



# AMALGAMATED TRANSIT UNION

## SUDDEN DEATH OVERTIME

A COMMON SENSE BUS SAFETY PROPOSAL  
BY THE AMALGAMATED TRANSIT UNION  
AFL-CIO / CLC



ATU is the largest labor organization representing public transit, over the road, and school bus workers in the U.S. and Canada. The union represents about 6,000 workers in the intercity bus industry

Four people were killed and dozens were injured after a tour bus overturned on Interstate 95 in central Virginia on May 31, 2011. Fifty-seven people were on board, including the driver, when the bus ran off the road and overturned, landing on its roof. No other vehicles were involved in the crash. Just hours after the accident, Virginia State Police said that the driver's fatigue caused the crash. It was the fourth major over-the-road bus accident this spring, including the horrific March 12 crash in The Bronx that killed 15 people. First responders to that accident, which left bodies severed and sprawled all over Interstate 95 – who have undoubtedly worked at many disturbing scenes in the past – were reportedly so overwhelmed with the gruesome nature of the crash that they required counseling.



*The Virginia State Police Accident Reconstruction Team and Motor Carrier Safety Team inspect a bus that was involved in a single-vehicle accident Tuesday, May 31, 2011, in Bowling Green, Va. The commercial tour bus went off Interstate 95 in Virginia and flipped on its roof before dawn Tuesday, killing four people and injuring many more, state police said. (AP Photo/Richmond Times-Dispatch, Dean Hoffmeyer).*

The first reaction by regulatory authorities in response to these disturbing events has been to focus on casino runs and other so-called curbside bus operators. Law enforcement has been pulling over buses in an effort to check rule compliance, examine log books, and determine if required rest periods are taking place. Federal authorities say nearly 2,800 spot safety checks of passenger buses across the country from March 28 through April 6 resulted in about 10 percent of the vehicles or drivers being taken off the road.

While it is appropriate for law enforcement to crack down immediately to protect the safety of over-the-road bus passengers, these steps do not even begin to address the

core issue which is at the root of these and hundreds of other intercity bus crashes which annually kill about 50 people in the U.S. and injure approximately 1,000 other innocent passengers who are simply hoping to get to their destination in the least expensive way possible. The current safety issues plaguing intercity buses are directly linked to driver fatigue. Up until the past decade, the approach to fatigue management for transportation operators was primarily one of limiting hours of work. Yet, in spite of these limitations on operator hours, an alarming number of accidents have resulted from human fatigue.<sup>1</sup>

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## Background

Prior to 1982, the intercity bus industry was strictly regulated by the Interstate Commerce Commission (ICC), which became the Surface Transportation Board in 1995. Bus operators were required to petition ICC for operating rights before beginning service on each interstate route. Regulators precisely defined each bus route, specifying exactly which highways could be used. They also dictated the size of the bus and the places where passengers could be picked up or discharged. Operators also had to get ICC approval for all changes in rates.

Intercity bus travel was at its peak during the 1940s. After World War II, the share of intercity travel done by bus steadily declined. As competition from air travel and improvements in automobiles increased, the industry's share of passengers decreased. In the 1970s, bus lines came under pressure from low fares offered by Amtrak. The steady decline of the industry lead Congress to pass the *Bus Regulatory Reform Act of 1982*, which simplified regulatory standards and expedited procedures.

<sup>1</sup> *Toolbox for Transit Operator Fatigue*. Transit Cooperative Research Program (TCRP) Report #81, 2002.

## Unintended Consequences

As a result of this legislation, market entry conditions into the industry were eased significantly, and applications for authority to operate have rarely been challenged. Entry was liberalized to the point where any prospective carrier that was “fit, willing, and able” was granted authority. Minimum insurance coverage and knowledge of safety regulations are now basically the only requirements to prove a carrier’s fitness to operate. While the act was certainly successful in stimulating competition, it is doubtful that Congress intended market forces to result in reduced safety in the industry.

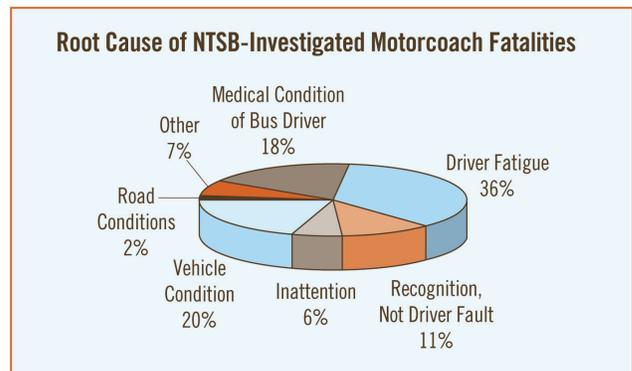
Operators are now free to set their own rates, which has allowed customers to lock in jaw-dropping fares between certain cities. If you take your chance on a discount bus operator, there is a good chance that you will be putting your life in the hands of a severely fatigued driver who may not speak English or even understand road signs. And you may very well be riding in a bus that has been cited for numerous safety violations. Ridership on intercity bus carriers has been climbing significantly in recent years and more people are putting themselves at risk every day.

The last two decades of the twentieth century saw enactment of several bills that together dismantled the banking regulatory structure established during the New Deal, leading to the current financial crisis. Similarly, the deregulation of the intercity bus industry has allowed greed and profits to endanger the well being of anyone who is traveling on the open road, whether they are in a bus or not.

## Low Wages, Extreme Fatigue

When an intercity bus crashes, especially when no other vehicles are involved in the accident, there is a high likelihood that the driver of that bus fell asleep at the wheel. Hundreds of non-union intercity bus companies – usually tiny operations that have only a few buses – typically pay their drivers incredibly low wages. As a result, bus drivers are being forced to work 100 hours a week or more just to make a living. If they are not driving a bus for that many hours, there is an excellent chance that the driver works two or three other jobs in order to make ends meet. Unsuspecting customers simply do not know that they are riding with drivers who are falling asleep because they never rest.

The National Traffic Safety Board (NTSB) investigated 16 fatal motorcoach crashes between June 1998 and January 2008. According to NTSB, driver related problems were responsible for 60 percent of the fatalities occurring in the crashes investigated, while **the condition of the vehicle accounted for only 20 percent of the fatalities. Driver fatigue was responsible for a staggering 36% of the fatalities** occurring in the crashes investigated. It was the **number one cause of fatal accidents**, far above road conditions (2%) and inattention (6%). Other than vehicle condition, the next highest root cause was driver medical condition (18%).<sup>2</sup>



## Fair Labor Standards Act Exemption

Under the Fair Labor Standards Act (FLSA), covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek at a rate not less than one and one-half times the regular rate of pay. But Section 13(b)(1) of the FLSA provides an exemption from the overtime pay requirements for “Any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935 (recodified at 49 U.S.C. 31502).” This exemption is applicable to drivers, helpers, loaders, or mechanics whose duties affect the safety of operation of commercial motor vehicles in transportation on public highways in interstate commerce.

Congress apparently created this exemption to eliminate any conflict between the jurisdiction exercised by the Department of Labor over the FLSA and the mutually exclusive jurisdiction exercised by the Department of Transportation over hours of service issues. However, there is no necessary inconsistency between enforcing rigid maximum hours of service for safety

<sup>2</sup> U.S. DOT Motorcoach Safety Action Plan, November, 2009

purposes and at the same time, within those limitations, requiring compliance with the increased rates of pay for overtime work. In fact, both issues are paramount to safety, and they are clearly linked. When drivers are not paid well, including appropriate overtime rates, they are going to be pushed to make a living elsewhere, providing them little time to rest and turning them into weary operators. But only a 10% higher driver base pay rate leads to a staggering 34% lower probability of a crash.<sup>3</sup>

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## Motorcoach Enhanced Safety Act of 2011 – Amendments Needed

Bipartisan legislation introduced by Senator Sherrod Brown and Kay Bailey Hutchison (S. 453) and Representative John Lewis (H.R. 873) would direct the Secretary of Transportation to prescribe regulations requiring motorcoaches to be installed with safety seat belts at each seating position, advanced glazing in each portal to prevent passenger ejection, and stability enhancing technology to reduce the number and frequency of rollover crashes, among other requirements. The bill would also require the Secretary to prescribe regulations establishing improved strength and crush resistance standards for motorcoach roofs.

In addition, the bill wisely reduces from 18 months to 9 months after motorcoach operations begin the deadline for mandatory safety reviews of newly registered motorcoach owners or operators. Moreover, in an effort to crack down on so-called “chameleon” operators who shut down after a series of accidents and investigations, only to reopen under a new name, the bill would prohibit two or more motorcoach operators from using common ownership, common management, common control, or common familial relationships to avoid

<sup>3</sup> *Paying for Safety: An Economic Analysis of the Effect of Compensation on Truck Driver Safety*, Michael H. Belzer, 2002.

compliance, or conceal noncompliance or a history of noncompliance with commercial motor vehicle safety regulations. And, it includes an important provision requiring that a driver must have a CDL passenger-carrying endorsement to operate a commercial van transporting 9 to 15 passengers in interstate commerce, while also initiating drug and alcohol testing for such operators.

With its focus on seatbelts, vehicle structural integrity, and keeping unsafe bus owners out of business, the *Motorcoach Enhanced Safety Act* is well-intentioned legislation which includes many overdue provisions. **Unfortunately, however, the bill still leaves passengers vulnerable because it ignores the key issue at the heart of intercity bus crashes: driver fatigue.** Common sense tells us that while maintaining the structural integrity of a bus is critically important, **if a 40,000 pound vehicle traveling at a high rate of speed overturns and smashes into a bridge or falls over a cliff, the lives of the occupants are going to be in grave danger, even if they are strapped in and the vehicle has the strength of a tank.**

**The real problem is that bus drivers are falling asleep at the wheel because they are working grueling hours at abysmally low wages.** And since intercity bus drivers are exempt from the FLSA’s overtime provisions, many drivers are forced to work second jobs during their so-called “rest period” in order to make ends meet. An amendment to S. 453/ H.R. 873 is needed<sup>4</sup> **that would apply FLSA’s overtime provisions – which for decades have covered the majority of American workers – to intercity bus drivers. Coach operators would get paid fairly for the work they put in above 40 hours per week, making them less inclined to work other jobs while pushing their bodies to the limit.**

**While the FLSA’s overtime provisions cover about 85% of the U.S. Workforce** in the public and private sector, intercity bus drivers are exempt.

<sup>4</sup> Suggested amendment to 29 U.S.C. 213 (b) (1): (b) Maximum hour requirements: The provisions of section 207 of this title shall not apply with respect to (1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49 **except a driver of an “over-the-road bus” as defined in section 3038(a)(3) of the Transportation Equity Act for the 21<sup>st</sup> Century (Public Law 105-178; 49 U.S.C. 5310 note).**

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## FLSA Overtime Exemptions Lifted Recently For Some Drivers

As a result of SAFETEA-LU (2005), employees engaged in transportation via vehicles such as most light pick-up trucks and automobiles, who historically had been covered by the FLSA § 13(b)(1) exemption from overtime, are no longer exempt. Congress saw the need to address a serious problem, as highway safety and worker safety were both undermined by employers who had an economic incentive to make their drivers work long hours without corresponding overtime pay.

Now is the time to lift the overtime exemption on intercity motorcoach drivers, who are still categorized with an odd group of workers that have no apparent connection to public safety which includes boat salespeople, buyers of agricultural products, forestry employees, livestock auction workers and motion picture theater employees. If the teenager who rips your ticket at the movies falls asleep on the job, the only consequence is that patrons get in for free. When bus drivers fall asleep at the wheel, people die.

## Hours of Service and Enforcement Ineffective

Federal Motor Carrier Safety Administration (FMCSA) rules prohibit driving a passenger-carrying commercial motor vehicle (CMV) for more than 10 hours, or to drive after having been on-duty for 15 hours. The five hour difference between the ten

hour driving limit and the fifteen hour on-duty limit was designed to give drivers the opportunity to take care of non-driving work-related duties such as loading and unloading of passengers and luggage, and fueling the vehicle, as well as non-working duties such as meal and rest breaks. After completing a 10 to 15-hour on-duty period, the driver must be allowed eight hours off-duty.

Greyhound drivers are paid hourly wages, but not for every hour they are at work. The current top driver rate is \$22.80 per hour for driving hours only. Reporting for work, performing pre-trip inspections, loading passengers, and making reports is unpaid work time, as is rest stop time, post-trip inspection time, and most late arrival time. So even though it is said to be an hourly rate of pay, it actually amounts almost to piece work: one is paid for the time it supposedly takes to drive a particular schedule.

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Hours of service regulations that have been in existence for decades are routinely ignored, especially by fly-by-night, non-union bus companies. The state police in general do not perform random checks of passenger buses the way they do on cargo-hauling trucks because of the dissatisfaction expressed by passengers when their bus gets pulled out of commission and no replacement vehicle arrives for hours. Moreover, even if police actively seek out so-called discount bus carriers, there are not nearly enough law enforcement officers to even begin the process of ridding the highways of unsafe buses. While periodic stings pull large numbers of vehicles off the

road and generate significant press coverage, it is back to business as usual once the headlines die down. On May 31, the families of four innocent people found out that “business as usual” in the intercity bus industry means that they will be attending a funeral instead of a family reunion.

## Rest: A Common Sense Approach to Safety

The *Motorcoach Enhanced Safety Act* requires the Secretary to conduct “collision avoidance research” and prescribe a standard or regulation based on research results. The federal government need not spend any

more resources on this subject. Extensive research has already found that fatigue is the overarching factor in the majority of intercity bus crashes.

Requiring motorcoaches to be as crash-worthy as possible is critically important. But doesn't it make sense to first create economic conditions whereby drivers are fairly compensated for their work which exceeds 40 hours per week, making it less likely that they will have to resort to doctoring log books, working other jobs, and wearily reporting for duty with a giant cup of coffee? By doing so, fewer collisions will ultimately occur. **Simply stated, the best way to avoid collisions is to get a good night's sleep.**



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