

STATE OF NEVADA
Senate Transportation Committee Hearing on SB-274
April 10, 2003

On April 10, 2003, the Nevada Senate Transportation Committee met to pass or not SB-274 -- a bill introduced by Senator Shaffer that would have repealed the requirement to wear some sort of "headgear" while riding a motorcycle in Nevada.

The following people testified (in order of appearance):

Gary Horrocks - Executive Director of the Nevada Association of Concerned Motorcyclists, ABATE of Southern Nevada and representing ABATE of Nevada

Jackie Suthers - BOLT of Nevada, State Director/Co-Founder; Helmet Law Defense League, Nevada State Director; Nevada Freedom Riders, Co-Founder

Richard Quigley - Bikers Of Lesser Tolerance, Member; BOLT of California, Deputy State Director; Helmet Law Defense League, Co-Founder/Sr. Deputy Director

Colonel Hosmer - Nevada Highway Patrol, Commander

Benjamin Blinn - Biker

Assemblyman Gustavson - Nevada Assemblyman; Bikers' friend
"Jake" - Motorcycle Enthusiast

Chuck Abbott - Department of Public Safety, Chief

Paul Snodgrass - National Highway Traffic Safety Administration, Regional Manager, Lobbyist

Laurel Standler - Mothers Against Drunk Drivers

Erin Breen - State Community Partnership, Chief

The meeting started on time, and the testimony was as follows:

Shaffer: Good afternoon. We're going to start the Senate Transportation Committee at this point in time and Sherry what do you think the roll, you don't have to look around. Lets see. Everyone is present and Amodei took a little powder, but we'll get him back in a little bit. He'll be back. Everybody's present and we are going to start out with start your motorcycles here. Gary do you want to go first,

do you have somebody you would like to start - address the bill?
(Pause) Good to see you up here.

Horrocks: Thank you, Senator. Good afternoon Senator Shaffer, members of the Committee, my name is Gary Horrocks, I'm the Executive Director of the Nevada Association of Concerned Motorcyclists, ABATE of Southern Nevada and I represent ABATE of Nevada. Today we'll present many reasons to repeal Nevada's mandatory helmet law. Across the country motorcyclists are exposing the lies, myths and misconceptions regarding helmets and public burden. In fact, motorcycle accidents represent less than one tenth of one percent of all vehicle accidents in the United States. You have a handout before you, the Nevada page handbook. Helmets provide a small window of protection, but the misconception remains that if you wear a helmet you'll survive. This could not be further from the truth. Helmets can and do cause injuries. In 1998 faced with an increasing death rate of women and children caused by air bag deployment the Federal Government decided to allow the public to ask for and receive permission to deactivate the air bags. In 1995 this body against objections of increased deaths and injuries repealed the mandatory 55 mile per hour speed limit with Senator O'Donnell stating "I guess we'll have to decide the price of freedom". You have the ability to choose 55 or the posted 70. You gave yourselves the ability to make your own decisions regarding safety, Nevada Motorcyclists ask for the same. Please support SB 274. Thank you for your time. I am available for any questions. Thanks.

Shaffer: Any questions for Gary? Any questions from the committee? No questions, thank you. Who else wants to testify in this legislation. I am talking about for it, are you for it? Ok, we'll take a seat, proponents first and who doesn't like it, we will take them last. It has no reflection on my opinion of the bill.

Suthers: Good afternoon, Senator. The current State of the Nevada helmet law in Nevada is unenforceable as written.

Shaffer: Did you ah, give us your name please.

Suthers: I'm sorry, Jacqueline Suthers, State Director, BOLT of Nevada. The current helmet law in Nevada is unenforceable as written -- a point Colonel Hosmer and the Nevada Attorney General has

agreed with. The Statute as written is a problem for law enforcement and motorcycle riders. We've been asked in a round about way to help fix this statute. Senator Shaffer has offered a solution to this problem by introducing SB 274 for full repeal. Richard Quigley is also here today, and he'll better explain what the problem is. In 2001, assemblyman, I'm sorry Assembly member, Chowning, asked us to give her something new, meaning no repetitious statistics and old information. The enforceability of the current law is new. The problem simply stated is the language of the Statute is unconstitutionally unenforceable. (There's a dead spot in the recording . . . we're working on it.) This one.

Shaffer: Yeah, just grab that.

Suthers: (More dead air.) Sorry.

Shaffer: I don't have any, I don't know, committee do you. Is there any questions from the committee?

Nolan: Mr. Chairman, I'm just ah, this is the first time we've had a chance to look at the book, I'm just gonna finger it through real quick and find out at what point, or where in the.....is it in the e-mail chain the um, the Attorney Generals office renders and opinion on this? (Dead Air) Oh, here it is AG Opinion, ok, gotcha. Ok, thank you.

Shaffer: We'll give the Senator a few seconds to look it over. Anyone else have any questions? Las Vegas, how many people in Las Vegas want to testify in favor of this bill, Senate Bill 274? Can I see a show of hands? I see no hands. Thank you. There is nobody in Vegas that wants to testify.

Quigley: My name is Richard Quigley, I'm with Bikers of Lesser Tolerance, and Bikers of Lesser Tolerance in California.

Shaffer: Is the (microphone) light on there?

Quigley: I usually do pretty good without a microphone, Senator and I'm also the Senior Deputy Director for the Helmet Law Defense League and we've been interested in the issue for some ten, twelve years now. I'm here to make a presentation and answer some questions as soon as Jackie's done.

Shaffer: Ok, we'll entertain your testimony while the Senators....

Quigley: Want to do that now?

Nolan: Yeah, yeah, let him go, I'm fine.

Shaffer: The Senator is going over some information here. He need to.

Quigley: I am kind of the background guy on this, I think probably best suited to the background because I was the guy who sort of followed it up. I came out here in May of 2001 to go on a motorcycle ride with some friends of mine and I was pulled over by one of Nevada's finest and I say that in all sincerity. This young man that pulled me over is as fine a peace officer as you would ever want to see on the street. Polite, articulate, intelligent, big healthily corn-fed, Midwest boy. I mean a real fine young man. But the outcome of that traffic stop was a absolute violation, patent violation of my constitutional rights, relative to due process and absolutely limited my ability to travel. And the problem stemmed from the fact that it was his understanding that I was required, in order to ride a motorcycle in the State of Nevada without violating your helmet law that I was required to wear a D-O-T approved helmet. Now he was so sure of this, that I asked him to write it on the ticket, which he did. He ultimately wrote not wearing a D-O-T approved helmet and then it came the problem, and he cited two other people on that day. Jackie was one and there was another. And we were all wearing head gear, it's just wasn't D-O-T approved helmets. In any case, those tickets were ultimately dropped, but the problem came in that traffic stop when we got ready to leave because I asked him what happens now? This is the only helmet I've got and I'm headed into town and it's a mile from here, and I'm 500 miles from home. How am I supposed to town? And he told me I couldn't move my motorcycle until I had this D-O-T approved helmet. Now I'm standing there, and I was fairly certain at the time and I'm fairly certain today that there is not such thing as a D-O-T approved helmet. So he just placed this impossible situation in front of me. So, I asked him to pull the Sergeant out there. "Would you have one of your officers, you know, your supervisor out here?" And again, a top notch cop. Here come this Sergeant, great peace officer, good cop. Same deal. I couldn't ride to town without a D-O-T approved helmet. 500 miles from home, I'm shut down on an interstate, you know in my interstate travels. Well, the story is told in here (pointing to

BOLT's handout). What I did, the shortest version I can give you is, I came back (to California). The first thing I was going to do was try and handle this in court. The District Attorney chose not to prosecute the case, so I had no access to your courts here. I couldn't get to the judicial system without that. I have no standing in the Nevada Courts. So, I went back and read the Statute, which is where the problem is, as you know. And the statute gave me no answers except to contact the Department of Motor Vehicles. So, I had the pleasure of meeting my first, outside the police department, Nevada bureaucrat -- a young woman by the name of ah...unnn...oh its going to fall out of my head. I'll get back to it. Wonderful women, your Director for the Department of Motor Vehicles, a fine lady. And I asked her the question, "How can a motorcyclist comply, with certainty -- the kind that I can walk into Court and say "This is a helmet, I had this on my head, the officer says I have to be wearing something else" -- and prove that I'm in compliance with the statute?" Well, she couldn't find an answer for me so she directed me to a gentlemen that I think you all know, by the name of Richard Kirkland, who is the head of the Department of Public Safety, I don't know his exact title. He referred me back to the Nevada Highway Patrol and my question was then put to Colonel Hosmer. And Colonel Hosmer, who is here today to testify in favor of this bill, by the way, came back and essentially had the same problem with answering my question. He couldn't give me a definitive answer as to how I could comply with your Statute. So, then he directed the question to the Attorney General, which is where you got that Attorney General's opinion that's on the front of this packet. Now what the Attorney General in essence came back and said was is ah, he didn't have an answer to the question either. Now, if there is no way to comply with the statute that's, that falls under that unconstitutional category. And I'll be honest with you, I'm not certain, except maybe out of respect for the Legislature, why it is that the Attorney General didn't simply order the thing, you know, stop enforcement. But he didn't, he wrote an opinion in which he made several recommendations to the legislature, except through Colonel Hosmer. Among which, you know, we need some sort of clear guidelines for enforcement and he pointed out that it's a misdemeanor. My heart went in my throat, when I read that opinion, I said, Holy Toledo! I was riding down the road in the State of Nevada, thought I was in compliance

with the law, wasn't in compliance with the law, and I was subject to a penalty that could have landed me a year in jail? I don't believe I'll be coming back to Nevada on my motorcycle, until we get this one fixed. Now he's offered some recommendations and again, ya'll are going to be the ones that, you've got to fix it. I mean it has got to be fixed and its ah, well we've offered, you know, there's two sides on the helmet law issue, which is not what we are here to talk about today. We're talking about an unenforceable statute. The nature of this statute is such and the evidence is such that the statutes simply not enforceable as written. For the people that want the helmet law, then I'm surprised there were no amendments to somehow or other fix the statute so that it complies with the enforceable requirements of a statute. For the people that don't want a helmet law, your bill, Senator Shaffer, is absolutely right on because this is one way to fix it. If we can repeal the requirement to comply with something you can't prove you are in compliance with, you just took away the violation of the Constitutional rights. So, that's the reason that I came here today and that's the reason . . . Oh, what happened was is when the answer came back from the Attorney General, I then got back in touch through the e-mails that are in here with Colonel Hosmer and I said Well, you can't leave me hanging like this, because this doesn't do me anything. You know, this Attorney General's opinion. And he suggested that I get together with a rights organization here in Nevada, one of the rights organizations, and bring it to y'all, that y'all would take care of it. So fortunately, Jackie and BOLT of Nevada were right in place and we have done every step of the way. I have done, BOLT of Nevada has done, everybody involved in this on our end has done everything that has been asked of us so far. And so far, so have you Senator. You have a bill here that will fix the problem. Other than the repeal, I have no idea what suggestions or recommendations might be made as to how to fix it, that is not the issue. What I am already trying to do is get the legislature to acknowledge that these problems exist. And I think the evidence is pretty much overwhelming. And then, if you want to fix it for the people who believe in helmet laws, fix it. And if you don't want to fix it for the people who don't believe in helmet laws, then take it out. That's essentially my testimony and I'm prepared to answer questions.

Shaffer: Sounds to me like you met a lot of nice people.

Quigley: Every one. (laughter) Senator . . . no, I am serious. This has been a life altering experience for me. I have been in California. I'm a native Californian. Been there most of my life. And I have never had the spirit of cooperation, the positive mental attitude, the quality of people, up and down. I mean any one of them, any one of them, these people would stand out over there in California like a boil. I mean they are so above everybody else that is in that State. I just can't even tell you. And when I walked in this morning to meet your Colonel, I'd already communicated with him so that I knew that he was a bright, articulate and honorable man. But when I walked in this morning and he greeted me, I did not get the greeting of somebody, you know, oh this guy is somebody I've just got to deal with. He is genuine, I mean, men of honor in California are on the endangered species list and that all I could tell you. And I do not find that to be the case in Nevada. I'm really pleased. I just wish y'all had that big pond over here a little bit closer so I could spend some time, . . . and didn't have this terrible statute.

Shaffer: Well your looking at seven other ones here.

Quigley: Yeah, as far as I can tell, everybody I've talked to in this building. I was commenting to these folks here, these local folks I said, you don't know what you've got. I sit outside that Legislative Palace out there in Sacramento and nobody smiles on the way in, nobody smiles on the way out, and nobody smiles while they're there. And here everybody, everybody has been wonderful, including the lady that in 15 minutes took my \$15 and turned it into something that makes me look official. Just wonderful people. I'm absolutely impressed. And that's why, since you folks do represent the people of this State, I just cannot believe that you would allow this Statute to remain on the books as written. I just, it is so inconsistent with everything else that I've seen about the State.

Shaffer: I'll tell ya, we're that nice. Were going to work another month and a half without any pay at all, just because we're that nice.
(laughter)

Quigley: If that includes taking out this particular Statute, Senator, I couldn't be more in favor. Where you going to introduce Colonel Hosmer, as if he needed introduction, so at least he can testify.

Shaffer: We'll bring him up. I just wanted to.

Quigley: Yeah

Shaffer: I just wanted, what I wanted to let you know that, is that you came to the right place to get an answer one way or the other. When you leave here today, you'll either know that we are going to change the laws or we'll get rid of the law, one or the other. But ah, you came to the right place. Senator Care would just like to ask you a few questions.

Quigley: Oh, a few? Okay. Fire and fall back, as they say.

Care: Let me ask you this. I think everybody would agree that when you get into a car you are assuming a risk. If you get on a motorcycle you are assuming a risk and usually the faster you go in that car or the faster you go on that motorcycle, the greater the risk, generally. I don't, I mean people have done studies and you can play with studies and statistics and this and that and the other and it may very well be true that in some instances a helmet will not make a difference. I doubt that at a hundred miles an hour or seventy miles an hour it will make any difference at all. It might at five or ten miles an hour, this is why Bret Favre I think wears a helmet on Sundays. I think there's a case to be made for helmets in some cases. Now, having said that, if we were to repeal this Statute, but substitute additional language along the following lines, I am wondering what your thoughts are on this? Do you believe that a motorcyclist who drives without a helmet, and there's no law requiring this helmet, but nonetheless chooses to ride without the helmet, is entitled to damages resulting from an accident if it can be demonstrated that his injuries are a result of not wearing a helmet?

Quigley: Of all the ones I was prepared for, that wasn't on the list. Go ahead, I know what my attitude would be if I was the guy that got hit.

Care: And I'm not talking about whether you were in the right or the wrong. I'm talking about the assumption of the risk knowing that you can be completely right and still get broadsided.

Quigley: My first impression, Senator, is that anything set aside from everything else might look like it by itself seems righteously unfair. But if you take out the motorcycle experience and you

replace it with any one of a hundred other things. For example, when they were doing this mandatory insurance in California, this mandatory liability insurance that the lobbyists have paid you guys enough money to learn to love and never really stepped back to look at and that's ok, I haven't been up here to correct that behavior, so its all forgiven. But, when they did that, I was asking them, well what about skiers? Because when you get a guy that jumps off the top of a mountain, he's got a couple skis on, he's got the ability to kill because he could smash into people. And he certainly has the ability to harm. But it would never occur to anybody to make him have liability insurance as a requirement of skiing. And so, you can move from there and anywhere where there is a liability thing, so is it my opinion, does the insurance companies have an arguable defense to damages because somebody was not wearing a helmet? Sure. Because lawyers can argue anything. But whether or not they have a legitimate claim? It would seem to me that would be something for the court or a jury to decide, as far as that goes. And other than that goes, and I hope I am answering your question.

Care: It would seem to me what we are really dealing with here is a question of freedom, one's definition of freedom. It is difficult for me to imagine Peter Fonda and Jack Nicholson wearing helmets. I am probably dating myself here. On the other hand, I, definitely I see the argument for that.

Quigley: Jack wore his for a while in the movie as I recall, but it was probably in a helmet law state, so it didn't matter.

Care: Yeah, in the movie he was a lawyer like me too. (Laughter) That sorta thing happens. . . . Just for the sake of conversation trying to find something. We do have a Statute, if I am not mistaken, in the state that says failure to wear a seat belt is not an act of negligence per say, there is a civil fine associated with that, which we are going to get into later. But its not an act of negligence per say, pursuant to statute. But I was wondering if there might be some possibility that you could come up with something like that in the case of the motorcycle helmet, simply because to me there is much more armor in a car than being basically naked on a motorcycle when you are going down the highway.

Quigley: But the other argument, Senator, with great respect, I make a whole lot smaller targets. Its a lot tougher to hit me when I am on that itty bitty motorcycle than it is when I am sitting in the great big Hummer. You know, so there is a little bit of difference in target space. Now granted, I won't survive as well when we get together, which is one of the things, when you talk about safety and if I may just for 15 seconds get off the subject just long enough to explain that I'd sure like to see a legislature come out and stop these zoom-zoom-zoom commercials. Get them off you television. Because as a motorcyclist, I am getting real tired of dodging people that are trying to live up to the advertising for Toyota and when they take that zoom-zoom-zoom mentality and put it in a SUV, I mean, it doesn't matter what kind of target I am, it's dangerous out there and I haven't seen a whole lot of help in getting that, that kind of help, you know. It seems like this was the fix that everybody made, the helmet law and ok fine. But if you are going to have a statute that requires us to do something that specific, regardless of what it is, then it needs to be specific enough so that honorable men, like myself and Colonel Hosmer, are equally able to ascertain how I comply and how he enforces. And neither of us can make that point today.

Care: Thank you Mr. Chairman

Shaffer: Any other questions? Senator Nolan?

Quigley: Come on, Senator Nolan, I came up here to meet you more than anybody. I wrote you . . . No, I did. I wrote you an e-mail, and it's in this packet and I was a little flip. I hadn't met you, I hadn't seen that sparkle in your eyes, I was just dealing with a news reporter and a bad memory from a guy that put the helmet Statute in in California and so, there's a note in here that probably the tone was not as good as it is, but I walked through pretty much everything I did today. But come on, you've got to have something to ask me Senator because I've decided I want you to be my buddy when I leave. (laughter)

Nolan: That's the great thing, Mr. Quigley about the Nevada Legislature is that regardless of our differences, which will remain the same, when you leave, that we can be buddies. And thank you very much for taking the time and catching me in the hall. You just saved me from one of those high paid lobbyists. You explained your point of

view to me and I think you are articulate enough and you were loud enough that you chased him away, but I spend the time and understand your position.

Quigley: Did you see the e-mail that I sent you?

Nolan: Actually, I see your e-mail in this packet right here, and no.

Quigley: You didn't see that? So you probably didn't see the one that the Commissioner sent you either?

Nolan: No.

Quigley: The Commander of the Highway Patrol.

Nolan: No. But I have a feeling that your good friend the Commander is going to come up here and share with us.

Quigley: He's a man of his word. He told me that if I got this hearing, he'd come testify and here this hearing is and by golly he's here and nobody can say he is not a man of his word.

Nolan: And he is here.

Suthers: Thank you for your time.

Quigley: Yes, thank you very much, It's been a pleasure meeting the bunch of you.

Hosmer: Good morning, Mr. Chairman, members of the Committee. I'd better for the record though, Colonel Hosmer, Nevada Highway Patrol and it cost me quite a bit to have him say those nice things. Truly, I met Mr. Quigley when Director Kirkland forwarded me the e-mail contact from him and we started communicating. And I will pay back the Director for that. However, on a serious note, I signed in neither for, nor against. I am a public servant, my troopers are public servants, and we will enforce whatever you want. But we do have serious problems with the way it is currently written now. It goes to CFR's which goes to manufacturing requirements. There's no way a trooper in Goldfield at 3:00 in the morning can understand or determine the difference in the density of foam inside the helmet, the shell material, those type of things the way it is written right now. That is the main problem with NRS right now. So, I really don't have anything other than that. And to say, the Commanders of the Highway Patrol, my Captains and

Majors and I all round-tabled this for an extensive period of time and basically determined that we would put out a directive to our troopers that if you are going to stop a biker and you are going to issue them a citation, you must be prepared to articulate to the court how you knew that that was an improper helmet. And that is quite a challenge for most the troopers. I would dare say that since we put that out there probably hasn't been any, unless the person wasn't wearing any type of helmet whatsoever.

Shaffer: What suggestions do you have to better the statute? What do you find to be the major problem in the statute as it is written now? Just the helmet? You can't identify whether its certified or . . . Is there a National Certified lab that tests these helmets for durability, strength? Or is it that everybody just makes one and puts a fancy color on it and sells it.

Hosmer: A series of problems with it. Yes, you have, there are testing facilities, SNELL and one of the other ones that do the testing for the manufacturers. Then they are supposed to affix certain stickers that are, you know, identifiable. I can tell you that as a, in a previous life as an undercover narcotics officer riding a Harley, I was able to buy a novelty-type helmet, because that is what the outlaw motorcycle rider prefers when they have to wear one. I was able to buy a D-O-T sticker to slap on the back of it. So for the average street officer to know out there that, from a glance, that that's an illegal helmet and I'm going to pull that person over for it. That's a very tough situation. And that is why we left it up to the individual officer, with the stipulation, you must be able to articulate to the court that you knew that helmet was wrong. And that's very tough.

Shaffer: Pretty fair too. Any other questions, or any questions for the Highway Patrol. Terry....Senator Care.

Care: Thank you, Senator, Colonel let me, forgetting studies for a moment and when I say helmets, lets assume the helmet contemplated perhaps by the Legislature that originally enacted this bill. In your experience does wearing a helmet make a difference one way or the other?

Hosmer: We had to and through the chair Mr. Senator, we've had this conversation as part of our round table with all of my Commanders

who have a collective of probably 250 years of Highway Patrol experience. I think the Senator earlier was right on mark. At speeds it doesn't make a difference. Slower speeds it may. I have dropped my Harley at a slower speed. And I did bounce my head. Thank God I had a helmet on. I'm not saying that I would have had a head injury, I'm just glad I didn't. But that was at a very slow speed. I have read studies a few years ago, dated, that indicated possible neck injuries caused by the weight of the helmet at the end of your extension flexation of your neck, the extra weight of the helmet could pull it farther and cause a neck injury. That's not my study, it was one study. I am sure there are other ones. That other people from NHTSA would argue with that. I'm trying not to put personal feeling into this. Thank you.

Shaffer: You're welcome. Any other questions for the Colonel? Ok, thank you very much. We appreciate your testimony. Yes sir, please give us your name for the record.

Blinn: I am a citizen, Benjamin Blinn, I've attended a number of Confederation meetings, local biker groups, which includes the Christian Bikers and the blue wall, police officers, some of them the nefarious ones we've seen on TV. In that I think that this bill is better than the law as written, I think it is a good bill. I also think that some of these little cars that dive in front of a 40 foot semi, is just about ah, they need to take driving lessons like we make our bikers take. Maybe we need to insure people who ride without helmets with Lloyds of London or something like that, but I'm sure that insurance can be bought to comply with our state requirements for any motorized vehicle. I'm a little nervous about, maybe the moped should have the low speed helmet on it. I see that they used to exempt the guy on the bicycle route so he could throw his papers and see. But my experience with helmets, the University of Nevada I played football and my senior year I broke 15 helmets with, using a technique now outlawed in football called spearing. When I tackled them, I meant to use the helmet as a weapon and never did I find one that I couldn't break and that was at low speed. So obviously, with our a, I like the term that was used by the Highway Patrolman that was here, with our finest and I too am a Nevadan, I haven't left the state in my 50 years because California has nothing to offer that the West doesn't offer. I consider this to be one of the last places of freedom. I think to be able to get in the

wind and have the freedom of choice as an adult, if you want to keep it on the kids or the moped I can understand that. But I think as a freedom of choice, as a Nevada citizen, I will support however you vote it. But I would rather error on the side of generosity for preserving our freedom and our sovereignty and our state rights to wear a helmet or not wear a helmet. Thank You.

Shaffer: Thank you for your testimony. Thank you, Sir. Any questions, anyone else in favor of the bill?

Gustavson: Thank you, Senator, members of the Transportation Committee. For the record, I am Assemblyman Don Gustavson representing Assembly District 30. I am also one of the 63 volunteers that are down here that will be here without pay.

Shaffer: Glad to have you join us.

Gustavson: Yes, I'd just like to thank you for having a hearing on this bill today. You've heard testimony, in light of this new testimony from Colonel Hosmer, the facts and how are we going to enforce a law that is written and really is unenforceable. My recommendation to the committee is to proceed with a do pass on this bill. That would eliminate this problem of being unenforceable. If you have any questions, I would be happy to answer them. Thank you.

Shaffer: Any questions? Thank You. I'll take testimony for the proponents for the bill, providing it is not repetitious, we are trying to move along. Is there anyone else who can tell anything else that we need to know about the good things about not wearing a helmet? Seeing none we will ask how many people want to speak against this bill. Jake, come on up, I didn't know you road motorcycles. I know you traveled in big ships for awhile.

Jake: Thank you Mr. Chairman, members of the Committee. I would admit to you that I have road a motorcycle on an occasion and truly enjoyed it, but I would also indicate to you that I was one of the people who was instrumental in the mandatory helmet law. I firmly believe in it and let me say that that comes mostly from experience. I recently completed 50 years as a volunteer ambulance driver for Douglas County. I can't tell you how many runs I've made that I've had a few young people die in my arms because of no helmet and I guess I became convinced that if I could have saved them, I would have. There again, I remember the

Exhibit D

Page 15 of 25

day too when the helmet was probably most important, you used to get it full of water and you had to take a bath and wash your under clothes and shave and the whole works and something to drink too, and that wasn't a pleasant thing, but there wasn't much you could do about it. There again, I think it is a reasonable approach and I realize how many people ride choppers or motorcycles today that are ever on the increase and a lot of them do it with moderation. There are some that still like to show off and that's too bad sometime that the younger people don't get the message earlier, but I think it's a, I don't think it's really a problem to wear a helmet there is nothing nicer than not having to wear one. But there again, I think it's the law and the law is the law, I can abide by it and I can live with whatever there is, but catering to young people. And I taught a motorcycle class right here in Carson City for YMCA and I guess if I experienced anything it was ride safe, be safe. And of course, I am one of those that believe in being your own master too, but so many times on the road today and I can remember when I could drive from Minden to right at the front door of the Capital in twelve minutes, I can't do that today.

Shaffer: No, Colonel, I can't either

Jake: Well, I have to admit I exceeded the speed limit, but there again, I think it's important and whatever consideration you give the bill I would abide by that.

Shaffer: Well, thanks Jake, I appreciate that. ... Anyone else opposing this bill? Your face looks familiar.

Abbott: Mr. Chairman, my name is Chuck Abbott, I'm the Chief of the Nevada Office of Traffic Safety. As a Federally funded Department of the Department of Public Safety we prohibited from taking a position on this particular issue.

However, at the Committee's request, Mr. Paul Snodgrass from the National Highway Traffic Safety Administration Region Number 9, San Francisco is here to provide you some information on what he has research.

Snodgrass: I am with the National Traffic Safety Administration in San Francisco, feeling a little bit lonely up here as you token Fed here today, but ah.

Shaffer: We have a few casinos up and down the strip, if you get too lonely....(unable to determine followed by laughter)

Snodgrass: Our agency was created in 1968 and I'll be also testifying on the seat belt bill. Since 1968 it is very, very clear that the use of seatbelts and wearing motorcycle helmets and bicycle helmets is the simplest and most effective things you can do to reduce the chance of injury on the highway. There is no question about that. The first thing our agency did was require seat belts in cars in 1968 and establish minimum standards for motorcycle helmets. Standards, Federal Motor Vehicle safety standard 218, it's 208 that requires the seat belts and your air bags in your car, occupant protection. The two most effective standards that we have, uhhhm, These battles have been going on for years, ah every year they try to repeal the California helmet law. People are getting a little worn down about it. Ummm...when California enacted their motorcycle helmet law this is the most populous state in the country with more motorcycles than almost any other jurisdiction in the world, deaths went down 32% in 1992. Texas repealed their (second?) helmet law, the second most populous state in the country, 20 million people, year round motorcycling, an awful lot of motorcycles in the state of Texas, they repealed it, deaths went up 32% the next year. So, we could cite lots and lots of studies, but those are the two biggest studies in the world, the largest groups of motorcycles to ever go through having being required to wear a helmet in California and no longer being required to wear a helmet as in Texas. So, I think those two studies sort of speak for themselves. We think motorcycle helmets are 30% effective in reducing death and injury in crashes. As you've heard, you'll hear later seat belts are 50% effective, why are motorcycle helmets only 30% effective? They don't protect the rest of the body. As you heard in a high speed crash, chest injuries, the fibril artery. leg injuries, will be so severe to the motorcyclist, who is always like someone not wearing a seatbelt, always ejected from the vehicle, always comes into contact with the highway, always. There is no protection around him, (ummmmm) except the helmet, gloves, boots. I'm on my fourth motorcycle myself, like I road one at 15 1/2 before I even drove a car in California. I've been down twice. I've been saved by a helmet twice. I got the bashed up helmets and saved it. So, that's my personal angle to it. I've always worn one. When I

got one at 15 1/2, they said it would go right back to the Honda shop, my parents, if they ever saw me on that thing without a helmet, so I've always had my own personal helmet law, I guess you could say, and I'll just, I'll just leave it at that and see if there are any questions.

Shaffer: Are there are questions? Senator Nolan?

Nolan: Thank you Mr. Chairman. Mr. Snodgrass are you familiar enough with umm the ahhh different, or the various types of helmets to be able to answer some expert type questions on those?

Snodgrass: Yeah, I'm not an engineer and I'm not the people that enforce the Motor Vehicle Safety Standard on the manufacturers, but yeah, I can tell you about the beanie helmets, the fake helmets.

Nolan: Are there ummm enough physical characteristics in those helmets which have been tested and approved versus those which have not been tested and approved that a lay person, or even a police officer if trained could make a visual inspection and say absolutely these types of helmets would fit it and just by visually looking at certain helmets.

Snodgrass: I think there is usually foam about an inch thick, generally yes, but to an absolute legal certainty, um, what the people have been arguing in California, Nevada and other state, which is pretty much why the highway patrol isn't stopping them anymore for beanie helmets, because some of their tickets were getting thrown out. They are pretty much arguing that look I can't go perform these five laboratory tests, there's a five test penetration, impact and so on. Without getting in to all the technicalities. I can't go do that myself, so how do I know that this is a federally approved helmet? The manufacturers self-certify. There is a label inside. First of all you can look at the label inside the helmet, which certifies that it does meet the federal motor vehicle safety standards, address of manufacturer, date of manufacture and then there is required to be a visible marking on the outside which just says D-O-T and that's where you hear that the stay legal generally be beanie helmets . . . um which are usually lined with sears best carpet padding, I'm told for \$5.95 a yard. They sell the D-O-T stickers apparently separately, generally and then you can apply it yourself. Some of them say inside "this is a novelty helmet" like a toy army helmet,

this is a toy, this is not meant to be a real motorcycle helmet, some of them say that. Four of them have been recalled by our agency after failing tests so far. But, the one I heard the most about was the E&R fiberglass in Tacoma, Washington and they served them a civil fine of \$10,000 and ordered a recall of the helmets and they went out and found an empty warehouse, they disappeared, so apparently this kind of plastic molding equipment is very easy and common now and there is a market for these beanie helmets, I guess you'd call them. Not usually sold in regular, real motorcycle shops, but flea markets, swap meets or gatherings, mail order, on-line. Our agency has pursued them. There is civil penalties, um, it's tough to keep up with them, they're out there. It's estimated maybe 10 to 20% percent of the helmets that are out there. They offer (no) virtually no protection in a crash. So it is a problem, but we don't think it is nearly the problem as repealing your helmet law, in which case helmet use would go down from virtually 100% with a helmet law, probably down to 50 or 60%, depending largely on the weather and temperature. The helmet use in Las Vegas would end up being lower than northern Nevada.

Nolan: I think you answered one of the questions. Does um, do any of the other states.....you spoke for, pretty much for California and Nevada, in a way of the number of citations being reduced because of the unenforceability of this. Do know of any states, who attempted to address this in State Statute?

Snodgrass: Um, yes, you could, yes, but not successfully. Mr. Quigley and the Helmet Law Defense League have been...ummm. You see the federal standard applies to manufacturers, not to owners. It requires, to use a simple example, it requires those seat belts and air bags to be in your car when its sold new. Then the State of Nevada law applies to owners and drivers as to what you do with those seat belts when you buy your car and register it in Nevada, whether you have to wear one. Um, so the Feds regulate the manufactures, the States regulate the drivers. So they manage to find a gray area in between these two sets of laws that they are having quite a bit of fun with. (laughter)

Nolan: Mr. Chairman if I may, this is an important issue and I recognize the legitimacy of the people who are proponents for this bill. I am curious why, if this has been an identified issue, we haven't run it

up the ranks to the Department of Transportation. Right now we saying, you can stick a sticker on the back of a helmet and its a D-O-T sticker and the Colonel indicated that it could be easily replicated or at least something be put on that from a distance you couldn't tell the difference. Why haven't they addressed something, in the way of ah some type of, and there are so many type of hologram type, I mean just ah, type of stickers and indicators that can't be replicated or easily replicated. Has there been any thought on the federal level about dealing with this issue if it has been identified?

Snodgrass: I've heard they are doing testing on molding of the ends, so its three dimensional, but there's a concern that it will weaken the shell of the helmet in the rear at a critical point. Umm, they are looking at holograms and things that, ummm, yeah, they are looking at it. I think the problem is that someone is determined to get a hold of one of these helmets and then go to your local traffic court judge and argue that they could not personally prove, whether or not this was a federally approved helmet or not. Ummm, they are gonna get a lot of tickets (sounds like expressed to them). They've um, they've got a lot of.....they've got a good traffic record on this. It is not an easy problem to solve. You could try banning the sale of helmets in the State of Nevada, that don't meet federal motor vehicle safety standards to a degree.

Nolan: Mr. Chairman, I'll ask one final question and if you don't know it, just go ahead and say it, because I know we have a lot of stuff to move through here, but uhm, do you.....has there been any study as to, in those states, well, it would be great if you had any numbers for Nevada. With the number of motorcycle riders, the percentage of them that wear certified helmets versus those who don't.

Snodgrass: Yeah, it is being measured in California, last I heard, it was running around 15%.

Nolan: Do not wear certified helmets?

Snodgrass: Yeah, that's based on observations, um the accounts observed use of helmets. The same kind of accounting for the observed use of seat belt at intersections, and that's there best estimate. Again, it's kind of hard to, I don't think it is hard to tell a beanie helmet. I

think it is pretty easy, but uhm, there are some that are in between. There is a brand called monarch, a black half shell helmet that does meet the federal standards, that tries to look a little bit like a German helmet, it has the flange on it. There are some black half shell helmets, that they call partial coverage helmets, that look somewhat similar to those. I mean, there is a couple of brands that could possibly be hard for an officer to tell, especially when they are moving. Unless they take it off and he looks for the manufacturers label inside. I mean that's the proof. But then you get into the issue of, "Why did you stop me in the first place?" "What was the probable cause?" "How could you be sure that it wasn't a federally approved helmet when you made the stop?" And . . .

Shaffer: Any more from the committee, any questions from the committee? Senator Care;

Care: Mr. Snodgrass, let me ask you this, are you aware of any states that have found some sort of middle ground, that is to say statute doesn't say yes or no on helmet laws. For example, when I say this in the context of beyond a certain speed it makes no difference, a state for example that might say that they are not required on Interstate Highways. Is there any such thing as that? Or is it just yes or no?

Snodgrass: No, un, the partial approach has been age limited. Some States have said only minors under 21, or under 18 wear helmets. But in those states, the use of helmets has dropped way down, because the police officers really have a hard time guessing the exact age of the rider. So those don't work very well. The other approach, Florida, when they basically repealed there law. You don't have to wear a helmet if you have a, I think its \$100,000 personal injury coverage and um, we've heard that the Florida Highway Patrol no longer stops people not wearing helmets because trying to prove there ah, whether there company health plan covers them, whether the veterans administration covers them, without going into all the complexities of how your injuries are taken care of when your injured. Most don't have it on there motorcycle insurance. The public liability you are required to have on a motorcycle is pretty cheap. Personal medical coverage on a motorcycle costs are very expensive, so most people aren't covered that way for head injury,

um, you know, some other way, their company owned plan, or Medicare, or the VA, or whatever, or just government picks it up. So, so, you know, that's very hard to prove, that's very hard to enforce. The proof of insurance approach has been tried, um, that's tough too.

Shaffer: Any other questions, from the committee? (Pause) Ok, Thank you very much.

Abbott: Mr. Chair, if I just might add just as a point of information. Last year in Nevada there were 32 motorcycle fatalities in our State, 21 of those were in Clark County, the year prior to that there were 21 fatalities statewide and motorcycles fatalities is our fastest growing area of fatalities considering motorcycle crashes, pedestrian and vehicle occupants.

Shaffer: Thank you for the information. Anyone else that opposes this bill? How many more people oppose this bill? Thank You

Standler: Thank you, Laurel Standler with Mothers Against Drunk Driving and I'm here in opposition of this bill today, opposition to the total repeal of the helmet law. Just as we see a seat belt as anyone's best defense against a drunk driver, for motorcyclists we see the helmet as that best defense also. Thank you.

Shaffer: Thank You. Las Vegas, anyone down there wants to testify? Don't be repetitious.

Breen: Good afternoon, thank you, Mr. Chairman. For the record my name is Erin Breen, I'm the director of the State Community Partnership here in Clark County. I was really coming today to testify for the primary seat belt law and as part of my job I have put out legislative updates on bills that we are following. So today I am here primarily for one of our partners, The UMC Trauma Center. They could not free anyone up today because of their schedule to come, so they asked me to represent their interests this afternoon. And they would like you to know that last year in Clark County, the trauma center treated 319 victims in motorcycle crashes, nine of those were fatalities. They too realize that not every motorcycle fatality is due to not wearing helmets; however, of the nine fatalities last year, half of them were head traumas, and 25% of them were not wearing helmets. More importantly, they sent 40 people with life altering injuries that will never be the same

to rehab centers. Again 25% of those people were not wearing motorcycle helmets.

They, rather tongue in cheek, said that what they really wanted to tell you is that since the State of Arizona repealed their motorcycle helmet law what it has done for the organ donation program in Clark County because of the catch of the trauma center, they treat some motorcycle injuries from Arizona. On the plus side motorcycle riders are good donors, organ donors. On the minus side, since they have repealed their helmet law there has been organ donors from the State of Arizona that the State of Nevada, especially Las Vegas has benefited from. Because the States community partnerships goal is to reduce fatalities and serious injuries due to all motor vehicle crashes, we would urge you to oppose senate bill 274. Thank you.

Shaffer: Thank you for your testimony. Anyone else in Vegas? Seeing none, we are going to close the hearing on this helmet bill and what's your pleasure? Committee, what's your pleasure.

Nolan: Mr. Chairman, I am going to try something here. You don't have to wipe your brow it won't be that long, a couple minutes. I think that one of the basic fundamental responsibilities of us in Government, and we take a pledge to do this, an oath, and that is to uphold the State and the US Constitution which includes providing for the safety of the citizens in this State and sometimes we provide for the safety the best way we know how even if the citizens don't agree for it and that doesn't matter if it is vehicle safety or building code safety or child safety, whatever. My experience drawing on this is fifteen years of being a paramedic and a coroner investigator and I'm convinced that helmets do save lives and I wouldn't do anything to repeal our mandatory helmet law and it's not because I have any affront against good people, good honest citizens who operate motorcycles, I don't. I have a lot of friends and I like you people very much and I'd like to keep you around and I think we keep your gray matter right where it's at between your two ears and make everybody happy. But I think there are two potential options here, we have a broken law that's unenforceable and that's been admitted here. If we are going to try and change that law then on one hand we could go to a higher standard where we make it mandatory that people wear helmets they can easily be identified

by the people enforcing them as a helmet which would have been certified by D-O-T. If you go that way we are eliminating skull caps and those type of things and going with full faced, big helmets. I don't think we'd make any friends there. That's not our job though. The other alternative, perhaps and Senator Carlton kind of floated this and we might be able to do it, is if we maintain the mandatory helmet law, but make offenses a secondary citation, so that if they were being cited for a helmet violation, it would have to be secondary to a primary offense. And I can't take credit for that, whoever at that end of the table came up with that as a possible solution was pretty reasonable. I'll let the committee discuss that.

Carlton: If I may Mr. Chairman, I'd like to clarify. This is in no way to intend that you would not pull them over for no helmet at all. Right now what I see as the problem and the Colonel expressed to us is the only people that the highway patrol or law enforcement are pulling over right now and citing it is because there is no helmet on their head. That's blatant, helmet, no helmet, there is a bright line there we know what they've got on their heads. The controversy seems to come in to when we don't know what type of helmet it is and if the problem on that of the State, though I see the possible solution, making this workable for our law enforcement agencies is if someone fails to signal going left and they do get pulled over, the officer has the opportunity to ask them is your helmet, fine, is your helmet within standards and then it is secondary. This is not to say anything about no helmets at all, it just to say in addition to any other traffic stop, secondary like we would the seatbelt law that exists right now. That was just a suggestion to try and help fix something that seems to be causing a problem for our Highway Patrol Officers.

Shaffer: Would you make a motion? Put the motion on the floor. Is there a second? All in favor? Are you seconding?

Nolan: I like what we've got but it is a mess, so um I don't know that necessarily, but yes I'll second it. (Laughter) But I think, here's the potential problem, I think it is coming off the mark a little bit and it is tough for me to do on this issue. But the problem of course is if an officer does stop, we may have to put the Colonel back on the spot here. If an officer does stop a rider for a primary offense then

he is kind of back into the same bailey wick of looking at the helmet. Now, Colonel, if I might, Mr. Chairman, I think we need some clarification on this one.

Shaffer: Go ahead. Colonel, I think you want to stay neutral on this issue

Hosmer: Yeah

Shaffer: You stated when you came to the front I know. I don't know if you have something constructive to add to the safety issue, but as far as giving an opinion I don't think you want to, nor would I...were not asking you to do that.

Nolan: Mr. Chairman if I can ask him just a specific question on the motion. If we do, if an officer does stop somebody for a secondary offense are they obligated to question the individual about their helmet if it is a secondary offense? You know, unless it is an obvious violation?

Hosmer: For the record, Colonel Hosmer, Highway Patrol. Still we'd have the same problem, an officer at 3:00 in the morning in Goldfield, how does he know that he, unless there is an obvious sticker in there that is obviously not a fake sticker, or whatever, to determine that that's the proper helmet.

Nolan: Mr., Chairman, if I may. Does it, if it was a secondary offense then at least there not sitting out on the road and seeing somebody go by and having a question in their mind about their helmet at least they are not obligated at that point to stop them solely based upon their helmet. Would that be accurate?

Hosmer: That's correct.

Shaffer: End of discussion.

Hardy: Thank you Mr. Chairman, I am going to vote against the motion and just not because I think, not necessarily think it's a bad idea. I've always considered the helmet law to kind of be the poster child for Government overstepping it's bounds as far as protecting us from ourselves. I think Government has a legitimate obligation to protect those who can't protect themselves. So I would support the helmet law with regard to minors and children. But at some point, you know, I used to race dirt bikes and a couple of things I learned, if you are going fast enough and crash, the helmets warning you

for protection. And another thing, I had a guy ask me one time, he was starting to get into racing and asked me how much he should spend on a helmet and I said, it depends on how much your head means to you. You know, I mean, I think we have to trust reasonable people to make decisions about what level of protection they want to provide for themselves. So I would intend to support the bill as it is, so that would be the only reason I am opposing the motion.

Shaffer: All in favor Opposed. Motion fails. Yeah, I'm opposed, Shaffer's opposed.

Hardy: I'll move do pass and there is no amendment

Shaffer: Looks like we have a move do pass from Senator Hardy, seconded by Senator Amodei all in favor. Passes four three

Voice: Four opposed, three in favor.