you such was not the intent when either AB 325 (2003) or AB 204 (2011) were passed. We had no idea that by insurance contract, an insurer could find a vehicle uneconomical to repair, consider it a total loss, **yet never be required to obtain a titled branded "SALVAGE."** The intent was that every seriously damaged vehicle would not live on with a clean title, and would be required to have a "SALVAGE" title and then a "REBUILT" title issued if and when repaired so that future consumers purchasing the vehicle would know the history of such a vehicle.

If what the insurance industry says is true, then I now fear that I, in advising Speaker Buckley in 2011 to adopt the carve-out for broadly defined electronic components, made a mistake. If we accept the representations of insurers as true, then that change resulted in more seriously damaged cars not being declared a total loss, yet were cars that were truly uneconomically to repair. The consequence, according to insurers, was that those cars resulted in a total loss settlement with the insured, but, because they did not meet the statutory definition of a total loss vehicle, were NOT issued a title branded "SALVAGE" by Division of Insurance interpretation. This unintended consequence is antithetical to the intent of the law and antithetical to good policy.

The point just made depends on the credibility of insurers. As I prepare this testimony, I have asked the proponent behind this bill for any data that would support the idea that the 2011 amendment carving out electronic components resulted in more vehicles uneconomical to repair which did not meet the "total loss" threshold. I have not yet seen that data. Also, perhaps we could test their position by looking at the data from DMV: did the number of titles branded "SALVAGE" go down after the change was made in 2011? We have asked Assemblyman Elliot Anderson to ask DMV for that data. We don't have it yet. Perhaps the Committee could ask DMV to have that data by the time a Work Session is held on this bill.

**As such, my most important concern is this: if insurers are to retain this latitude to consider a vehicle a total loss as stated above, then it is crucial that such be expressed in the statute, that such a vehicle expressly be defined as a "total loss vehicle" regardless of any statutory percentage threshold, and be required to obtain a title branded "SALVAGE."** I believe the proponents of AB 368 have done this in Section 1, paragraph 1, sub-paragraph (b).

I must stress that the Division of Insurance has, by proposed Amendment, as I read it, changed the entire meaning of that sub-paragraph (b) by inserting the language "in accordance with the provisions of paragraph (a) of this subsection." This proposed Amendment must be rejected. As I read it, the proposed Amendment guts the proponent's sub-paragraph (b).

Here are also a few more details I suggested to the proponent of the bill which, as I prepare this testimony, I believe the proponent will propose:

- a. Delete "submerged in water." Section 1.(1)(a), page 2, line 5.
- b. Delete "80" and change to "75." Section 1.(1)(a), page 2, line 11.
- c. Delete "submerged in water." Section 1.(1)(a), page 2, line 13.

- d. If the part about electronic components is omitted as the bill proposes, then it would seem NRS 487.725 defining same should be omitted.
- e. Delete “submerged in water.” Section1.(2), page 2, line 29.

I do not believe “submerged in water” is necessary because a “salvage vehicle” is defined (NRS 487.770) to include both a “total loss vehicle” and a “flood damaged vehicle” (which itself is defined in NRS 487.740). And adding an undefined term “submerged in water” will cause confusion.

Lastly, I believe 75% should be substituted for 80% in the bill. It appears the majority of states set the total loss threshold at 75%. See attached Exhibit No. 1, obtained from Farmers Insurance.

If all of my stated assumptions are true, then I fully support the bill as originally proposed. If no data supports the proponent’s position, or if the collision repair industry comes forward with contrary data, then I respectfully reserve my right to alter my support.

# EXHIBIT 1



STATE	% Total Loss Threshold	LINK TO CODE
ALABAMA	75%	<a href="http://law.justia.com/codes/alabama/2013/title-32/chapter-8/section-32-8-87/">http://law.justia.com/codes/alabama/2013/title-32/chapter-8/section-32-8-87/</a>
ALASKA	CARRIER DETERMINATION	NONE Title affixed with junked code (J) following total loss determination.
ARIZONA	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/arizona/2013/title-28/section-28-2091/">http://law.justia.com/codes/arizona/2013/title-28/section-28-2091/</a>
ARKANSAS	70%	<a href="http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/mv2007_8.pdf">http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/mv2007_8.pdf</a>
CALIFORNIA	CARRIER DETERMINATION	<a href="http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH&amp;sectionNum=11515">http://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH&amp;sectionNum=11515</a>
COLORADO	100%	<a href="http://www.colorado.gov/cs/Satellite/Revenue-MV/RMV/1186648383344">http://www.colorado.gov/cs/Satellite/Revenue-MV/RMV/1186648383344</a>
CONNECTICUT	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/connecticut/2012/title-38a/chapter-700/section-38a-353/">http://law.justia.com/codes/connecticut/2012/title-38a/chapter-700/section-38a-353/</a>
DELAWARE	CARRIER DETERMINATION	<a href="http://www.dmv.de.gov/services/vehicle_services/titles/ve_title_salvage.shtml">http://www.dmv.de.gov/services/vehicle_services/titles/ve_title_salvage.shtml</a>
FLORIDA	80%	<a href="http://law.justia.com/codes/florida/2013/title-xxiii/chapter-319/section-319.30/">http://law.justia.com/codes/florida/2013/title-xxiii/chapter-319/section-319.30/</a>
GEORGIA	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/georgia/2010/title-40/chapter-3/article-1/40-3-2/">http://law.justia.com/codes/georgia/2010/title-40/chapter-3/article-1/40-3-2/</a>
HAWAII	CARRIER DETERMINATION	<a href="http://www.capitol.hawaii.gov/hrs2013/Vol05_Ch0261-0319/HRS0286/HRS_0286-0048.HTM">http://www.capitol.hawaii.gov/hrs2013/Vol05_Ch0261-0319/HRS0286/HRS_0286-0048.HTM</a>
IDAHO	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/idaho/2013/title-49/chapter-1/section-49-123/">http://law.justia.com/codes/idaho/2013/title-49/chapter-1/section-49-123/</a>
ILLINOIS	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/illinois/2013/chapter-625/act-625-ilcs-5/chapter-3/">http://law.justia.com/codes/illinois/2013/chapter-625/act-625-ilcs-5/chapter-3/</a>
INDIANA	70%	<a href="http://law.justia.com/codes/indiana/2013/title-9/article-22/chapter-3/">http://law.justia.com/codes/indiana/2013/title-9/article-22/chapter-3/</a>
IOWA	50%	<a href="http://law.justia.com/codes/iowa/2013/titleviii/subtitle2/chapter321/321-52/">http://law.justia.com/codes/iowa/2013/titleviii/subtitle2/chapter321/321-52/</a>
KANSAS	75%	<a href="http://law.justia.com/codes/kansas/2012/chapter8/article1/section8-197/">http://law.justia.com/codes/kansas/2012/chapter8/article1/section8-197/</a>
KENTUCKY	75%	<a href="http://law.justia.com/codes/kentucky/2012/chapter-186a/186a.520/">http://law.justia.com/codes/kentucky/2012/chapter-186a/186a.520/</a>
LOUISIANA	75%	<a href="http://law.justia.com/codes/louisiana/2012/rs/title32/rs32-702/">http://law.justia.com/codes/louisiana/2012/rs/title32/rs32-702/</a>
MAINE	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/maine/2013/title-29-a/chapter-7/section-667/">http://law.justia.com/codes/maine/2013/title-29-a/chapter-7/section-667/</a>
MARYLAND	75%	<a href="http://mgaleg.maryland.gov/webmg/frmStatutesText.aspx?article=gtr&amp;section=11-152&amp;ext=html&amp;session">http://mgaleg.maryland.gov/webmg/frmStatutesText.aspx?article=gtr&amp;section=11-152&amp;ext=html&amp;session</a>
MASSACHUSETTS	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/massachusetts/2012/parti/titlexiv/chapter90d/section1/">http://law.justia.com/codes/massachusetts/2012/parti/titlexiv/chapter90d/section1/</a>
MICHIGAN	75%	<a href="http://law.justia.com/codes/michigan/2012/chapter257/act300of1949/300-1949-ii/section257-217c/">http://law.justia.com/codes/michigan/2012/chapter257/act300of1949/300-1949-ii/section257-217c/</a>
MINNESOTA	80%	<a href="http://law.justia.com/codes/minnesota/2013/chapters-160-174a/chapter-168a/section-168a.151/">http://law.justia.com/codes/minnesota/2013/chapters-160-174a/chapter-168a/section-168a.151/</a>
MISSISSIPPI	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/mississippi/2013/title-63/chapter-21/section-63-21-33/">http://law.justia.com/codes/mississippi/2013/title-63/chapter-21/section-63-21-33/</a>
MISSOURI	80%	<a href="http://law.justia.com/codes/missouri/2013/title-xix/chapter-301/section-301.010/">http://law.justia.com/codes/missouri/2013/title-xix/chapter-301/section-301.010/</a>
MONTANA	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/montana/2013/title-61/chapter-3/part-2/section-61-3-211/">http://law.justia.com/codes/montana/2013/title-61/chapter-3/part-2/section-61-3-211/</a>
NEBRASKA	75%	<a href="http://law.justia.com/codes/nebraska/2013/chapter-60/statute-60-171/">http://law.justia.com/codes/nebraska/2013/chapter-60/statute-60-171/</a>
NEVADA	65%	<a href="http://law.justia.com/codes/nevada/2013/chapter-487/statute-487.790/">http://law.justia.com/codes/nevada/2013/chapter-487/statute-487.790/</a>
NEW HAMPSHIRE	75%	<a href="http://law.justia.com/codes/new-hampshire/2013/title-xxi/chapter-261/section-261-22/">http://law.justia.com/codes/new-hampshire/2013/title-xxi/chapter-261/section-261-22/</a>
NEW JERSEY	CARRIER DETERMINATION	<a href="http://www.state.nj.us/mvcbiz/Abandoned/WhatsSalvage.htm">http://www.state.nj.us/mvcbiz/Abandoned/WhatsSalvage.htm</a>
NEW MEXICO	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/new-mexico/2013/chapter-66/article-1/section-66-1-4.16/">http://law.justia.com/codes/new-mexico/2013/chapter-66/article-1/section-66-1-4.16/</a>
NEW YORK	75%	<a href="http://dmv.ny.gov/node/2087">http://dmv.ny.gov/node/2087</a>
NORTH CAROLINA	75%	<a href="http://law.justia.com/codes/north-carolina/2012/chapter-20/article-3/section-20-71.3/">http://law.justia.com/codes/north-carolina/2012/chapter-20/article-3/section-20-71.3/</a>
NORTH DAKOTA	75%	<a href="http://law.justia.com/codes/north-dakota/2013/title-39/chapter-39-05/">http://law.justia.com/codes/north-dakota/2013/title-39/chapter-39-05/</a>
OHIO	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/ohio/2013/title-45/chapter-4505/section-4505.11-2/">http://law.justia.com/codes/ohio/2013/title-45/chapter-4505/section-4505.11-2/</a>
OKLAHOMA	60%	<a href="http://www.oscn.net/applications/oscn/deliverdocument.asp?id=83046&amp;hits=">http://www.oscn.net/applications/oscn/deliverdocument.asp?id=83046&amp;hits=</a>
OREGON	80%	<a href="https://www.oregonlaws.org/ors/801.527">https://www.oregonlaws.org/ors/801.527</a>
PENNSYLVANIA	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/pennsylvania/2012/title-75/chapter-11/section-1165/">http://law.justia.com/codes/pennsylvania/2012/title-75/chapter-11/section-1165/</a>
RHODE ISLAND	CARRIER DETERMINATION	<a href="http://www.dmv.ri.gov/registrations/titles/index.php#3">http://www.dmv.ri.gov/registrations/titles/index.php#3</a>
SOUTH CAROLINA	75%	<a href="http://www.scstatehouse.gov/code/t56c019.php">http://www.scstatehouse.gov/code/t56c019.php</a>
SOUTH DAKOTA	CARRIER DETERMINATION	<a href="http://legis.sd.gov/statutes/DisplayStatute.aspx?Type=Statute&amp;Statute=32-3-51.19">http://legis.sd.gov/statutes/DisplayStatute.aspx?Type=Statute&amp;Statute=32-3-51.19</a>
TENNESSEE	75%	<a href="http://law.justia.com/codes/tennessee/2010/title-55/chapter-3/part-2/55-3-211/">http://law.justia.com/codes/tennessee/2010/title-55/chapter-3/part-2/55-3-211/</a>
TEXAS	100%	<a href="http://law.justia.com/codes/texas/2011/transportation-code/title-7/subtitle-a/chapter-501/">http://law.justia.com/codes/texas/2011/transportation-code/title-7/subtitle-a/chapter-501/</a>
UTAH	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/utah/2012/title-41/article-1a/section-1005/">http://law.justia.com/codes/utah/2012/title-41/article-1a/section-1005/</a>
VERMONT	CARRIER DETERMINATION	<a href="http://law.justia.com/codes/vermont/2012/title23/chapter21/section2001/">http://law.justia.com/codes/vermont/2012/title23/chapter21/section2001/</a>
VIRGINIA	75%	<a href="http://law.justia.com/codes/virginia/2013/title-46.2/chapter-16/section-46.2-1603/">http://law.justia.com/codes/virginia/2013/title-46.2/chapter-16/section-46.2-1603/</a>
WASHINGTON	CARRIER DETERMINATION	<a href="http://apps.leg.wa.gov/rcw/default.aspx?cite=46.04.514">http://apps.leg.wa.gov/rcw/default.aspx?cite=46.04.514</a>
WEST VIRGINIA	75%	<a href="http://law.justia.com/codes/west-virginia/2012/chapter17a/article4/17a-4-10/">http://law.justia.com/codes/west-virginia/2012/chapter17a/article4/17a-4-10/</a>
WISCONSIN	70%	<a href="http://law.justia.com/codes/wisconsin/2012/chapter-342/section-342.065/">http://law.justia.com/codes/wisconsin/2012/chapter-342/section-342.065/</a>
WYOMING	75%	<a href="http://law.justia.com/codes/wyoming/2013/title-31/chapter-2/article-1/section-31-2-106/">http://law.justia.com/codes/wyoming/2013/title-31/chapter-2/article-1/section-31-2-106/</a>