

Approved March 5, 1990  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Michael R. O'Neal at  
Chairperson

3:30 ~~am~~ p.m. on February 15, 1990 in room 519-S of the Capitol.

All members were present except:

Representatives Fuller, Gomez, Peterson and Sebelius, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Representative Barbara Allen  
Brad Smoot, Coordinator, Kansas Coalition for Tort Reform  
Jim Nordstrom, Attorney, representing the Kansas Association of Defense Counsel  
Attorney General Robert T. Stephan submitted testimony  
Robert Frey, Kansas Trial Lawyers Association

HEARING ON HB 2798 Admissibility of certain evidence in auto accidents

Representative Allen testified HB 2798 amends the Seat Belt Safety Act to provide that evidence of failure to use a safety belt shall be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages, see Attachment I.

Brad Smoot, Coordinator, Kansas Coalition for Tort Reform, testified the bill is permissive. The judge must determine the relevance of such evidence of non-compliance in each case and both sides will have an opportunity to argue the relevancy issue. The change in evidentiary rules included in HB 2798 will encourage seat belt use. The amendment to the Seat Belt Act is consistent with other Kansas evidentiary rules regarding traffic violations and gives both plaintiffs and defendants a fair opportunity to present their respective cases to the judge and jury, see Attachment II.

Jim Nordstrom, Attorney, representing Kansas Association of Defense Counsel, testified in favor of HB 2798. He said HB 2798 would restore consistency, uniformity and fairness to the code of civil procedure regarding admissibility of evidence in civil injury cases. He stated he did not like the mitigation aspect of the bill, see Attachment III.

Attorney General Robert T. Stephan submitted prepared testimony in support of HB 2798, see Attachment IV.

Robert Frey, Kansas Trial Lawyers Association, testified in opposition to HB 2798, see Attachment V. He said the law is fine the way it is now. The law does not discourage people from wearing seat belts, in fact, the present law encourages people to wear seat belts because they are fined if they don't.

Representative Jenkins moved and Representative Lawrence seconded to report HB 2798 favorably. The motion passed.

Representative Solbach asked to be reported as voting "no".

CONSIDERATION OF HB 2721 Privilege against discovery and finding of accountants

An amendment was distributed to the Committee, see Attachment VI. The proposed amendment excepts the privilege of immunity when the material in question is involved in a dispute between a reviewer and the person or entity being reviewed.

Representative Snowbarger moved to adopt the amendment. Representative Douville seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 519-S, Statehouse, at 3:30 a.m./p.m. on February 15, 1990.

Representative Walker moved to report HB 2721, as amended, favorably. Representative Buehler seconded the motion. The motion passed.

The Committee meeting was adjourned at 5:05 p.m.





TOPEKA

HOUSE OF  
REPRESENTATIVES

## COMMITTEE ASSIGNMENTS

VICE CHAIRPERSON: INSURANCE  
MEMBER: TRANSPORTATION  
PENSIONS, INVESTMENTS AND BENEFITS  
RULES AND JOURNAL

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PRAIRIE VILLAGE, KANSAS 66208  
(913) 642-1273  
STATE CAPITOL, ROOM 426-S  
TOPEKA, KANSAS 66612  
(913) 296-7680

February 15, 1990

Mr. Chairman, Members of the Committee:

In 1986, the Kansas Legislature passed a mandatory seat belt law (K.S.A. 8-2503) which provides that each front seat occupant of a passenger car shall have a safety belt properly fastened about such person's body at all times when the vehicle is in motion. An amendment was added to the mandatory seat belt bill (K.S.A. 8-2504(c)), which provides that evidence of failure to use a safety belt shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages. **H. B. 2798 amends the Seat Belt Safety Act to provide that such evidence may be admissible.**

I believe this change in law is a good idea for several reasons. First, the purpose of this bill is to encourage persons to obey the mandatory seat belt law, and thus to promote safety and decrease fatalities. Later today, you will hear testimony from the Kansas Coalition for Tort Reform which documents that Kansas automobile fatalities have significantly decreased since passage of Kansas' mandatory seat belt law. Passage of this measure will encourage the use of seat belts by rewarding those who obey Kansas' seat belt law, and thus hopefully cause a further reduction in automobile fatalities.

Second, the 1986 amendment which prohibits the admissibility of evidence regarding the use of seat belts is an exception to our rules of civil procedure. K.S.A. 60-407(f) provides that except as otherwise provided by statute, **all relevant evidence is admissible. Relevant evidence** is defined in K.S.A. 60-401(b) to mean **evidence having any tendency in reason to prove any material fact.** Obviously, failure to wear a seat belt should be relevant evidence for a jury in determining damages, because our Seat Belt Safety Act mandates the use of seat belts.

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T. J. Corn.

Attachment I

Third, the case of Taplin v. Clark, 6 Kan. App.2d 66 (1972), is relevant to our deliberations. In that case, the Kansas Court of Appeals considered the issue of whether a jury could consider as a negligence factor to reduce a negligent driver's liability for damages the failure of a passenger in an automobile to use an available seat belt. The court held that the trial court did not err in excluding evidence of plaintiff's nonuse of a seat belt, because that evidence was not relevant to any issue to be determined. In reaching this decision, the court reasoned:

"Our own Legislature...has not made their (seat belts) use mandatory... Plaintiff was therefore not violating any statutory duty. In short, there was no duty to use a seat belt...[t]hat being so, the trial court did not err in excluding evidence of plaintiff's nonuse for it was not relevant to any issue to be determined."

The Taplin court's reasons for making evidence regarding the nonuse of seat belts inadmissible are no longer valid. In fact, the exact opposite reasons should be used to argue for admissibility. **Because the Kansas Legislature has now mandated the use of seat belts, evidence of nonuse is relevant to the issue of determining damages.**

I want to point out that H.B. 2798 applies **only** to the **Seat Belt Safety Act**, not to the Child Passenger Safety Act, and thus would **not** apply to children under the age of fourteen years. For individuals fourteen years of age and older, it would only apply to persons in the front seat, either on the driver's or passenger's side. In addition, **the provision is permissive, not mandatory.**

Thank you for allowing me the opportunity to appear before you today. I will be happy to answer any questions.

2/15/90  
H. Jud. Com.  
Att I

# KANSAS COALITION FOR TORT REFORM

STATEMENT OF BRAD SMOOT, COORDINATOR  
KANSAS COALITION FOR TORT REFORM  
REGARDING 1990 HOUSE BILL NO. 2798  
HOUSE JUDICIARY COMMITTEE  
FEBRUARY 15, 1990

Mr. Chairman; Members:

On behalf of the Kansas Coalition for Tort Reform, thank you for permitting us to appear today in support of 1990 House Bill No. 2798. Attached to our testimony is a partial membership list of our organization. As you can see, we represent businesses, large and small, various professional associations and members of the insurance and health care industries.

We believe the Kansas seat belt law is a good law. It has been a factor in the three-year decline in Kansas auto fatalities. Last year, Kansas fatalities declined a record 13.5%. Compliance is now estimated to be as high as 52%. We think Kansans will continue to use seat belts and that the Legislature ought to do all it can to encourage even greater seat belt usage. One measure which would encourage seat belt use is H-2798. This bill would permit the admission of the failure to use seat belts as evidence with regard to comparative negligence and mitigation of damages.

Obviously, the failure to wear a seat belt is not only a violation of state traffic law, but also a frequent contributing factor in the type and seriousness of automobile traffic injuries. It seems odd that we would deny to a jury evidence so clearly relevant to the nature and scope of a plaintiff's injuries. In fact, I can think of no other instance in which evidence of a violation of our traffic laws, otherwise relevant to the injuries or the extent of damages, is statutorily inadmissible. You will note that the Pattern Instructions for Kansas (PIK) generally permit evidence of traffic violations to be admitted. See PIK Section 8.01 et seq. Specifically, evidence is not excluded by our child safety restraint law, (K.S.A. 8-1343 et seq.) or the motorcycle helmet and eye protection law, (K.S.A. 8-1598).

Finally, the bill is permissive. The judge must determine the relevance of such evidence of non-compliance in each case and both sides will have an opportunity to argue the relevancy issue. In addition, if admitted, both sides can present evidence, and even expert testimony, on the seat belt issue and further argue their case to the jury. We believe that judges and

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H. Jud. Com.

Attachment II

juries can properly decide questions of relevancy and weight to be given violations of our seat belt laws.

In summary, we believe the change in evidentiary rules included in H-2798 will encourage seat belt use. This amendment is consistent with other Kansas evidentiary rules regarding traffic violations and gives both plaintiffs and defendants a fair opportunity to present their respective cases to the judge and jury.

Thank you for your time and interest. I would be happy to respond to any questions.

2/15/90  
H. Jud Com  
Att II

# KANSAS COALITION FOR TORT REFORM

Kansas Chamber of Commerce and Industry  
Kansas Farm Bureau  
Kansas Contractors Association  
Independent Insurance Agents of Kansas  
Kansas Railroad Association  
Kansas Motor Carriers Association  
Kansas Society of Architects  
Kansas Hospital Association  
Wichita Area Chamber of Commerce  
Kansas Medical Society  
Associated General Contractors of Kansas  
Kansas Association of Broadcasters  
Kansas Grain and Feed Dealers Association  
Kansas Consulting Engineers  
Kansas Lodging Association  
Kansas Life Insurance Companies  
Kansas Petroleum Council  
Kansas Association of Property and Casualty Insurance Companies  
Kansas Independent Oil and Gas Association  
Kansas Engineering Society  
Kansas Oil Marketers Association  
Kansas Motor Car Dealers Association  
Kansas League of Savings Institutions  
Wichita Independent Business Association  
Western Retail Implement and Hardware Association  
Kansas Telecommunications Association  
National Federation of Independent Business/Kansas  
Merrell Dow Pharmaceuticals, Inc., Overland Park  
Hutchinson Division, Lear Siegler, Inc., Clay Center  
Becker Corporation, El Dorado  
The Coleman Company, Wichita  
FMC Corporation, Lawrence  
Puritan-Bennett Corporation, Overland Park  
Seaton Media Group, Manhattan  
Boeing Military Airplane Company, Wichita  
American Insurance Association  
Alliance of American Insurers  
National Association of Independent Insurers  
National Association of Mutual Insurance Companies  
Kansas Fertilizer and Chemical Association  
Wes Sowers Management Counsel  
Beech Aircraft Corporation  
Cooper Industries, Funk Manufacturing Div.  
Southwestern Bell Telephone Co.  
Allied-Signal, Inc., King Radio

January 1988

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2/15/90  
Att II 3*





Testimony on H.B. 2798 before the  
House Judiciary Committee  
February 15, 1990

Mr. Chairman, members of the committee I am Jim Nordstrom and I appear before you today on behalf of the Kansas Association of Defense Counsel as a proponent of H.B. 2798.

The Kansas Association of Defense Counsel is an organization of more than 200 Kansas trial attorneys who perform principally defense work in the Kansas state and federal courts.

We believe H.B. 2798 corrects a significant inconsistency in our code of civil procedure regarding the admissibility of certain evidence in civil personal injury cases.

Currently any violation of a traffic offense may be admissible into evidence except for one offense--the violation of the state's safety belt use act, K.S.A. 8-2501 et seq.

The specific language which forbids the introduction of such evidence is at K.S.A. 8-2504 (c) which states:

"Evidence of failure of any person to use a safety belt shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages."

Members of the Kansas Association of Defense Counsel believe H.B. 2798 would restore consistency, uniformity and fairness to the code of civil procedure regarding admissibility of evidence in this area.

I would be happy to respond to any questions of the committee on our position.

Respectfully submitted,

Jim Nordstrom  
Attorney at Law  
on behalf of the  
Kansas Association of Defense Counsel

*2/15/90  
J Nordstrom*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

February 15, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

The Honorable Michael O'Neal  
Chairman  
House Judiciary Committee  
Kansas Capitol  
Topeka, Kansas 66612

Dear Mr. Chairman; Members:

I am writing to express support for 1990 House Bill No. 2798 concerning the admissibility of evidence of seat belt violations in civil actions. I believe the Kansas seat belt law is saving lives and I encourage the legislature to consider other steps to promote greater usage.

House Bill 2798 would put the seat belt law in the same class as other traffic offenses with regard to admissibility of evidence. I think judges and juries can properly consider such evidence and that our statutes should not absolutely preclude its use.

In the long run, this proposed change in public policy should help promote greater compliance with our seat belt laws.

Sincerely,

A handwritten signature in cursive script that reads "Robert T. Stephan".

Robert T. Stephan  
Attorney General

RTS:bls

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H. Jud Com.  
Attachment IV



# KANSAS TRIAL LAWYERS ASSOCIATION

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(913) 232-7756 FAX (913) 232-7730

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## TESTIMONY of the KANSAS TRIAL LAWYERS ASSOCIATION concerning HB 2798

The Kansas Trial Lawyers Association sees HB 2798 as a bill with very good intentions but which could, if passed, produce very bad results. No one can seriously argue that the use of safety belts in automobiles is a bad public policy or that the citizens of Kansas should not be encouraged to use safety belts while operating an automobile. Yet, there recently have been alarming reports about studies which have shown that use of safety belts in the rear seats of automobiles by small children has produced tragic results involving serious spinal injuries in head-on collisions.

Mandatory safety belt use in school busses has been rejected here in Kansas by this very legislature because it has not been shown that safety belts will prevent injury on school busses. In fact, there is evidence to show that safety belt use on school busses can result in causing as much injury to the occupants as it prevents.

The fact is, safety belt usage has been documented as producing injuries in some instances where there would have been less injury or no injury at all if the belt had not been used. There simply is not sufficient evidence to support an evidentiary rule change that would allow failure to use a safety belt to be considered in determining any aspect of comparative negligence.

If the simple change of the words "shall not" to "may" is allowed, it will set up an ideal defense for every automobile insurance company that is facing a claim in which there was someone in the automobile that failed to have his or her safety belt fastened. If it would be possible to avoid paying a claim because a safety belt was not used, does the committee think that an insurance company would not do so? Of course they would. They would stand to benefit every time since the comparative negligence of the non-user will always operate to reduce the amount the person is going to receive in compensation for his or her injuries. The reduced compensation will result regardless of whether or not the non-use of the safety belt had anything whatsoever to do with the injury.

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H. Jud Com

Attachment V

RICHARD H. MASON  
EXECUTIVE DIRECTOR

Imagine an accident in which two cars collide at an intersection and which produces serious injury to the occupants of only one of the cars. The car in which the injuries were suffered was driven by a young mother with her seven-year-old daughter in the rear seat. The other car was driven by a person who was alone in the car. The mother was sober, alert and a safe driver. The 20-year-old was drunk, had run a red light, and was speeding 15 mph over the speed limit.

When the mother makes a claim against the other driver for damages, the insurance company adjuster is going to ask her if she had a safety belt in use and if her daughter was wearing a safety belt. If she or her daughter were not wearing their safety belts, it is certain that the insurance company will deny full liability for the claimed damages and the injured people will either have to accept less compensation for their damages or they may have to file suit and try to get a judge or jury to rule that the failure to use the safety belts had nothing to do with the causation of the accident or the injuries.

If you multiply the above scenario out many times over you will quickly see that the insurance companies who can use the defense of comparative negligence for not using a safety belt will enjoy a predictable reduction in claims paid. The injured parties will recover less for their damages and the truly negligent drivers, the ones who cause the accidents, will suffer less liability for their negligent acts.

Passage of HB 2798 will have the following results:

1. There will be virtually no reduction in the number or severity of traffic accidents.
2. Because of comparative negligence, claims paid by insurance companies will be reduced.
3. Because of lack of accountability, there will be no possibility of coincidental reductions in insurance premiums as a reflection of the savings that insurance companies will experience.
4. Because of a higher incidence of claim denials by insurance companies, there will be a greater number of suits filed in Kansas courts for damages.

The Kansas Trial Lawyers Association urges this committee to retain the language in K.S.A. 8-2504 that evidence of failure to use a safety belt shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages.

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H. J. Corn

Att V 2

**60-258a. Comparative negligence.** (a)

The contributory negligence of any party in a civil action shall not bar such party or such party's legal representative from recovering damages for negligence resulting in death, personal injury, property damage or economic loss, if such party's negligence was less than the causal negligence of the party or parties against whom claim for recovery is made, but the award of damages to any party in such action shall be diminished in proportion to the amount of negligence attributed to such party.

If any such party is claiming damages for a decedent's wrongful death, the negligence of the decedent, if any, shall be imputed to such party.

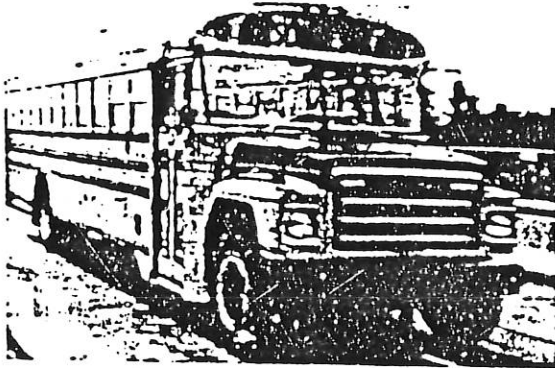
(b) Where the comparative negligence of the parties in any such action is an issue, the jury shall return special verdicts, or in the absence of a jury, the court shall make special findings, determining the percentage of negligence attributable to each of the parties, and determining the total amount of damages sustained by each of the claimants, and the entry of judgment shall be made by the court. No general verdict shall be returned by the jury.

(c) On motion of any party against whom a claim is asserted for negligence resulting in death, personal injury, property damage or economic loss, any other person whose causal negligence is claimed to have contributed to such death, personal injury, property damage or economic loss, shall be joined as an additional party to the action.

(d) Where the comparative negligence of the parties in any action is an issue and recovery is allowed against more than one party, each such party shall be liable for that portion of the total dollar amount awarded as damages to any claimant in the proportion that the amount of such party's causal negligence bears to the amount of the causal negligence attributed to all parties against whom such recovery is allowed.

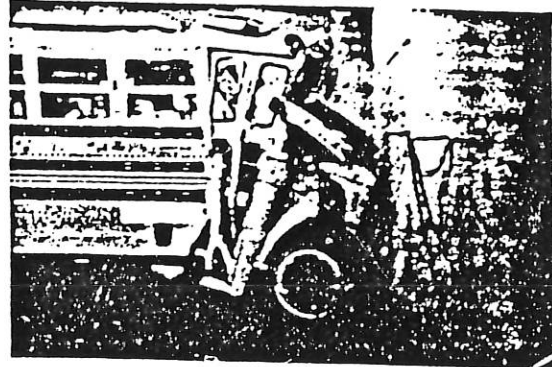
(e) The provisions of this section shall be applicable to actions pursuant to this chapter and to actions commenced pursuant to the code of civil procedure for limited actions.

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J. Jud. Com  
Att. V



Large buses are safer for riders.

Photographs from Transport Canada Film



Large bus absorbs crash forces, lessens injuries.

### Canadian Crash Tests

## Will Lap Belts Do More Harm Than Good?

Recent tests conducted by the Canadian government indicate that in severe frontal impacts, lap belts in school buses could do children more harm than good.

The 1985 study of lap belt performance in frontal impacts was conducted by Transport Canada, the equivalent of the U.S. Department of Transportation. The Canadians conducted three full-scale 30 mph barrier impacts using various sizes of dummies, some equipped with instruments to record injury levels. The vehicles tested were a 66-passenger Blue Bird school bus, which meets U.S. standards designed to protect unbelted occupants, and two smaller buses seating 20 and 22 passengers.

The lap belted dummies on the large bus recorded head impacts two to three times more severe than the unbelted dummies. But by far the worst scores were recorded by the lap belted dummies on the small buses.

The results were not surprising, says Dr. Kennerly Digges, deputy associate administrator for research at the National Highway Traffic Safety Administration (NHTSA). In 1978, sled tests by the safety agency showed that lap belts "caused an increase in peak accelerations," resulting in harder head impacts with seat backs.

Digges noted, as have other NHTSA officials, that in side and rollover crashes, belts would provide safety benefits to school bus occupants. However, he contends that lap belts for large buses are a poor investment from a cost-benefit point of view. "You'd be better off spending the money on better brakes and better drivers," he says.

In Canada, large school buses meet safety standards that are similar to U.S. requirements. However, small Canadian school buses weighing less than 10,000 pounds are not equipped with lap belts and the head protection zone and seat spacing measurements differ from U.S. requirements.

Transport Canada concluded that in the tests "the belted dummies experienced higher head accelerations, lower chest accelerations, and more severe neck extension than did the unbelted [dummies]. This indicates that if lap belts are installed on current designs of school bus seats, a greater potential for head injury exists."

The report said that the "passive occupant restraint system (compartmentalization) required [by Canadian safety standard 222] since 1980 functions as intended during frontal impacts and provides excellent protection for occupants."

The "School Bus Safety Study" was written by G.N. Farr, an automotive safety engineer with the crashworthiness section of Transport Canada. The tests were conducted under contract with Calspan, a private research company.

William T. Gardner, head of crashworthiness engineering for Transport Canada, says the tests were conducted because it might be more damaging to add lap belts and previous studies indicated that head and neck injuries might be aggravated by them. The tests were done to answer those questions. About 55 percent of all school bus crashes in Canada during 1981 were frontal, the report noted.

The engineers tested a 66-passenger 1984 Blue Bird bus, a 1984 Campwagon van conversion type, 20-passenger bus, and a 1984 Thomas Minotour 1, 22-

(Cont'd on page 6)

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H. J. Com  
Att V



Full-size bus: seat cushions impact.



... But belted dummy's head bears brunt of load.

(Continued from Page 5)

passenger bus built on a Ford school bus chassis. All three are commonly used throughout Canada, the study said.

For the test series, 4-foot, 10-inch, 5th percentile adult female anthropomorphic dummies were used in each bus. Three were belted and three were unrestrained in each bus. Each was instrumented to determine head and chest acceleration during the crash. Some of the dummies were instrumented to measure knee and upper leg injury data. Other, smaller dummies were placed on the large bus to provide a photographic comparison with the larger dummies.

None of the test dummies were certified for compliance testing under U.S. Federal Motor Vehicle Safety Standard (FMVSS) 208. Therefore, a calculated head injury criterion (HIC) level of 1,000 for the dummies used in these tests cannot be correlated with the HIC level of 1,000 set as the upper limit under the U.S. occupant safety rule. However, the measurements obtained in the Canadian crash tests can be used to compare lap belted and unbelted performance of the dummies used in each of the school bus tests.

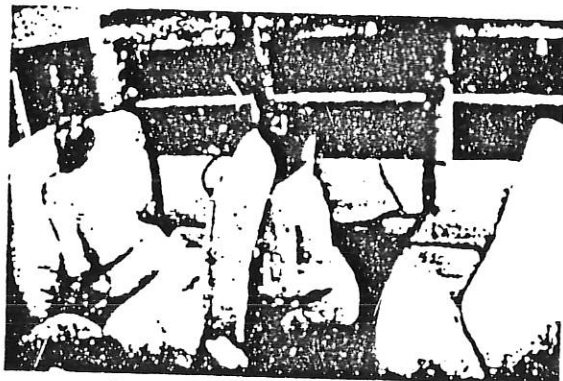
The barrier crashes of the two smaller buses showed that in all cases, the dummies secured by lap belts measured HIC values exceeding 1,000—and in some cases, scores in the 2,000 plus range were calculated. All unrestrained dummies had HIC values of less than 1,000.

"From these results," the Farr report said, "it must be concluded, that for frontal impacts, the restrained occupant would receive more severe head injuries than the unrestrained one. One can further conclude that injuries could very likely be life threatening."

The test films showed that many of the belted dummies' heads struck the seats in front of them so violently that the force bent the heads back on the necks at almost a 90 degree angle. The action was severe enough to be judged to cause serious injury, Farr said.

In the large school bus, the HIC values for the lap belted dummies were about three times greater than for the unrestrained dummies. However, none measured HIC values in excess of 1,000.

The reason they didn't, says Transport Canada's Bill Gardner, is that a 30 mph barrier crash of the small (Cont'd on page 8)



Busette: "Soft" landing for the unbelted.



Belted passengers could have fatal injuries.

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bus is much more severe than that of a 66-passenger bus. The smaller buses are much stiffer than the large bus and, in addition, the smaller buses stop much more quickly. Because the large bus body slides on the frame and its front end crushes, much of the crash force is absorbed before it is transferred to the occupants.

The high head injury loads measured by the dummies were, in part, a result of the stiffness of the dummies used in the test, the report noted. Gardner pointed out that the severity of the rearward flexure experienced by the dummy heads after they hit the seats in front of them is particularly noteworthy because the stiffness of the dummies should have acted to decrease the amount of flexion.

During the crash of the large school bus, two unrestrained dummies the size of six-year-olds struck the seat backs below the seat back frame spreading the forces of the crash over the dummies' bodies. "It is expected that this size of child would be better protected by the 'compartmentalization' concept than a larger child," Farr said.

An adult-sized lap belted dummy in the driver's seat of the large school bus was struck in the head by the steering column in the crash. The driver probably would have suffered serious or fatal injuries in the crash, Farr concluded.

There were other problems noted. On the Blue Bird bus, the fuel tank cap was punctured. "If a rollover had occurred," Farr said, "a significant leakage of fuel would probably have occurred."

On the Thomas Minotour bus, a gasoline tank hose broke loose. "If even a partial rollover had occurred," Farr reported, "a major fuel spill would have happened."

During the crash of the school van, two of the three left side windows shattered, hurling "a tremendous number of small shards of tempered glass" throughout the bus interior. Had the bus been filled with children, the glass could have caused severe eye and body injuries, Farr said. He suggested that window glazing and fuel systems receive further attention from ministry scientists.

Because of the Canadian test results, the U.S. National Transportation Safety Board, which is conducting an evaluation of large FMVSS 222 buses, has decided to expand its study to examine how well small, van-type school buses are protecting their occupants in crashes. (See "Safety Board Studies," Page 11.)

## Railroad Crossings

School districts should establish and enforce procedures for checking on whether bus drivers are stopping at railroad crossings, the National Transportation Safety Board recommends.

The recommendation was issued following the board's examination of a train collision with a school bus near Carrsville, Virginia, in 1984. A 108-car train collided with the bus as the driver was trying to back off the tracks. Board investigators found that the driver failed to stop before she started to cross the tracks. The train hit the front of the bus, which was knocked off its chassis. The body then rolled over. Two of the 26 students were seriously injured and the driver died. Board investigators learned that it was not unusual for bus drivers in that school district to fail to stop at rail crossings.

## Retrofitting School Buses With Lap Belts? Handle With Care

School districts that retrofit their school buses with lap belts should be very careful about their installation, say officials of the National Highway Traffic Safety Administration (NHTSA) and the Wayne Corporation, a bus manufacturing company.

Under no circumstances should belts be added to buses that were manufactured before 1977. The old bus seats have an exposed rail. Because of the dynamics of a crash, lap belts would actually increase the force with which an occupant's head would strike the rail.

NHTSA has said that it is safe to attach the lap belts to the current seats in post-1977 buses. That statement is still true, says Ralph Hitchcock, director of NHTSA's office of vehicle safety standards.

Hitchcock says that if school districts want to retrofit school buses that were manufactured after 1977, they should first make sure that they purchase lap belts that meet Federal Motor Vehicle Safety Standard (FMVSS) 209. Also, if the manufacturer sells buses that have a lap belt option, school districts should check to see how they are installed and, if possible, follow the manufacturer's installation method.

In general, belts should be attached to the seat frame: if the belts are attached to the floor, children's

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Section 1(d) of H. B. No. 2721:

Except as provided by K.S.A. 60-437, and amendments thereto, and in actions by the board of accountancy to enforce this section, any reports, statements, memoranda, findings, records, working papers prepared, any proceedings held, and any opinions formulated, in connection with any positive enforcement, quality assurance or peer review shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding, except that such privilege shall not exist when the material in question is involved in a dispute between a reviewer and the person or entity being reviewed.

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Attachment VI