

**MINUTES OF THE
SENATE COMMITTEE ON ENERGY, INFRASTRUCTURE AND
TRANSPORTATION**

**Seventy-fifth Session
May 6, 2009**

The Senate Committee on Energy, Infrastructure and Transportation was called to order by Chair Michael A. Schneider at 8:22 a.m. on Wednesday, May 6, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Chair
Senator Maggie Carlton, Vice Chair
Senator John J. Lee
Senator Shirley A. Breeden
Senator Randolph Townsend
Senator Barbara K. Cegavske
Senator Dennis Nolan

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Carpenter, Assembly District No. 33
Assemblyman Mo Denis, Assembly District No. 28
Assemblyman James Ohrenschall, Assembly District No. 12
Assemblywoman Ellen B. Spiegel, Assembly District No. 21

STAFF MEMBERS PRESENT:

Matt Nichols, Committee Counsel
Scott Young, Committee Policy Analyst
Sandra Hudgens, Committee Secretary

OTHERS PRESENT:

Jon L. Sasser, Esq., Statewide Advocacy Coordinator, Washoe Legal Services
Dan L. Wulz, Legal Aid Center of Southern Nevada, Inc.

Senate Committee on Energy, Infrastructure and Transportation
May 6, 2009
Page 2

John P. Sande III, Nevada Franchised Auto Dealers Association
Jack Stanko, President, Champion Chevrolet
Wayne A. Frediani, Executive Director, Nevada Franchised Auto Dealers Association
Troy Dillard, Administrator, Division of Compliance Enforcement, Department of Motor Vehicles
Dawn Lietz, Motor Carrier Division, Department of Motor Vehicles
John C. Sagebiel, Ph.D., LEED AP, Environmental Affairs Manager, University of Nevada, Reno
Martha Barnes, Administrator, Division of Central Services and Records, Department of Motor Vehicles
Sean Gamble, United Road Towing, Inc.; Nevada Motor Transport
Joe Braverman, Western Regional Manager, United Road Towing, Inc.
Andy MacKay, Chairman, Nevada Transportation Authority, Department of Business and Industry
Robert Compan, Farmers Insurance Group

CHAIR SCHNEIDER:

Public radio had a story about traffic congestion on the freeways. Since the recession, the number of cars on the freeways has dropped by 10 to 20 percent. People's commute time in California went from 1 1/2 hours to 40 minutes.

We are removing Senate Bill (S.B.) 331 off the agenda until further notice. We will open the hearing on Assembly Bill (A.B.) 290.

SENATE BILL 331 (1st Reprint): Provides a partial abatement of property taxes and certain sales and use taxes imposed on facilities that use solar or wind energy to generate electricity or process heat. (BDR 58-289)

ASSEMBLY BILL 290 (1st Reprint): Makes various changes relating to the sale of used vehicles. (BDR 43-917)

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 21):

My written testimony is available to this Committee ([Exhibit C](#)). I would like to enter into the record testimony sent to you by the Office of the Attorney General ([Exhibit D](#)).

Senate Committee on Energy, Infrastructure and Transportation
May 6, 2009
Page 3

SENATOR TOWNSEND:

Could you give us some indication of the problem we are trying to address with A.B. 290?

ASSEMBLYWOMAN SPIEGEL:

Many times when people purchase cars something goes wrong a day or two afterwards, like the radiator falls out, or there is a transmission problem or something happens rendering a car inoperable. There is an expectation the dealer who is selling the car knows there is a problem. This bill addresses just the 15 days and 500 miles. It is not a very large warranty.

SENATOR TOWNSEND:

I understand that. Do we have figures? What is the underlying pandemic happening that this bill needs to address?

JON L. SASSER, ESQ. (Statewide Advocacy Coordinator, Washoe Legal Services):

This is a regular reoccurring problem in the Washoe Legal Services I represent. About four folks a week complain about having purchased a car with problems occurring almost immediately. This bill guarantees the vehicle will travel at least 500 miles or 15 days or the dealer shall repair it. There was a law adopted 10 years ago that applies to cars with 75,000 miles or more. This bill will change the law to apply to newer cars. This bill excludes cars that are under the manufacturer's warranty. Some cars today have warranties that go up to 100,000 miles that should lessen the burden on the dealers. It would apply to those cars that are not under manufacturer's warranty and should run for at least that minimum period.

SENATOR TOWNSEND:

Are you averaging four of these complaints a week?

MR. SASSER:

That is only the Washoe Legal Services, that does not include the Washoe County Senior Law Project or the Las Vegas area.

SENATOR TOWNSEND:

Is this a recent phenomenon? How long has this been ongoing?

MR. SASSER:

I cannot testify to the statistics. There was an attempt to fix it ten years ago, which took care of part of the problem. We need to finish the job.

SENATOR TOWNSEND:

Of those 16 complaints per month, how many complaints were from new-car franchised dealers as opposed to used-car dealers?

MR. SASSER:

The majority were from used-car dealers. Occasionally we have complaints from new-car franchised dealers.

SENATOR TOWNSEND:

At what point do you think the responsibility is with the buyer? A person buying a used car from a franchised dealer has the option of having their own mechanic review and inspect the vehicle before it is purchased. What is the difference from the way it is currently done, which is putting a sign in the window that says "as is" with no responsibility by the consumer?

MR. SASSER:

That is wise to have their own mechanic inspect the vehicle. Our Websites, both Washoe Legal Services and the Legal Aid Center of Southern Nevada, have tips for buying cars. One of the tips we give the consumer is to take the car to be checked by their mechanic. Many low-income consumers do not have mechanics they have been using regularly, and many cannot afford the cost of such an inspection. The consumer should do all they can to check out the condition of the car and a savvy consumer would do that. Many of the consumers we see are not savvy.

SENATOR TOWNSEND:

Why is this different from buying a used refrigerator or television from a secondhand store or a pawnshop? Why would this not apply to that? Are you saying the only problems you get are with automobiles?

MR. SASSER:

I am not saying automobiles are the only problems we get; I am saying automobiles are predominately the ones. The automobile, after a home, is one of the most important items a consumer buys. People rely on an automobile to

get back and forth to their jobs. They are essential to life. That is the distinction.

SENATOR TOWNSEND:

Have you discussed what additional cost this will have on the industry when they have to insure the vehicle for the 15 days or 500 miles; thereby adding cost to the consumer?

ASSEMBLYWOMAN SPIEGEL:

I have had discussions about that. One of the issues not covered in those discussions is the differentiation within the *Kelley Blue Book* of the value of a private-party car which they say is sold "as is." The private-party price from the *Kelley Blue Book* is an "as is" price. The dealer's price includes the dealer's cost. This can be found on < www.kbb.com > . When you buy a vehicle from a dealer, you are assuming the dealer, as a professional, has looked at the vehicle, examined it and took it for a test drive because this has been included in the *Kelley Blue Book* price. Everything the dealer has done to that vehicle is figured in the price.

SENATOR TOWNSEND:

Speaking from experience, *Kelley Blue Book* has no relationship to anything. It is merely a guide to start a discussion. The acquisition price by a used-car or new-car franchised dealer who buys a used car is whatever it is. The economy states that value is only worth what someone is willing to pay for it. Are you saying that private-party salespeople are more trustworthy or are you saying this bill should apply to them, also?

ASSEMBLYWOMAN SPIEGEL:

The consumer uses *Kelley Blue Book* as a tool when they buy a car, because it is intimidating to buy a car. There is an implied warranty when people buy a car from a dealer of merchantability and expectation of a baseline. This is from a consumer's perspective. When going through a private party, people assume there is more risk involved because there is not a professional involved. I assume the best cars go to the franchised car dealers, and the next ones down go to the used-car lots, and the leftovers go to the auctions. There is a perception the car dealers get the best inventory and they have mechanics to look at the cars. That is why consumers buy from dealers. People who buy from private parties expect to pay a lot less, knowing the risk.

SENATOR TOWNSEND:

I can only speak about new-car franchise people who sell pre-owned cars. When they purchase a car as a trade-in, buy it from an individual or purchase it from an auction, they drive the car, inspect the car and put a purchase price on it before they send it to the used-car department which then places a value on it before putting it on the lot. The vehicle has been inspected, but they do not know what is going to happen to it once it leaves the lot. The manufacturer stands behind new cars. This bill is saying you should know that the car is going to be functional for 15 days. How can you do that without driving the price up? You would have to put an insurance policy on it.

On the 14th day, according to your bill, a person can come back to the dealer and say, "You have to fix it." There is a cost associated with the repair. According to the bill, the purchaser must pay half the cost of the first two repairs that are necessary, but not more than \$25. That means the vast majority of any repairs are going to cost the dealer. The dealer would have to have insurance to cover that. In the bill, you have 30 days to give notice to the dealer. That means, 44 days after the sale of the vehicle, the dealer does not know what the repair cost could be. On page 4, the purchaser may return the used vehicle in no later than five business days and be refunded the price of the vehicle. Meanwhile, the vehicle has been under a contract, which has been sold to a financial institution, and finance needs to be reversed, which adds significant cost to the sale of the pre-owned vehicle. That has been my concern over the last 30 years, every time someone brings in a bill. People are going to be priced out of the market at some point. That is a legitimate concern based on my experience in this industry. There are many things on the books, including *Nevada Revised Statutes* (NRS) 597 and NRS 598, to protect the consumer. You made a statement with regard to this bill helping the industry. There is only one thing that is going to help this industry and that is liquidity. That has nothing to do with what the State does; that has to do with financial institutions and the federal government. If you want to help the industry, there may be other things that can be done. This is not one of them. And if you put the industry aside, and you want to help consumers, this bill will drive the cost up. If I were running the store again, I would have to add to the cost of the vehicle.

SENATOR CEGAVSKE:

Does this bill apply just to used-car lots? Does this bill pertain to private individuals who sell a vehicle? The used-car dealer has no idea what a person is

going to do to that vehicle when it leaves his lot. How does this bill protect the car dealer when something happens to the car after it leaves the lot?

ASSEMBLYWOMAN SPIEGEL:

It does not apply to private-party sales. It applies to used-car lots and new-car franchise dealers who sell used cars.

SENATOR CEGAVSKE:

What about car-rental sales?

ASSEMBLYWOMAN SPIEGEL:

They sell cars in their used-car lot division.

SENATOR CEGAVSKE:

Are car rentals included in this bill?

ASSEMBLYWOMAN SPIEGEL:

Yes, the ones that are sold as used cars. After having washed our car to turn it in to a used-car lot, we were told it had nothing to do with the value of the car. The dealership informed us it was their job to test drive and inspect it to determine its worth. It was their job to find out what was wrong with the car and decide how much to pay for it. The car dealer is the expert at assessing everything and determining for how much they will be able to sell it.

SENATOR CEGAVSKE:

What is the guarantee, for the dealership, that the consumer did not do something to render the automobile defective once it leaves the lot? Would this bill result in car dealerships to stop selling used cars? That would hurt the consumer.

ASSEMBLYWOMAN SPIEGEL:

We are talking about 15 days. No consumer is going to purposely harm the vehicle within the first two weeks, and then bring it back. If it is in an accident, with body work, it is outside the scope of this bill. This is just for the operation of the vehicle. There are some protections in the bill.

SENATOR CEGAVSKE:

What if someone is messing with the engine, or if something happens to it afterwards; how is that covered in this bill?

MR. SASSER:

If you look at section 5, subsection 1, paragraph (b) the warranty applies if the damage:

Is not the result of any damage that occurs after the sale of the used vehicle, including, without limitation, damage resulting from off-road use, racing, towing, abuse, misuse, neglect, failure to perform ordinary maintenance ...

SENATOR CEGAVSKE:

I wanted to make sure that was covered. Could this bill affect dealers not wanting to sell used vehicles?

ASSEMBLYWOMAN SPIEGEL:

I cannot answer that question. There is 30- to 50-percent profit in the sale of used cars. If this bill would result in the loss of more than 30- to 50-percent profit margin, that would have an impact. It might not cost that much.

SENATOR CEGAVSKE:

Do you think the profit they make on used cars is between 30 to 50 percent?

ASSEMBLYWOMAN SPIEGEL:

I read this in an article. I can send it to you. It talks about a markup on cars in order to allow negotiations on the price.

MR. SASSER:

You have my written testimony in front of you ([Exhibit E](#)). Under current law, a dealer is required to inspect a vehicle with over 75,000 miles, and disclose the defects to the consumer. There is no such obligation for vehicles with under 75,000 miles. Dealerships are already doing it for this one class of vehicles. The bill extends the same duty to a second class of vehicles. Is that going to cost something extra? If they were not doing it today, it would cost something extra. Reputable dealers are doing it already, therefore it does not cost anything more. The inspection is not always going to reveal every defect. There are going to be some cars manifesting problems within the 15 days, in spite of the good-faith inspection. Who should assume the risk? Is it fair for the consumer to be unlucky to stumble across a bad car, or should the cost be spread out to all consumers? I have not heard how this law has affected the dealerships in New Mexico. The implied warranty of merchantability may not be waived for any used vehicle for 15 days or 500 miles. This is a mechanism for the

consumer to bring that car back and have it repaired. Then, if the repairs do not work, the deal can be rescinded.

This bill also changes some of our present laws in terms of the Department of Motor Vehicles (DMV) and what they do to investigate complaints. This bill takes out the special provision we already had for cars over 75,000 miles, and a warranty we would give them if there were 3 strikes resulting in unresolved complaints. It treats these complaints like any other complaints that come to DMV with the same penalties. As a result of the reduction of paperwork that we put into the bill to DMV, there is no fiscal note DMV is asking at this time.

DAN L. WULZ (Legal Aid Center of Southern Nevada, Inc.):

I have submitted written testimony ([Exhibit F](#)). Even if a consumer purchases a service contract with the sale of the used car, most of them contain exclusions for defects or conditions existing at the time of the sale. When a vehicle breaks down soon after the sale, a dispute develops in that regard, and the consumer can find themselves with no recourse when the car is sold "as is." Assembly Bill 290 would fill that gap for 15 days or 500 miles. That is a modest change to provide modest protection to the purchaser of a used car. It is not radical to expect a car to run 15 days or 500 miles. At the Legal Aid Center, we do not track the type of consumer complaints which the proposed legislation would address. We cannot help those consumers. We have a consumer hotline where we receive five or six complaints per month from consumers stating their vehicle broke down shortly after their purchase. Attached to my written testimony is an example of a complaint, [Exhibit F](#). A client reporting a household income of \$1,300 per month paid a \$2,000 down payment for a used car with a balance of \$4,900 plus a \$399 document fee. Within 6 days and 388 miles the vehicle experienced problems costing over \$300 worth of repairs. He could only afford \$75 for a belt to do an emergency repair.

We do not expect a huge quantity of cars that will need to be repaired by car dealers. It affects the quality of someone's life when they purchase a vehicle, which is the second most important purchase. People are dependent on vehicles.

CHAIR SCHNEIDER:

Looking at your exhibit that shows 29-percent interest; we should be going after 2 different industries with this bill. The new-car franchises sell the trade-in vehicles to the used-car dealers, who are the ones charging the 29 percent.

They are in the finance business, not the car business. They will repossess the vehicle if the payments are not made, and resell the car. We are only going after the abusers.

MR. SASSER:

That is why we put into the bill that it does not apply to cars still under the manufacturer's warranty. We believe it will have a minor impact. I do not see how you can make this bill apply only to certain dealerships. It should not have an impact on the franchise dealerships.

MR. WULZ:

We have not tracked the specific facts of each of the cases; therefore, we do not know which dealerships are responsible. I am not sure we could write the bill to address one kind of dealer.

SENATOR CEGAVSKE:

I want to know which dealerships are responsible. Are the complaints from the same dealerships? Is it the same salesman or the same owner? We need to protect the consumer, but we need to know how far we can go.

ASSEMBLYWOMAN SPIEGEL:

I made a chart to pictorially illustrate what period we are talking about when it comes to cars ([Exhibit G](#)). I have shown increments of every 10,000 miles. Most cars come with 3-year, 36,000-mile warranties. That period is excluded from the bill. There are other cars sold with warranties up to 50,000 miles, those cars would be excluded, and anything over 75,000 miles is already covered. We are only talking about 15 days and 500 miles. It is not a lot of time and not a lot of miles, but it is a lot of protection. It removes angst from consumers going through the purchase process.

JOHN P. SANDE, III (Nevada Franchised Auto Dealers Association):

Under current law, the dealer is required to inspect the vehicle and disclose in writing any problems with the drivetrain or with the engine to the purchaser. The Uniform Commercial Code (UCC) is what we look at from a legal standpoint as far as implied warranties. The UCC applies to all sales. It says there is an implied warranty of merchantability in any sale of tangible personal property, unless it is sold "as is," and is disclosed clearly to the purchaser as such.

If the seller knows there is a defect, it is a fraudulent sale and it is covered under existing law. What is a deficiency that significantly limits the use of the used vehicle on any public highway? How do you prove that? How would a dealer know when someone says they have a problem with the vehicle if it had been used for off-road use, racing, towing, abuse or misuse? How would you know that? There is bound to be litigation. The bill says in 15 days or 500 miles, but it gives the purchaser an additional 30 days to come in to say they have a problem. It does not make sense for someone to come in 45 days later saying it happened 30 days ago, within 500 miles, when there are 2,000 more miles on the vehicle. It could happen after the 15th day, and the dealer would not know that. That is the problem I have with the bill. With Chrysler and General Motors (GM) going bankrupt, sales in Nevada are the worst in the country, even worse than in New Mexico. Dealers are having problems and some are going out of business.

SENATOR CARLTON:

Would you agree there is an expectation from the consumer that the car being negotiated has been looked at and evaluated?

MR. SANDE:

Yes. I believe the dealer has inspected the vehicle.

SENATOR CARLTON:

You would agree with that?

MR. SANDE:

I do not agree a used car would be under warranty for a certain length of time.

SENATOR CARLTON:

Would you agree you could drive it off the lot and not have it fall apart at the next intersection?

MR. SANDE:

Yes, I would assume it would not fall apart.

SENATOR CARLTON:

Would you assume there is some type of professional responsibility making sure when the person takes that car that it is drivable and safe?

MR. SANDE:

If I purchased a used car that said "as is," I would assume I had the responsibility if there was a problem. I would assume the dealer would have inspected the car and if there were any problems, they would tell me. I would have that responsibility in any property that I purchased.

SENATOR CARLTON:

When you put "as is" on a contract, is the explanation to the customer in large print? Does the consumer really understand what "as is" means?

MR. SANDE:

Under the UCC it states ...

SENATOR CARLTON:

Do you explain to the consumer what it means when they sign the contract?

MR. SANDE:

The UCC requires you to make it clear to the purchaser that they are buying the car without any warranty. That is how it is described. That is a question of fact. If there were any complaints, the question would be whether or not the customer was adequately advised that there were no warranties.

SENATOR CARLTON:

Is that put on the contract?

MR. SANDE:

I will leave that up to Mr. Stanko.

SENATOR CARLTON:

I did not see that on the contract, [Exhibit F](#).

SENATOR LEE:

Is there a bridge for the option of paying an additional fee for the mechanic to check the vehicle before deciding to buy it? Is there a gray area that would solve the problem?

MR. SANDE:

Our industry would be interested in something like that. How would you write it into the statute and how would you disclose it?

SENATOR LEE:

While you are doing your best, the customer can know what the problem is and it will be their problem on an "as is" vehicle. It would be good faith on your part and one more level of security for the buyer. I am trying to find a happy medium.

JACK STANKO (President, Champion Chevrolet):

On every used vehicle we sell, and every dealer sells, we do a 100-point safety inspection on it. The DMV monitors that by checking our files. If the vehicle has 75,000 miles or more on it, a copy of the safety inspection is given to the customer indicating any problems. The problems are explained to the customer, and they are told the assessed lifetime of the vehicle. There are over 6,000 moving parts in a car or truck that will break down at times, and that is why the manufacturer has a new-car warranty. We have a service department and a large parts department to take care of them.

There is a certified used-car program offered to all franchised dealers throughout the country by manufacturers of all makes. That program comes with an automatic warranty on the power transmission. The dealer pays \$399 for this program, which is added to the cost of the car. This program certifies vehicles back seven model years. If a customer buys a certified used car, they have a warranty up to 3 years and 36,000 miles, and 5 years and 100,000 miles. Most of the used cars are protected. The problem starts with cars in excess of 100,000 miles, and customers are strictly looking for a transportation car for \$5,000 or \$6,000. We give them a 75,000-mile inspection, and they are aware of the condition of the car when they take it. We cannot predict that 100,000-mile vehicle will last 1, 2 or 3 weeks.

After we have already financed and obtained a dealer's report of sale and taxes have been paid on a used car, there is a problem if the car has been out 45 days, and it is returned. There is an insurance liability which will occur if this bill is passed. Who has insurance on it if it is in an accident? Who is responsible? It becomes a major problem.

On the face of our buyer's order, there is a spot where the customer signs "as is." It says, "I understand that I am buying this vehicle 'as is,' and there is no guarantee with it, on any present or future defects." They sign it. They sign an information sheet that goes with it, explaining the same thing. They sign twice, and they are aware of it. We have few problems. I believe I am hearing four to five complaints a week, statewide. There are 150,000 used vehicles sold in one year in this State. You are talking about a very small problem. I have never seen an "as is" section in a *Kelley Blue Book*. It only says, auction value good, auction value fair, wholesale lending value and suggested retail; those are the four categories in there. This bill would cause customers to pay more money for a transportation car. It would hurt the same people you are trying to help. If there is a law passed that I have to guarantee, within 45 days, if an engine or transmission goes bad, in a 100,000-mile used vehicle I sold, and I have to take care of it spending \$3,000 on it, instead of selling that car for \$5,000, I will have to sell it for \$6,995 or \$7,995. I would be taking a risk. Maybe only one out of ten cars will have a problem. We are already covered by the certified cars and the 75,000-mile checklist. This bill is not necessary.

SENATOR CEGAVSKE:

Was the 75,000-mile checklist repealed in A.B. 290?

MR. SANDE:

Yes, it repeals certain warranties in NRS 482.36663. If a dealer has been found guilty of 3 violations of not giving notice to the customer on a 75,000 mile or more vehicle, and did not inspect it, nor disclose any defects to the customer, then you have to give a written warranty. That is what would be repealed.

SENATOR CEGAVSKE:

That is what I wanted clarified.

WAYNE A. FREDIANI (Executive Director, Nevada Franchised Auto Dealers Association):

The auto industry is experiencing a drastic turmoil in these economic times. I have served on an auto task force for the national association. Chrysler entered bankruptcy last week and GM has until June 1, 2009, to determine what they will do. There will be an elimination of 3,500 dealerships across the Country between Chrysler and GM. The sales-tax revenue has been low in Nevada over the past 16 months. In Clark County for the first 4 months this year, new sales were off 53 percent from a year ago, which was off 20 to

25 percent the year before that. Business is tough, and we will lose some dealerships in this State. This industry is now heavily regulated and is going through severe times. We need to know who are the problems necessitating this bill, where are the problems and to what degree. Most of these cars are being sold off transportation lots and used-car lots throughout the State. In terms of sales, it is a minute problem compared to the total number of sales. We still need to be protecting consumers' safety.

CHAIR SCHNEIDER:

What type of financing do you have on your average car? What does the consumer pay?

MR. FREDIANI:

It depends on his credit history and the amount of money put down on the vehicle. Financing is tight right now, even with people with good credit. The interest rate is usually zero percent on new vehicles from the factories. General Motors Acceptance Credit and the credit unions finance used vehicles. They set the parameters at low rates and are competitive.

CHAIR SCHNEIDER:

Are they financing in the 6- to 7-percent range?

MR. FREDIANI:

Yes, and sometimes 14 to 15 percent, depending on the customer. The dealer does not have control over that. It is different for dealerships that do their own financing.

CHAIR SCHNEIDER:

Are you talking about the dealerships that charge 29 percent?

MR. FREDIANI:

Yes. We do not do that.

CHAIR SCHNEIDER:

These are the dealers who are selling vehicles on the lower-end lots for \$3,000 to \$5,000. Are those the vehicles that you wholesale out? Do you not keep a vehicle on a trade-in, if it is a 13-year old car?

MR. FREDIANI:

We will wholesale it unless it is an exceptional car. If it is, we will road test it, do a safety check on it and make sure it is safe before we retail it. We safety check all used cars except the ones we wholesale out to the used-car lot. It is their responsibility to do the safety checks.

TROY DILLARD (Administrator, Division of Compliance Enforcement, Department of Motor Vehicles):

The DMV has a neutral position on A.B. 290. The first revised edition does eliminate the need for a fiscal note that was initially submitted in the first draft. The short-term lessors and the leasing companies hold dealer's licenses. They would be covered under the requirement, as a dealer, to sell leased vehicles if this bill were to pass.

SENATOR CEGAVSKE:

Do you mean the rental cars?

MR. DILLARD:

Yes, I mean the rental cars. According to the interpretation of the enforcement agency of the DMV, all used vehicles will require the inspection sheet, currently only required for vehicles that are 75,000 miles and over. If any defects are noted on that sheet, regardless of the mileage of that vehicle, the vehicle would be excluded from any requirement of the warranty that would be included with this. If you were to disclose that the vehicle has a slipping transmission, in spite of the fact the vehicle only has 50,000 miles, and it is no longer under a manufacturer's warranty, that slipping transmission would not be covered under the warranty that would be required under this bill.

CHAIR SCHNEIDER:

If you had a history of selling vehicles with problems, and if you were using a credit union, would not the credit union cut you off?

Mr. STANKO:

Yes. There is a federal law termed "holder in due course." The lender can come back to you and say, "Hey, every contract you're sending me, there's a problem with the vehicle." You would have to take care of it.

SENATOR CEGAVSKE:

Is DMV getting these complaints?

MR. DILLARD:

Yes, we do get complaints, and we must then determine if the contract is written as an "as is" and if it is less than 75,000 miles. There is no ability for us to regulate anything over 75,000 miles. It becomes a contractual issue. If there were a violation, it would become civil law. If the vehicle had over 75,000 miles, we start an investigation to ensure the inspection was completed as required, and the disclosures were made, if there were any disclosures. If we find they fail to make inspection sheets on those vehicles after three times within a two-year period, they would have to apply the required warranties, based upon the mileage that is listed in the statutes. The fourth time is when we would be able to sanction them. This bill does away with that, and treats it like any other administrative violation. They would be fined for a first-offense violation.

SENATOR CEGAUSKE:

Do you have a list of used-car lots that are in violation? How many do you get a year?

MR. DILLARD:

The 4-strike rule would only apply to vehicles that were sold at 75,000 miles and higher. That tends to be the localized used-car lots, because those are the vehicles they tend to sell. We have had no dealerships reach the four strikes. It means two strikes are the most we have ever had in the two-year time frame. We have never had to implement that.

SENATOR CEGAUSKE:

Are they aware they are in trouble and are being watched if they received two more? Would they then be sanctioned with a penalty? Do you keep a record, and can you tell us the names of those dealerships with which you are having a problem?

MR. DILLARD:

Yes, we have case records, and it is a matter of public record.

SENATOR CEGAUSKE:

It would help if we had a copy.

MR. DILLARD:

I will get those to you.

Senate Committee on Energy, Infrastructure and Transportation
May 6, 2009
Page 18

CHAIR SCHNEIDER:

We will close the hearing on A.B. 290. There was no opposition to Assembly Joint Resolution (A.J.R.) 10. What is your pleasure?

ASSEMBLY JOINT RESOLUTION 10: Urges Congress to enact legislation requiring the Secretary of the Interior to convey ownership of certain land to the State of Nevada for the development of projects for renewable energy. (BDR R-686)

SENATOR CEGAVSKE MOVED TO DO PASS A.J. R. 10.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

CHAIR SCHNEIDER:

Senator Lee, would you please bring A.J.R. 10 to the Senate Floor?

SENATOR LEE:

I will do that.

CHAIR SCHNEIDER:

Let us go to A.B. 455.

ASSEMBLY BILL 455: Provides for self-registration of certain motor vehicles.
(BDR 43-877)

SENATOR CEGAVSKE MOVED TO DO PASS A.B. 455.

SENATOR LEE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

CHAIR SCHNEIDER:

We will begin the work session on A.B. 372.

Senate Committee on Energy, Infrastructure and Transportation
May 6, 2009
Page 19

ASSEMBLY BILL 372: Makes various changes concerning registration of commercial motor vehicles. (BDR 43-1015)

SENATOR LEE:

Is the definition of a large motor home the same as a commercial bus?

ASSEMBLYMAN JOHN C. CARPENTER (Assembly District No. 33):

It only applies to commercial vehicles.

SENATOR LEE:

Those huge motor homes are still personal property. That is what I thought.

ASSEMBLYMAN CARPENTER:

When this bill was discussed in the Assembly, we were assured motor homes were not part of this bill.

SENATOR LEE:

If one of these vehicles is pulling a horse trailer with a heavy horse, is the weight of the horse included?

ASSEMBLYMAN CARPENTER:

You would have to ask DMV.

DAWN LIETZ (Motor Carrier Division, Department of Motor Vehicles):

Combined vehicle weight would include the weight they are hauling. They would pay for the combined weight when they register the vehicle, but they would not be penalized.

SENATOR LEE:

If you have a truck you are loading to take to the dump, would the Nevada Highway Patrol stop you and give you a citation? Would this affect the way you register your vehicle if you are not doing it all the time?

Ms. LIETZ:

That is correct. We have instances when companies haul materials with a trailer. Only if they are doing it consistently will they need to register the vehicle at the combined weight. This is all A.B. 372 does.

SENATOR CARLTON MOVED TO DO PASS A.B. 372.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR SCHNEIDER:

We will open the hearing on A.B. 441. Do we need an amendment on this bill?

[ASSEMBLY BILL 441 \(1st Reprint\)](#): Revises provisions governing transportation.
(BDR 43-840)

MATT NICHOLS (Committee Counsel):

I don't think we need an amendment at this point. But, if both bills pass through both houses, something's going to have to be done to resolve I believe the other bill is S.B. 309, Senator Nolan's bill on mopeds and motorcycles.

[SENATE BILL 309 \(1st Reprint\)](#): Makes various changes to provisions governing motor vehicles. (BDR 43-533)

SENATOR LEE:

Would my motion be to "do pass" at this time, Mr. Nichols?

MR. NICHOLS:

"Yes, you can do that at this time."

SENATOR CARLTON:

If both bills pass, who will be here to adjust it? What are the conflicts? Will these bicycles have to be registered as mopeds?

MR. NICHOLS:

Senator Schneider, the electric bicycles are not defined as mopeds in this bill. The other bill requires registration of mopeds as motor vehicles. So, the electric bicycles that are in Mr. [Assemblyman] Ohrenschild's bill would not have to be registered as mopeds, I don't believe, but there's the additional complication of the electric scooter, subclass of bikes, that's in S.B. 309, and I'm not sure how you want to resolve adding

two new classifications of sub-moped, but above bicycle-type vehicles. Something will have to be done, but I don't know what it is you want to do. So, I just offer, that it has to be dealt with at some point.

SENATOR CARLTON:

That is my point. We knew there was a conflict that may arise when we left the hearing last time. I thought it was going to be addressed within the working group or whoever was going to get together and take care of it. We do not want to leave here having done more harm than good.

CHAIR SCHNEIDER:

If S.B. 309 moved out of the Senate Floor to the Governor for his signature before the one in the Assembly, we could then deal with it. Is that true, Mr. Nichols?

MR. NICHOLS:

"Yes."

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):

Dr. John Sagebiel from the University of Nevada, Reno (UNR) will answer all of your questions.

JOHN C. SAGEBIEL Ph.D., LEED AP (Environmental Affairs Manager, University of Nevada, Reno):

There is a clear distinction between an electric bicycle and an electric scooter ([Exhibit H](#)). A bicycle is defined in A.B. 441, and an electric scooter is defined in S.B. 309. A scooter has no operable peddles, and that is the key word. An electric bicycle has to have operable peddles like a regular bicycle, allowing you to peddle without having to engage the motor. The scooter is only a motor-driven vehicle.

SENATOR LEE MOVED TO DO PASS A.B. 441.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CARLTON AND NOLAN
ABSTAINED FROM THE VOTE.)

* * * * *

SENATOR TOWNSEND:

Dr. John Sagebiel has one of the best-designed renewable-energy homes. All the materials used in the home are indigenous to the area. His home was designed before it was built, and it is a lesson in how things can be done properly. We count on people like Dr. Sagebiel to lead us. Developers need to think "outside the box" to develop these things at a reasonable price for the average consumer.

SENATOR CEGAVSKE:

Could Matt Nichols respond to the conflict?

MR. NICHOLS:

I think the wise man that came up to testify with Assemblyman Ohrenschall is correct. The principal distinction between the electric scooters and electric bicycles, aside from the name, is just the electric bicycles have to be essentially bicycles, pedal powered, at least some component of it. Whereas, the electric scooter definition that was in S.B. 309 doesn't have any such requirement for pedals. It may be enough to amend S.B. 309 to sort of merge those two definitions together so that the electric scooter ... The only problem is, to call it an electric bicycle, but it not have pedals like the vehicles we were talking about with S.B. 309 raises some issues. So, it's a matter of, I guess, the Committee determining what term you want to use to describe the vehicles we're talking about that are not bicycles but not motorcycles. But, that's just, that's really just a policy issue, what you want to call them.

CHAIR SCHNEIDER:

We will open the hearing on A.B. 333.

[ASSEMBLY BILL 333 \(1st Reprint\)](#): Revises certain provisions relating to motor vehicles. (BDR 58-835)

ASSEMBLYMAN MO DENIS (Assembly District No. 28):

Two Sessions ago, I had a constituent who wanted to get rid of a car. Rather than selling it, she gave it to a young family who needed a car. She went to the Website and to the DMV and did all the things you have to do. About 6 months later, she receives a bill in the mail for \$3,000 from a tow company. The DMV told her she was the last person on record because the people who were given the car did not register it. Four years ago, we made some changes that would allow you the opportunity to say, "I no longer own it, so, you cannot come after me." We thought that would work. About five months ago, I had another constituent call. This person was not so diligent in doing all the paperwork and everything required. This person just gave the car to somebody at church who needed a car. The new owner did not register the car and it was towed for another \$2,000. The constituent called the tow company to let them know he did not own the car anymore. It was turned over to a collection agency. The collection agency proceeded to call at all hours of the day. This person cannot afford to pay the \$2,000 and did not realize they could do an affidavit to the DMV stating the car was given away. The tow company did not have a requirement to tell him he could do that. He did not know what to do. This is why we are here with A.B. 333.

We have an amendment that we are going to make. Section 1 of the bill allows the Nevada Transportation Authority (NTA) to reduce charges. The consumer can go to the NTA to say the charges are too much. This may or may not help the individuals I have presented in this case. It will help other people. Section 2 talks about presumptions and some other issues. Section 2, subsection 3, paragraph (b) of A.B. 333 refers to the car when it is stolen, allowing a person to do the affidavit. The bill mandates the tow company to ask the person if they own it at the time when they send the notification. If they do not own it, they can fill out a bill-of-sale affidavit. The problem is an education issue. Even though the law was in effect, nobody knew about it, and the tow companies did not have an incentive to tell them. On page 5, lines 8 through 20, the DMV is given the ability to program their system to allow people to go on-line to say they no longer own the vehicle. This requires no fiscal note for the DMV because they are going to work it into their regular programming. The tow companies have to wait 96 hours before they can start charging. We have changed the days from 21 days and 15 business days to 14 days and 7 business days. The tow-car companies say the shorter time period is hard for them because it is difficult to get the data on out-of-state plates, and it takes longer. Nevada can respond quicker.

The basics with this bill provide help for the consumer. We tried to work with the Constituent Services Unit, Research Division, Legislative Counsel Bureau, on the one case, but he still had to hire an attorney to help him out. I do not know where he got the money. I think he is a photographer and paid the lawyer with photography work. The first lady could afford to pay the money but was worried about her credit. They told her they were going to ruin her credit. This bill should help the constituent as well as the tow guys. The NTA has more authority to go after the bad guys in the industry. There might be more fine tuning needed. This will get us going in the right direction.

SENATOR LEE:

On page 3, line 27 of A.B. 333, it says, "As indicated by a bill of sale for the vehicle that is signed by the registered owner;" If a car got towed, somebody could say, "Let us tell them it is your car, not mine, I will sign a quick bill of sale." Is there a bill-of-sale form? Does a notary have to notarize it? What if someone just writes out a bill of sale?

ASSEMBLYMAN DENIS:

If it was not true, they could still come after you for not being truthful. There are laws in place that would cover that.

MARTHA BARNES (Administrator, Division of Central Services and Records, Department of Motor Vehicles):

We have a bill-of-sale form on our Website. We get bills of sale on all types of paper. We try to get people to use our form, because it asks for information we need. We make it available in the office or on the Internet.

SENATOR LEE:

Should we make a notarized bill of sale a requirement?

MS. BARNES:

When the tow companies ask us for the owner of the vehicle, we provide them with the last registered owner. If that vehicle has been given away or sold, and the previous owner has provided us with that information, we can give the information to the tow company.

SENATOR LEE:

If someone gives a car with a bill of sale, but did not go through the DMV process, will they still be responsible? Are they still responsible if the bill of sale is not notarized or if the bill of sale was not dated previously to the sale?

MS. BARNES:

We have to have the information in our system to be able to provide it to the tow companies. If the new owner has not gone through the registration process, we would not have that information. We are relying on the customer who has sold or donated the vehicle to provide the transfer of ownership to us in order for us to give that information to the tow companies.

ASSEMBLYMAN DENIS:

There are still some things we need to look at. We need to mandate that the new owner register the vehicle. There are some issues we need to look at.

SENATOR LEE:

If you had a notarized bill of sale, the tow company would still go back to the person on record. The intent is good.

SEAN GAMBLE (United Road Towing, Inc.; United Motor Transport):

We are in full support of A.B. 333. The towing companies want to find the easiest way to locate the owners of the vehicles. The only issue we have is the 14 days and the 7 business days. We would like to see the language go back to the original 21 days and 15 business days.

JOE BRAVERMAN (Western Regional Manager, United Road Towing, Inc.):

We are the only national towing company in America and the largest towing company as well. We will take care of the constituent problem. We have issues on section 3, subsection 1, paragraph (a) of A.B. 333. We are asking for the days to be changed back to the original days, because it will cause constraints and additional costs to the towing companies. It will tie our hands trying to do the right thing by getting the notification to the owners. Most cars are picked up within 96 hours. The abandoned vehicles and accident-insured vehicles have to be notified. There is no lien fee attached to it until the fifth day. We have to wait for the 96 hours to go by before we request information from DMV. Most reputable companies do it the way we do by going through Nevada first, then California, then the seven states around Nevada and then we go to the rest of the Nation trying to find the owner or lien holder of the vehicle. That takes time.

If we tow a vehicle on a Tuesday, we have 96 hours bringing us until Friday; DMV is closed Saturday and Sunday. Monday is the fifth day when we start doing the notifications. The 21 days helps us when we have to locate vehicles outside the state. Some departments of motor vehicles are not as cooperative as Nevada. Some are understaffed, we have to pay for the information, it takes time and we want to do what is right. By leaving the original time frame, we would be able to do what is necessary.

CHAIR SCHNEIDER:
Is Assemblyman Denis in agreement with that?

MR. BRAVERMAN:
Yes.

SENATOR CARLTON:
Does this only apply to abandoned vehicles?

MR. BRAVERMAN:
No, accident vehicles will have 15 days, all others will have 21 days.

SENATOR CARLTON:
I am concerned about accident vehicles. There was a situation with an accident vehicle that was towed without the tow driver telling the young lady to where it was going to be towed. Her parents were not available. I got involved trying to track the vehicle in order to keep the expenses down. It took a day's worth of phone calls to find the vehicle.

MR. BRAVERMAN:
Our business is directed by the police department.

SENATOR CARLTON:
Right, then we have to search for the car. If you have five days to search for us, that is five days of storage fees.

MR. BRAVERMAN:
The police department records that information. The vehicles are on a rotation basis as to where they are sent.

SENATOR CARLTON:

That could take six or seven days. I opened up the phone book and started making phone calls and found the car. That is one of my concerns when we talk about the number of days. I understand you want to find the right owner.

MR. BRAVERMAN:

Yes.

SENATOR CARLTON:

When they hook up the car and it is gone, you would not know where it went. The young lady remembering the color of the truck is how we found the car.

MR. BRAVERMAN:

The reason for the 96 hours is to give the customer the chance to get their vehicle. The police know where the vehicle is being towed.

SENATOR CARLTON:

Are you charging for every day the vehicle is there?

MR. BRAVERMAN:

Yes, those are storage fees, regulated through NTA.

SENATOR CARLTON:

Those fees are not cheap.

ANDY MACKAY (Chairman, Nevada Transportation Authority, Department of Business and Industry):

We are in support of A.B. 333, particularly section 2, as it relates to the bill of sale discussed earlier. That is the complaint we often get. This bill should protect the public as it relates to the lien fees. We do not have a problem changing the days back due to the concerns of the tow companies. The changes in the bill are good changes, and we support them.

ROBERT COMPAN (Farmers Insurance Group):

You have my mock-up proposed amendment concerning the number of days about which the tow companies were concerned ([Exhibit I](#)). In section 3, subsection 1, paragraph (a) of A.B. 333, we have changed the days back to 21 days and 15 business days.

Quality Towing and Ewing Brothers Towing are the two companies contracted in Las Vegas proper. Henderson has another carrier. Washoe Valley and Reno have their contracts. Two Sessions ago, we developed this language because it is a costly issue for the notification process that the tow operators explained previously. It costs \$250 to \$300 per vehicle. By allowing the 21 days for notification ... If you notice under paragraph (a), line 38 on page 3 of the bill, it says to notify the registered and legal owner of the motor vehicle by certified mail not later than ... 21 days is what we are requesting ... the original days after placing the motor vehicle in storage if the motor vehicle was towed at the request of a law enforcement officer following an accident involving the motor vehicle That is the key word. It means 99 percent of vehicles towed from an accident scene are going to have insurance from one side or the other. It will be first-party or third-party insurance. The insurance company will ask the client if they know where the vehicle is. The insurance company will know where the vehicle was taken, and will be able to locate it. The third-party case will involve contacting the first party, and then tracking down the vehicle. They will have to get statements and obtain a police report. When the bill was first drafted, the police were required to have the accident report within ten days. Within that time frame, we can find the vehicle and can avoid the notification which comes with another fee on top of the lien-processing fee. That is the reason we are asking to keep it at 21 days. There are still issues and towing concerns my company and consumers have in Nevada. We will continue working with Andy MacKay to address these issues in the interim and propose legislation for the next Session. We are neutral on the bill, but would like to change the days back to where they were.

CHAIR SCHNEIDER:
Are you speaking for the insurance industry?

MR. COMPAN:
I do not believe I am.

Senate Committee on Energy, Infrastructure and Transportation
May 6, 2009
Page 29

CHAIR SCHNEIDER:

There being no further business, the Senate Committee on Energy, Infrastructure and Transportation is adjourned at 10:29 a.m.

RESPECTFULLY SUBMITTED:

Sandra Hudgens,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____