

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8610 HOUSE JUDICIARY

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There are two final points I would like to make. During 1994, in the states where we were notified that UPC-II language was being considered, the bill was stopped or amended. This took place in Colorado, Indiana, Mississippi, Tennessee, Washington and your own state.

In Arizona, the new definition language of UPC-II was included. Our retained counsel in that state, whose firm has a probate practice, assured us that the bill amending the probate code did not affect insurance because insurance, in that state, is still not considered a probate item.

In enacting the amendments contained in UPC-II, North Dakota is further down the road than Alaska. It has already enacted the amendments contained in UPC-II. The new law does not take effect until July 1, 1995, however this summer a legislative study committee took another look at the 1993 enactment and no one on the committee could remember anyone testifying in favor or in opposition to that piece of legislation.

In 1993, the legislature was told the state bar association was in support of the legislation; there was no opposition; and it was a model act approved by the Uniform Commissioners and the American Bar Association. So that is how it appeared to the legislature -- that passage of this bill put them on the side of the angels.

Once the life insurance industry raised some of the above issues in the North Dakota legislative study committee, the members of that committee developed some real concerns as to what had been enacted. The bottom line is what was passed in 1993 will receive another look in 1995.

During the summer study, several interesting things occurred. The former North Dakota Attorney General expressed a concern that the surviving spouses could end up with 70% or 80% of the entire estate unless the amendments to UPC-II remained.

He arrived at that conclusion by saying the surviving spouse could get all the insurance (as the beneficiary on the insurance policy), and then decide to take against the will and get 50% of the remaining assets. He didn't testify -- he had to attend a funeral of a state employee.

Of course raised could have been easily solved by a showing the current probate code to provide that what spouse received via a nonprobate transfer policy, trust, pension plan, annuity policy, plan, disability plan, etc.), would reduce

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the total amount or percentage the surviving spouse was entitled to under the laws of intestacy.

That would have handled the problem (to limit the surviving spouse, married more than 15 years, to a maximum of 50% of all assets the deceased spouse had) without including insurance in the probate estate.

In addition, two letters were received by the North Dakota legislative study committee from lawyers practicing law in North Dakota. They pointed out some concerns with House Bill 1111 (and by reference, the amended language of UPC-II).

A letter from Sharon M. Reis, of the law firm of Shaft, Reis, Shaft & Sogard, listed several problem areas. One gave the example of three North Dakota attorneys, working with the same fact situation, computed the amount of the augmented estate the surviving spouse was entitled to. All three reached a different final figure.

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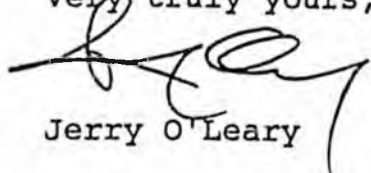
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Believe it or not, I have tried to keep this as short as possible and to the point. But as you are aware, this subject is quite technical. I hope this explains the concerns this industry has with UPC-II.

Very truly yours,



Jerry O'Leary

cc: Eugene L. Copeland, Esq.
Alicia Cordova, Esq.
John L. George, Esq.
William Scher, NALU



American Council of Life Insurance

Elizabeth J. Byrne
Counsel

June 6, 1994

Thomas J. Meyer
Vice President & General Counsel
Jackson National Life Ins. Co.
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Lansing, MI 48911

Dear Tom:

The Uniform Probate Code (UPC) was approved by the National Conference of Commissioners on Uniform State Laws, and by the American Bar Association in August 1969. After approval and promulgation of the Code in 1969, the National Conference of Commissioners on Uniform State Laws and the Real Property, Probate and Trust Law Section of the American Bar Association formed the Joint Editorial Board composed of five commissioners and five representatives of the ABA Section. Since the Fall of 1971, the Board has monitored the legal literature concerning the Code and has studied ways of strengthening and improving the Code. As changes and corrections were considered and approved by the Board, the text was revised and approved.

For the past 25 years, Article II (Intestate Succession and Wills), Uniform Probate Code, contained an exclusion for insurance related products. Specifically it stated:

"Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse."
(Page 76, Volume 8, UPC, 1983).

In 1991, Article II, UPC was amended by striking this insurance exclusion. UPC-II (the 1991 or current edition) now includes insurance products as part of the Augmented and Reclaimable Estate.

With the 1991 amendments, the Comment following Section 2-202, UPC-II, stated that the augmented estate was redesigned to include life insurance a decedent purchased, naming someone other than the surviving spouse as the beneficiary.
(Page 96, Volume 8, UPC, 1993 Cumulative Annual Pocket Part).

The redesigned elective - share system included these types of insurance policies in the augmented estate and as part of the

decedent's reclaimable estate under Section 2-202(b)(2). In addition, the definition of "payor" now includes an insurer.

ACLI opposes the 1991 amendments because they reflect a 180 degree turn in philosophy concerning insurance being included in the augmented and/or reclaimable estate. The current language in Article II, UPC-II, affecting insurance is predicated upon a philosophy that the pre-1990 language in UPC-I could have been used to deplete the estate and reduce the surviving spouse's elective - share entitlement. We are still searching for examples where insurance was used to defeat the interests of a surviving spouse.

The insurance industry had no problem with the change in philosophy so long as insurance was not included in the probate estate. However, UPC-II containing the 1991 amendments removed the insurance exemption and left our products subject to the probate laws of 50 different jurisdictions if the most recent changes to the UPC were enacted in all 50 states.

Eight states (Alaska, Colorado, Hawaii, Idaho, Maine, Minnesota, Nebraska and Utah) have enacted the augmented estate provisions of UPC-I, or a version of it incorporating the life insurance exemption.

Of the 15 states enacting parts of UPC-I, seven states (Alaska, Colorado, Hawaii, Maine, Minnesota, Nebraska and Utah) included the augmented estate language but it was the pre-1990 language excluding insurance from the augmented estate. In 1986, Minnesota struck the life insurance exemption language from its probate code. In 1992 West Virginia and in 1993 Montana and North Dakota enacted UPC-II (including insurance in the probate estate).

The 1991 amendments to the UPC (UPC-II) provide no protection for the beneficiary of an insurance policy who is not the surviving spouse and receives the policy proceeds as the beneficiary named in the policy. The surviving spouse, if electing (up to 9 months later) to take against the will, can force the beneficiary of the insurance policy to "return some or all of the policy proceeds to the reclaimable estate" even though that beneficiary never was aware that there would be a claim filed on those funds by the surviving spouse at a later date.

Another point of information is that Article VI (the Nonprobate Transfer Article), UPC was not changed by the 1991 amendments so the Article continues to provide that insurance is a nonprobate transfer item and not considered within the probate estate. In all likelihood if Article II amendments are proposed, the language of Article VI will not be because they are diametrically opposed.

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I hope this has answered any questions you may have had concerning the Uniform Probate Code and its recent amendments. Please do not hesitate to contact me if you have any further questions or concerns.

Sincerely,

Elizabeth J. Byrne

EJB/vmj

THEYER/LAWSTATE/BYRNE

**American Council of Life Insurance**

Jerry P. O'Leary
Senior Counsel

December 6, 1994

Art Peterson, Esq.
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99801

Dear Counselor:

RE: ACLI's concern with the Uniform Probate Code (UPC-II)

This is in reply to my tele-conference call of yesterday to your office. With me was Alicia Cordova, Esq. our legislative director responsible for Alaska. You suggested, because of time constraints that we should send you our concerns about UPC-II. So that is what we are now doing.

As you will recall, I told you that changes to the Uniform Probate Code, usually referred to as UPC-II, could not be supported by this industry, and we will be opposing efforts in the various states to amend their probate code to incorporate the amendments made to the UPC, commonly known as UPC-II. We wanted to inform you as a courtesy so that when amendments to your state's probate code are proposed, if they are the language of UPC-II, this organization will be in opposition. Thus this letter probably could be considered a notification to you on the position of the life insurance industry.

The American Council of Life Insurance represents more than 650 life and health insurance member companies doing business in the United States and Canada. These companies account for over 92 percent of all the ordinary life and health insurance sold in these countries.

Let me start with a little background on how the life insurance industry became involved in the probate code and the Uniform Commissioners. Ever since 1969, when the Uniform Commissioners approved and promulgated the Uniform Act, and the American Bar Association House of Delegates supported its enactment, the Model Act has been in effect.

Section 2-202 (Augmented Estate) had a one sentence exception for most insurance products. That sentence read as follows:

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"Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse."

Having that exception, or carve-out, in the uniform act, continue to allow insurance proceeds to be distributed outside the probate estate (unless the beneficiary of the policy was the estate of the insured). This is how it had been done for over 200 years.

Then in the late 1980's, Article VI (the nonprobate transfer article) came under review. This organization was alerted to the fact that amendments to that Article were under consideration. The ACLI Legislative Committee formed a Task Force to coordinate this industry's response to any amendments which were to be proposed.

Representatives of the ACLI Task Force as well as other organizations testified before the Article VI Drafting Committee. At that time, the Drafting Committee was chaired by one of Ed Wright's younger partners. You will recall Ed Wright was from Little Rock, Arkansas and had been President of the American Bar Association.

Representatives of this organization were informed by the Drafting Committee that their testimony would be considered and in closing, our spokesman asked that this organization (the ACLI) be kept informed of any proposals in the future, which would have an effect upon how this industry did its business. These assurances were given to our spokesman and changes were made to Article VI, but Section 101 (formerly Section 6-201) of the original Uniform Probate Code) continued to provide that "...an insurance policy...custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan,...or other written instrument of a similar nature is (was) nontestamentary."

The "Comment" section following Article VI, Part 1, Section 6-101, as printed in the 1993 Cumulative Annual Pocket Part, discussed the fact that most courts had held that certain specific types of transactions have been held to be testamentary and so the courts usually invalidated them because they had not been executed in accordance with the statute of wills. It further stated that these same courts for years had upheld beneficiary designations of life insurance contracts. The "Comment" said the "drafters of the original Uniform Probate Code declared they were unable to

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Identify policy reasons for continuing to treat these varied arrangements as testamentary.

Also in the "Comment" is this statement, "The sole purpose of this section is to prevent the transfer authorized here from being treated as testamentary."

So you can see that when the re-write of Article VI of the UPC was completed, insurance and insurance related products still were considered nontestamentary in nature and would continue to be handled outside the probate estate.

Now we move forward to the years 1990 and 1991. A Uniform Commissioner's UPC Drafting Committee amended, as far as the life insurance industry is concerned, Article II and more specifically, Part 2 entitled "Elective Share of Surviving Spouse". This was after the Uniform Commissioners had approved the amendments at its Annual Meetings and the American Bar Association's House of Delegates did likewise. Thus, was born UPC-II.

The ACLI never knew this Article was revised or even that a revision was being considered. The ACLI only learned about its existence in late 1993 after North Dakota House Bill 1111 was on the Governor's desk awaiting his signature.

The fact that the re-write of this Article removed this industry's exemption and we were never even given the courtesy of notification (when we had been assured only a few years before that we would be kept informed), certainly upset many within the life insurance industry. It is almost as if the drafters of the amendments were operating in a vacuum.

If we had been given the opportunity to testify before the UPC drafting committee, this industry would have argued for the continued exclusion of insurance issued products plus a broadening of the insurance exemption in Article II (using UPC-I language) to include additional products this industry is now selling which were not even in existence at the time the exemption language was originally written into the Uniform Probate Code over a quarter of a century ago.

Additionally, the Comment section of Article II, Part 2, starts by stating the amendments have been endorsed by the Assembly of the National Association of Women Lawyers, on the unanimous recommendation of its Executive Committee, leads to only one possible conclusion. Namely, the industry most affected by the amendments, as well as the one with the most expertise concerning the subject of insurance, was completely ignored and instead the Uniform Commissioners turned to a Bar

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Association for "expert advise" in the drafting of the revised language.

The language in the same comment section, as printed in the 1992 Cumulative Annual Pocket Part, went even further and thanked that Bar Association, plus one other organization for its help in the revision. Lastly, a representative of the National Association of Women Lawyers was on the drafting committee while the life insurance industry was totally ignored.

This background section of this letter cannot be completed without restating the fact that for over 25 years, the Uniform Probate Code excluded life insurance products from the probate estate and no one to date has been able to show that insurance products are being used to deprive the surviving spouse of his or her "fair share". It would stand to reason the burden of proof is upon those people wishing to amend the Article to remove the exemption for life insurance products. If the amendments were needed to correct widespread abuses, it would stand to reason that there would be a plethora of case laws citing a litany of abuses which occurred because products issued by life insurance companies had been used to defeat the interests of a surviving spouse. We are still searching for "those smoking guns" but have come up empty handed.

Up to this point, I have touched on the complete lack of courtesy towards this industry on the part of the Uniform Commissioners and the absence of specific reasons why the insurance exemption was eliminated from Article II of the Uniform Probate Code.

The critical issue really is whether the person purchasing an insurance policy is better qualified to determine the beneficiary of an insurance policy or should that determination be left up to an impersonal court or governmental unit. That really is the critical issue.

If someone purchases an insurance policy, should they have the right to determine who is to receive the policy proceeds or should that determination be left to a probate court judge with no knowledge of the reasons motivating the policyowner to purchase the insurance product initially. For a court or state statute to substitute their reasoning or judgement in place of the owner of the insurance policy is indeed quite presumptuous.

Certainly the person buying the insurance product knows better than anyone else the situation in his or her own family;

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their business; their favorite charity; and especially what motivated the insured to purchase the insurance policy.

I would now like to give a few reasons why life insurance products are unique and therefore should not be included in the probate estate, except in specific instances when the policy owner/insurer decides that he/she wants those proceeds made payable to the estate.

- (1) To take care of a spouse.
 - (2) To help educate children of a 1st or 2nd marriage.
 - (3) To provide a down payment on a home for children of a 1st or 2nd marriage.
 - (4) To fund a buy-out agreement between two business partners.
 - (5) To provide liquidity for an estate so probate costs, estate taxes, inheritance taxes, etc., can be paid and the real estate (farms, office buildings, shopping centers, family home, etc.) in the estate, do not have to be sold when it is economically disadvantageous to do so because the value of real estate is down.
 - (6) To provide for the care into the future of a child, niece, nephew, younger brother or sister, etc. who is brain injured, retarded, or injured in an accident and will need constant care for the rest of their natural life, and perhaps the child's parents will never be able to accumulate the funds needed to provide for this eventuality which surely will take place.
 - (7) To provide for an aged parent with Alzheimer or who is in a nursing home; etc.
- o We know of no horror stories which would have led the Uniform Commissioners to believe insurance was purchased to defraud the surviving spouse and hide assets from a surviving spouse.

Representatives from the Uniform Commissioners who met with the ACLI Task Force in early January, 1994, acknowledged they were unaware of any "horror stories" of surviving spouses being defrauded of their "fair share" by the use of insurance beneficiary designations, but they said they were concerned that it could happen sometime in the future.

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- o This industry did not concern itself with the UPC after the Nonprobate Transfer Article (Article VI of the UPC) was amended in the late 1980's since it continued to state that insurance was a nonprobate item and was not part of the probate estate since Article II had the insurance exemption in it.
- o Because of the amendments to UPC-II, policyowners purchasing life insurance for specific purposes can no longer be assured that the policy proceeds will be available to fund what the policyowner originally intended the proceeds to be used for.
- o Under the language of UPC-II, policyowners who change the beneficiary designation within 24 months of death, expose the policy proceeds to being swept up into the augmented and/or reclaimable estate. Some states have proposed further amendments to their probate code by providing that even if a power of appointment (the power to change the beneficiary) is retained by the policyowner, that is sufficient to bring that policy under the augmented / reclaimable estate.
- o The amendments to the UPC go further than even community property states do since in those states property owned by one spouse prior to marriage, remains separate property during the marriage. In Wisconsin, which has enacted the Uniform Commissioner's Uniform Marital Property Act, if one insurance premium is paid with commingled funds, that policy becomes "joint property" regardless of whether the policy was purchased and/or owned prior to the marriage.

The net effect is to change a state enacting UPC-II from a common-law state into a community property state. If the state wishes to do so, they should be up-front about it rather than doing so via the back door by amending its probate code.

- o There is no definition of "insurance" in UPC-II.
- o Better protection for insurance carriers making payments are needed.

- o UPC-II is silent as to who is responsible for the payment of interest when a non-payment occurs, after a company receives notice of a possible claim to be made by the surviving spouse, but before the election is actually made.

Several state statutes require a claim payment be made within 30 days. If that is not done, the current rate of interest paid by a company stops and a penalty interest rate commences, such as 12%, 14% or even 18% per annum. The issue is: Who is responsible for the higher interest payment which is caused by the time delay in payment of benefits?

- a. The company? Most statutes make it a responsibility of the company. Yet the company is in the position where it wants to pay the benefits but cannot because of the election notice received of a possible adverse claim.
 - b. The surviving spouse who first served notice that he or she wants to keep their options open before deciding whether to take under the will or under the laws of intestacy?
 - c. Is the insurance company protected by paying the proceeds into the probate court and walking away at that point? No one knows.
 - d. What about a claim from the policy beneficiary who is not paid the policy benefits as contracted for in the policy?
 - e. What if the beneficiary demands payment even if the notice was received?
- o The augmented estate section contains a provision stating if full consideration was received for a piece of real property or insurance which was transferred within 24 months of the death of the owner, that property, real or personal, does not become part of the augmented estate.

So arises the issue of the "adequacy of consideration" which may cause problems for either an insurance company or a purchaser of real property. Both would be left subject to a future claim by the surviving spouse

alleging no consideration was received by the deceased spouse.

In the case of an insurance policy, the allegation would be that the beneficiary of the policy did not give full consideration to the deceased spouse when the change of beneficiary was made. So, too, in the case of the purchaser of real estate, the same "inadequacy of consideration" allegation would be made concerning what the purchaser of the real property paid the deceased spouse.

So both the insurance company and the purchaser of the real property would be called on to pay the policy proceeds and/or return the real estate back to the estate of the deceased spouse.

The insurance company then is left in the position of requesting a return of the funds from the beneficiary to which it originally paid the policy proceeds to.

In the case of a purchaser of real estate, the recourse a buyer would have may be a cause of action against the estate of the deceased spouse since the purchaser of the real estate has now been called upon to pay twice for the same property.

Thus, the insurance company will have been involved in an additional lawsuit and may be forced to pay the policy proceeds out a second time. If it was real property involved in the lawsuit, the innocent purchaser from the deceased spouse would be forced to prove that "full consideration" was paid for the real estate when it was purchased from the deceased spouse. Again that purchaser or his company will have been dragged into a lawsuit when it never imagined it would be involved in such a thing.

- o The insurance industry will end up with many more interpleader actions (expanded litigation) because the augmented estate language includes insurance products. The insurance company's cost of operations will increase, as well as being faced with a severe public relations problem -- being pulled into the middle of a "family fight".
- o The purchaser of insurance products designates the beneficiary of a life insurance policy or an annuity. That indication couldn't be any clearer. However, under

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UPC-II, the wishes and desires of the policy purchaser are secondary and the party named as the beneficiary may never received the policy proceeds. Based upon the estate situation, the language of UPC-II may direct the policy proceeds be payable to the estate. This makes the proceeds available for the surviving spouse when the purchaser never intended for this to take place.

o The Antilapse Provisions of UPC-II would apply to life insurance policies and similar governing instruments and specifically to the language used in the beneficiary designation of the policy. With insurance policies being subject to the probate code, the beneficiary designation language would have to be reviewed in light of the state's antilapse provisions. When life insurance products were not included in the probate estate, this problem did not exist.

o It appears that the drafters of UPC-II had a concern with the insurance designation language of many insurance policies. The Uniform Commissioners allege that some of the policy beneficiary designation language works to disinherit a line of descent because the person's lineal descendent failed to survive the insured. Again, if insurance products were only subject to Article VI (the nonprobate transfer section of UPC), many of the above problems would not exist.

o Insurance proceeds generally are paid to the beneficiary shortly after the death of the named insured, usually within a week or two of the date of death. An insurance company usually requires a certified copy of the Death Certificate and, in some instances, a completed proof of loss form. After the insurance company receives that information, the funds are distributed in accordance with the wishes of the policyowner as reflected in his or her beneficiary designation and the records of the insurance company. The funds can be wire transferred to expedite the distribution rather than taking 24 or 48 hours by U.S. Mail.

But when a large policy payment is involved in a state where UPC-II is in effect, an insurance company may wish to protect itself from a future lawsuit by a beneficiary who had to return to the estate, part or all of the policy proceeds. The company could require the surviving spouse to consent to the payment to the beneficiary even

though he or she is not a beneficiary under the policy. This is because the insurance company may fear that it could be held responsible for not forewarning the policyowner and/or spouse of the policyowner that any such beneficiary changes made within 24 months of death could result in a demand for a return of some or all of the policy proceeds.

- o UPC-II provides for automatic termination of a beneficiary upon divorce. If the policyowner is not aware of this provision in the state probate law, it will affect how he or she would like the policy proceeds to be distributed. If the policyowner moves to another state with this provision and is unaware of its consequences, what would be the result?
- o What about passing down the family farm to the next generation? That should be considered. If the farm has come down through the "father's line"; he dies before his spouse; and then the spouse remarries. Something new must be factored in.

Does the new husband, if he is married to the widow for more than 15 years, have a right to 50% of the farm his wife inherited from her first husband? What rights do the children of the first marriage have? If the intention of the grandparents (the first father's parents) as well as the deceased husband and the surviving wife was that the surviving spouse (wife) would have the farm until she retired and they their children would inherit, what happens now?

Where is the equity in this situation if the 2nd husband now stands to inherit part of that farm? UPC-II makes it much more difficult to pass the farm down to the "proper" lineal descendants without more estate planning and many times that is now done with young couples.

These are just some of the concerns the life insurance industry has. No attempt to place them in order of "strength of argument" (with better arguments being listed first). I just listed them as they occurred to me.

It is important to note that all of the concerns expressed above never need to arise except for the incorporation of UPC-II into the Alaskan probate code.

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There are two final points I would like to make. During 1994, in the states where we were notified that UPC-II language was being considered, the bill was stopped or amended. This took place in Colorado, Indiana, Mississippi, Tennessee, Washington and your own state.

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He arrived at that conclusion by saying the surviving spouse could get all the insurance (as the beneficiary on the insurance policy), and then decide to take against the will and get 50% of the remaining assets. He didn't testify -- he had to attend a funeral of a state employee.

Of course, the problem he raised could have been easily solved by a short amendment in the current probate code to provide that whatever a surviving spouse received via a nonprobate transfer (insurance policy, trust, pension plan, annuity policy, retirement plan, disability plan, etc.), would reduce

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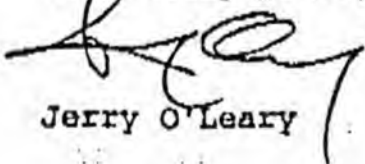
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Very truly yours,



Jerry O'Leary

cc: Eugene L. Copeland, Esq.
Alicia Cordova, Esq.
John L. George, Esq.
William Scher, NALU

ATTACHMENT NO. 5—SECURITY LIFE LEGISLATIVE ALERT



LEGISLATIVE ALERT

FEBRUARY 4, 1994

In its continuing focus on agent and policyholder well being, Security Life has uncovered legislation which undermines the very heart of what insurance companies do - contracting to provide specific insurance benefits to designated individuals.

The source of our concern is the proposed Uniform Probate Code II ("UPC II"). Currently, under consideration in numerous states, UPC II proposes to fundamentally alter the manner in which and to whom property, including non probate property such as life insurance, may be transferred upon death. A complex and lengthy document, UPC II is difficult to understand. To date, with the assistance of probate experts, Security Life has identified several areas in which life insurance is seriously compromised. The following list identifies only the consequences, please see the attachment for an in depth discussion of the issue and the necessary revisions:

ISSUE NO. 1: *UPC II subjects non probate property including life insurance, pensions, non qualified deferred compensation and trusts (both irrevocable and revocable) to the probate code in numerous ways.*

ISSUE NO. 2: *Under UPC II, the named beneficiary on a life insurance policy may not be the individual who receives all of the proceeds of the policy under specified circumstances.*

ISSUE NO. 3: *Transfers of any property made less than two years prior to death can be reclaimed under certain circumstances by a surviving spouse unless the property is transferred for full and adequate value without notice.*

ISSUE NO. 4: *Under UPC II, if an insured names a beneficiary other than his or her spouse, the non spouse beneficiary is left uncertain that all of the policy proceeds belong to him or her for an indefinite period of time after the insured's death.*

ISSUE NO. 5: *The plain language of a beneficiary designation will no longer mean what it says, UPC II will impose its beneficiary arrangement which may be different.*

ISSUE NO. 6: *Payor provisions under UPC II do not fully protect the payor. The payor may still need to do additional administration and investigation of claims before making payment to a beneficiary, thus delaying claim payment and causing the payor to incur additional expense.*

SECURITY LIFE LEGISLATIVE ALERT-CONTINUED

ISSUE NO. 7: UPC II creates exposure to malpractice claims for agents, lawyers and insurers for which there is no adequate protection.

ISSUE NO. 8: Not Only Agents and Insurers are affected by UPC II, employers who establish employee benefit plans such as deferred compensation, split dollar and 162 bonus plans will be faced with additional administrative burdens, uncertainties, expenses and litigation.

We do not oppose UPC II since it contains many positive provisions. However, there is something profoundly wrong when:

- words do not mean what they plainly say;
- lay people cannot do their business without paying for a new legal expert;
- non spouse beneficiaries must be concerned that the surviving spouse may reclaim portions of property left to the beneficiary at some unknown future date;
- the probate code becomes another layer of complicated regulation, delay, expense and uncertainty at a time when the public is seeking to limit probate;
- the integrity of life insurance products and services is compromised; and
- there is substantial interference with commerce while solving no problem. and

The above listed portions of UPC II are paternalistic social engineering at its worst and should not be allowed to stand. Please act now! Protect policyholder interests by becoming involved in the legislative process when UPC II is introduced in your state.

SECURITY LIFE LEGISLATIVE ALERT—CONTINUED

DISCUSSION POINTS

- Issue No. 1** **UPC II subjects non probate property to its provisions.** Historically, non probate property was not subject to the probate code. UPC II subjects all of the following non probate property to certain of its provisions: life insurance; annuities; accounts with POD designations; securities; pensions, profit sharing, retirement or similar (e.g., non qualified deferred compensation) employee benefit plans; real and personal property; joint tenancies with right of survivorship and trusts (both irrevocable and revocable).
- Response:** It is our opinion that UPC II should not subject any non probate property to its estate valuation or reclamation provisions.
- Issue No. 2** **The Integrity of the Insurance Contract May Be Compromised.** As stated above, currently, when an individual buys an insurance policy on his or her life and names a beneficiary, the insured can usually be assured, absent fraud, that the insurance proceeds will pass outside of the insured's probate estate to the named beneficiary. However, under UPC II a surviving spouse may, in certain circumstances, include non probate property such as life insurance in a decedent's estate for the purposes of determining the surviving spouse's share of the estate. Moreover, if the property owned by or received by the surviving spouse from the decedent does not satisfy the surviving spouse's share of the estate, UPC II provides that the surviving spouse may, with court approval, reclaim specified portions of non probate property such as life insurance proceeds to cure the deficiency, perhaps years later. Therefore, *under UPC II the named beneficiary on a life insurance policy may not be the individual who receives all of the proceeds of the policy.*
- Response:** It is our opinion that UPC II should not subject any non probate property to its estate valuation or reclamation provisions.
- Issue No. 3** **Transfers Prior to Death May be Challenged.** The UPC II allows the pull back of property transferred within two years of death unless that property has been transferred for full and adequate value without notice. For example, an insurance policy transferred to an irrevocable trust within two years of the grantor's death could be subjected to spousal reclamation since the trust cannot qualify as a bona fide purchaser for full and adequate value without notice.
- Response:** Non probate property must not be subjected to the probate code.
- Issue No. 4** **Beneficiaries May Be Subjected to Litigation, Expenses and Delays.** Under UPC II, if a surviving spouse elects to reclaim non probate property to satisfy his or her share of a decedent's estate, the spouse must first obtain approval of the probate court. However, UPC II does not appear to specify a time period within which the surviving spouse must gain court approval, or, after having gained approval, exercise the reclamation right. Therefore, reclamation could occur years after policy proceeds have been paid to the named beneficiary, causing the beneficiary to either not use all of the proceeds or to come up with the amount of money reclaimed through other sources. In either event, *under UPC II the beneficiary is left uncertain that all of the policy proceeds belong to him or her for an indefinite period of time. This result interferes with the ability of an individual to benefit children of prior marriages, other needy relatives, charities and children born out of wedlock.*
- Response:** As stated earlier, we do not believe non probate property should be subjected to the probated code.

SECURITY LIFE LEGISLATIVE ALERT—CONTINUED

Issue No. 5 Beneficiary Designation Language May Be Overridden by the Probate Code. Currently, a beneficiary designation that states, for example, "To my surviving children," would generally be interpreted in almost every state to mean that if an insured has three children and one of those children predeceases the insured that the remaining two children would be the beneficiaries of the insured's policy. In other words, the plain language of the designation would govern.

Under UPC II, however, this may not be the case. UPC II specifies that the language construction rules for wills would also be the rules applicable in non probate property such as life insurance policies, pensions, non qualified deferred compensation and trusts. This means that the words "to my surviving children" would generally be given a meaning different from their plain language meaning. Thus, if one of the insured's children predeceases the insured, that predeceased child's share of the insurance proceeds would be divided among the child's descendants (step children would not qualify as descendants unless legally adopted). In order for the "surviving children" to share in the deceased child's share, the beneficiary designation would have to emphatically state that the children are to receive the deceased child's benefits and there is no guidance in UPC II as to what language would be sufficient to insure that the insured's intent is met. In short, *under UPC II, the plain language of beneficiary designations will no longer mean what it says, the rules of the UPC II will govern.*

Since each state which considers the UPC II may adopt differing version of the beneficiary language rules, agents, when assisting their clients in drafting beneficiary designation would have to retain counsel familiar with the specific rules of the state in which the client resides. Further, if the client later moves to a state in which the probate code differs, then the beneficiary designations would have to be altered to comply with the new state's rules to insure that the insured's intentions are met. *An insured would be required to constantly maintain vigilance over his beneficiary designations to make sure that his intentions will be met and even then he cannot be sure.*

Response: There appears to be no logical reason why the UPC II subjects non probate property to rigid mechanical construction requirements. The problems created by this provision far outweigh any benefits to be gained by these "one shoe fits all" requirements. Therefore, we conclude that the rules of construction should not apply to non probate property, unless they fill a void in the document.

Issue No. 6 Termination of Beneficiary Arrangements Upon Divorce. UPC II provides that a beneficiary designation naming a spouse is revoked upon divorce. Although some payor protection provisions exist under UPC II for benefit payors such as insurance companies and employers, these payor provisions do not provide the fullest protection. The payor may still need to do additional administration and investigation of claims before making payment to a beneficiary, thus delaying claim payment and causing the payor to incur additional expense.

Response: The payor protection provisions will need to be made absolute so that payors do not face potential conflicts when paying claims.

Issue No. 7 Agent Malpractice Exposure. Even though payor protection exists under UPC II, it does not protect insurers and agents from malpractice claims.

Response: The only protection against malpractice claims is the deletion of non probate property from UPC II and the limitation of rules of construction exclusively to wills.

SECURITY LIFE LEGISLATIVE ALERT-CONTINUED

Issue No. 8 Not Only Insurance Companies and Agents are Affected by the UPC II. Some of the issues discussed above not only affect insurance companies and their agents; they also affect employers who establish benefit plans such as deferred compensation, split dollar, 162 Bonus plans, etc. These employers when making distributions will be burdened by some of the same issues, uncertainties, expense and litigation in determining claim payments and administering their benefits plans.

Response: The solutions suggested for each of the above issues should also solve many of the problems that employers may encounter with UPC II.

American Council of Life Insurance

Jerry P. O'Leary
Senior Counsel

June 30, 1994

Mr. William Scher
Vice President - Law
National Association of Life
Underwriters
1922 F Street, N.W.
Washington,
D.C.
20006-4387

Dear Bill:

RE: Uniform Probate Code-II amendments

Several months ago, we spoke about the Uniform Probate Code and how the latest model law now includes life insurance products in the probate estate. At that time, we had retained a St. Louis law firm to work on drafting amendments, etc. which could be tailored for use at the state level to remove insurance products from the probate estate and permit insurance carriers to continue the payment of policy proceeds to the named beneficiaries just as it always has been done.

I told you as soon as the work product was received from our retained counsel, copies would be furnished to you for distribution to your Legislative Directors. In the meantime, there was very little either of us could do to slow down the movement to amend state probate codes to incorporate the latest language of Article II, Uniform Probate Code providing for the inclusion of insurance products in the probate estate in certain instances, regardless of what the policyowner desired. We had to wait until we had something definitive in hand to work with.

Kathy Sherby of the Bryan Cave law firm has completed her analysis of the above model law and forwarded the following:

- 1) Cover letter from Ms. Kathleen R. Sherby, Esq., dated May 5, 1994 with the following:
 - a) a summary of the proposed changes to UPC-II;
 - b) a memorandum concerning spousal rights in certain non-probate transfers before UPC-II was approved as a model law;

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FACSIMILE 202-524-2319

Mr. William Scher
Page Two
June 30, 1994

c) a memorandum concerning spousal rights over life insurance proceeds;

d) amendments removing insurance products from the model law;

2) Cover letter from Ms. Kathleen R. Sherby, Esq., dated June 9, 1994 with the following:

a) biographical information of Ms. Kathleen R. Sherby, Esq.

b) a description of specific changes suggested for inclusion within UPC-II whenever it is introduced at the state level.

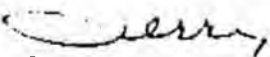
3) Cover letter from Ms. Kathleen R. Sherby, Esq., dated April 29, 1994 containing information mailed by Professors Wellman and Waggoner of the Uniform Commissioners regarding UPC-II as it pertains to various positions taken by the ACLI and Security Life Insurance Company of Denver vis-a-vis UPC-II.


Bill, the enclosed material can be made available to your members who follow this issue in the states. It should be pointed out that the real estate people (The Realtors) as well as the Mortgage Bankers are "our natural allies" in this effort because real property, if it was transferred by a spouse for less than full value (whatever that means) within two years of that spouse's death, is also subject to being pulled back into the "probate/augmented/reclaimable" estate regardless who purchased the piece of real estate, and not knowing that the seller would not live 24 months following the sale of the real property.

The result would be that the purchaser of a piece of real estate may become embroiled in a probate dispute (lawsuit?) commenced by the spouse who elected to take "against the will", since the estate did not have enough assets to meet the minimum percentage he or she was entitled to, based upon the length of the marriage.

I will be on the road for the next two weeks but will telephone you upon my return.

Thanks, ..


Jerry P. O'Leary

Encl: 

SUMMARY OF PROPOSED CHANGES TO UPC II

In 1991 the Uniform Commissioners on Uniform State Laws completely revised the Uniform Probate Code (known as UPC II). As revised, UPC II now covers nonprobate property, including life insurance products. While the ACLI does not oppose UPC II and its many positive additions, the following technical corrections are necessary, and have been proposed, to avoid problems for policy holders, agents, life insurance companies and other transferring entities.

- - UPC II makes some significant changes in determining the marital share of the surviving spouse. These changes include a significant broadening of the "augmented estate" for purposes of determining the amount of, and satisfying, the spouse's elective-share. Our proposal would narrow the scope of the "augmented estate."
 - ° Property subject to a general power of appointment would be included only if the decedent created the general power of appointment during the marriage.
 - ° Survivorship interests would be included only to the extent the survivorship interest was created by the decedent during the marriage.
 - ° Life insurance products would be excluded.
- - In addition to the new elective-share provisions, UPC II changes the rules of construction applicable to nonprobate transfers by providing new antilapse rules, among other things, that would ignore certain survivorship rules without proof of the decedent's intent. Under our proposal, the antilapse provisions have been changed to give meaning to the words of survivorship usually found in probate and nonprobate documents alike. The antilapse provisions will apply only if the gift has not been made contingent upon survival.
- - Under our proposal, payor protections scattered throughout UPC II have been enhanced to protect the payor in dealing with the augmented estate, the 120 hour survival requirement, the antilapse provisions, the revocation by divorce provisions, and the revocation by felonious killing provisions.

These changes, while relatively small modifications of the overall scheme of UPC II, will enable the insurance industry as well as other nonprobate transferors to comply with the changes in the law without an adverse impact upon its business.

DESCRIPTION OF SPECIFIC CHANGES
SUGGESTED FOR
UNIFORM PROBATE CODE II

Section 1-201. The definitions of "beneficiary" and "beneficiary designation" are changed by deleting the references to life insurance, life insurance type products and retirement benefits.

Section 2-201. This section would change the pecuniary elective share back to the fractional elective share of UPC-I.

With a pecuniary elective share, the non-marital beneficiaries would bear the risk that the augmented estate assets would decline in value prior to the spouse receiving his or her elective share. For example, if the augmented estate included IBM stock held jointly between the decedent and the decedent's daughter valued at the date of death at \$100,000, and the value of the IBM stock diminished in value so that, at the time the decedent's spouse reclaimed his or her 50% elective share, the stock owned by the daughter was now worth \$50,000, the decedent spouse would be entitled to \$50,000 in value from the decedent's daughter, notwithstanding the fact that that was the entire value of the IBM stock at that time.

By retaining the fractional elective share of UPC-I, the risk of loss is borne equally by the spouse and the non-spouse beneficiaries. In the example above, therefore, the spouse would at all times be entitled to one-half of the IBM stock, regardless of its then value.

On the other hand, if the assets appreciate in value, under a fractional elective share, the spouse shares in the appreciation in value of the augmented estate. For example, if the augmented estate included Microsoft stock worth \$100,000 in value at the time of the decedent's death, which then appreciated to \$150,000 in value at the time the spouse sought satisfaction of the elective share, with a fractional elective share, the surviving spouse would be entitled to reclaim one-half of the Microsoft stock, or \$75,000 in value. With a pecuniary elective share, the surviving spouse would be entitled to \$50,000, one-half of the original value of the Microsoft stock.

Because of the way a pecuniary share works, however, if there is an appreciating asset, and that asset is used in part to satisfy the elective share amount, the owner of that asset could be required to report, as capital gain on his or her income tax return, the appreciation on that asset used to satisfy the surviving spouse's elective share. The fractional elective share would not result in the recognition of taxable income by the non-spouse beneficiary when the elective share is satisfied with an appreciated asset.

Section 2-202. This section defines the "augmented estate," subject to the surviving spouse's elective share rights. Notwithstanding the general comments to the elective share provisions of the UPC II, the provisions of this section under the current UPC II extend far beyond the partnership concept of marriage embodied in community property laws, causing assets that

would not be marital property during life to transform into marital property upon death. Under this regime, the "reclaimable estate" would include trusts created by others long before the marriage for the benefit of the decedent, and life insurance payable to non-spouse beneficiaries, which has never before been subject to spousal rights upon death of the insured. The value of the decedent's "reclaimable estate" would be included in the augmented estate of the decedent and would be subject to the elective rights of the surviving spouse. As such, these assets would be used not only to determine the amount of the spouse's elective share, but also to satisfy the spouse's elective share.

The suggested changes in this section are intended to reduce the scope of the decedent's "reclaimable estate." Thus, under the suggested changes

1. Property subject to a general power of appointment will only be included in the reclaimable estate if the power was created by the decedent during the marriage and then only if the property was still subject to the general power of appointment at the time of the decedent's death.
2. Jointly held property would be included only if it was held jointly by the decedent and another with rights of survivorship at the time of the decedent's death, and then only to the extent of the decedent's contribution to the purchase of that property during the marriage.

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: 1-17-96 : 3:37PM :

ACLI-

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3. Life insurance would not be included in the decedent's reclaimable estate.

These changes would not displace any of the property currently included within the augmented estate under UPC I. Nevertheless, even with these recommended changes, the augmented estate under UPC II would still be broader than under UPC I.

The payor provisions in this section are enhanced to be more meaningful and more protective of payors as follows:

1. The reference to "good faith" is deleted as that is a concept that results in expensive litigation as to its meaning;
2. The precise matters required to be included in the written notice to the payor are specifically set out. The payor will not be bound by a notice that fails to comply with these requirements. The items to be included in the written notice, under the suggested change, are those items that would enable the payor to act upon the notice;
3. The payor is given two business days to communicate the receipt of the notice within its own organization. The payor is not liable for unknowing actions on its part prior to that time;
4. The proposed changes would clarify that notice to a sales representative of the payor does not constitute notice to the payor;
5. The procedure for the payor to use once the payor has received written notice under this section is set

out in more detail and specifically dispenses with charges to the payor who follows such procedure;

6. The proposed changes would clarify that the payor can follow federal law where federal law preempts state law without concern for this provision of the UPC II.

Section 2-205. The changes proposed in this section would require a surviving spouse to deliver a copy of the petition for the elective share to all non-spouse beneficiaries whose interest may be affected by the taking of the elective share. Further, it would clarify that if the court grants an extension to the surviving spouse for filing a petition for an elective share, the reclaimable estate in the hands of the non-spouse beneficiaries will no longer be available for satisfying that elective share amount.

Section 2-207. The changes recommended here would clarify that the original recipients of the reclaimable estate, or their donees, would be liable to the surviving spouse for their proportional contribution toward the satisfaction of the surviving spouse's elective share only to the extent the property or its proceeds are still in their possession. Therefore, if the recipient sells the property and uses the proceeds to pay for living expenses so that the recipient no longer has any portion of the property, the recipient would no longer be required to contribute toward the satisfaction of the spouse's elective share.

Section 2-603. Under general common law, a bequest under a will is conditioned upon surviving the testator, so that a bequest to a deceased beneficiary will automatically lapse. Most jurisdictions have enacted an antilapse statute, as a rule of construction, to prevent a bequest from automatically lapsing on the death of a beneficiary if the beneficiary has a certain degree of familial relationship to the decedent.

Prior to UPC II, the antilapse statute could be negated in many states by using words of survivorship. In Ohio and Texas, however, the courts reached a contrary result, apparently holding that the use of mere words of survivorship were insufficient to negate that state's antilapse statute.

This section as it currently exists in UPC-II would adopt the greater requirements of the courts in Ohio and Texas, so that words of survivorship such as "if she survives me" or "my nieces and nephews who survive me," without more, would not defeat the antilapse provisions of this section. This section would require very particular language, such as "to my niece, if she survives me, and not to her descendants" to be included in a decedent's will in order to negate the application of the antilapse provisions set out in this section.

Although the antilapse provisions in the various states should be clarified on this issue of what should be required in order to defeat the application of the antilapse provisions, the clarification should be as has been held by the courts in many jurisdictions, that words of survivorship mean what they mean and

adequately negate the antilapse statute without having to add that descendants are not to be included.

The changes recommended here would change the antilapse provision in this fashion so that words of survivorship would be sufficient to negate the antilapse provisions of this section.

These changes are recommended here so that the will provisions will be consistent with the similar antilapse provisions for non probate transfers contained in Section 2-706.

Section 2-702. The same changes have been made to the payor protection provisions in this section as described above for Section 2-202.

In addition, the suggested changes would eliminate the requirement that a simultaneous death provision or a common disaster provision contained in a non-probate transfer be operable under the facts of the case in order to negate the 120-hour survival period. Most nonlawyers would anticipate that a simultaneous death provision or similar provision would automatically apply in lieu of the 120-hour survival requirement. The intention here is to remove any surprise results for the unwary consumer.

Section 2-706. This section provides an antilapse statute similar to that contained in Section 2-603 to all nonprobate type transfers. These transfers are most often dealt with by the general public without the benefit of legal advise. When a member of the public uses the condition that a beneficiary

survive, they intend and believe that these words have meaning.

The recommended changes would allow these words to have meaning, clarifying that words of survivorship are a sufficient indication under the statute of an intention to negate the antilapse statute.

The payor provisions in this section are also enhanced in the same manner as set out above with respect to Section 2-202.

Section 2-707. This Section also deals with the antilapse provisions. The suggested changes would likewise allow survivorship language to be a sufficient indication of an intention to negate the antilapse provisions applicable to future interest.

Section 2-803. In this section, the payor protection provisions are enhanced in the same manner as set out above with respect to Section 2-202.

Section 2-804. In this section, the payor protection provisions are enhanced in the same manner as set out above with respect to Section 2-202.

ATTACHMENT NO. 1

JANE BRYANT QUINN, INSURANCE PLOY CAN LEAVE SPOUSE PENNILESS¹

Washington Post Writers Group, Released November 16, 1995

Published in Over 200 U.S. Newspapers

NEW YORK—The life insurance industry loves to show pictures of good-looking men buying life insurance to save their grateful wives from the poorhouse.

Guess what? In most states, those good-looking men can also use life insurance to disinherit their wives (and wives can disinherit their husbands). You just dump your savings into a cash-value policy and leave that policy to someone else.

A number of states are considering laws to prevent this from happening. But the powerful insurance lobby is obstructing change. Only three states have blocked disinheritance-by-insurance (Kansas, Minnesota and South Dakota). Other states have rolled over when the lobbyists came to call.

In an attack on the laws, Jerry O'Leary, former senior counsel of the American Council on Life Insurance (ACLI) and now retired, wrote the following last year: "I believe we can all agree that the surviving spouse should be protected, but many question whether the surviving spouse should be 'canonized' and protected to the detriment of the insurance policy beneficiary. . . ."

At issue is a change proposed in probate law. It's part of the Uniform Probate Code (UPC), developed by a committee of lawyers to improve and simplify the process of leaving property to heirs. States decide individually what to accept from the UPC.

Probate assures that, when you die, the property you've left by will goes to the people you designate. But state law makes one exception. You're not allowed to disinherit a spouse unless the spouse consents.

In the nine states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin) with community property

laws, spouses own one-half of the marital property. In most of the other states, they get at least one-third or one-half of their spouse's property at death.

If you write a will that leaves your spouse too small a share, he or she can demand the full portion owed by law. Spouses, however, can give up their share voluntarily, by signing an agreement to do so.

Spousal-support laws have a valid public purpose. No monied spouse should be allowed to leave a penniless mate, who might have to go on welfare.

You're pretty well protected in a community property state, where half of the marital property is yours by law, says Los Angeles attorney Charles Collier. In most of the states, however, huge loopholes exist, which can be used to cut a spouse out.

That's because the spousal share applies only to the property that's left by will. Billions of dollars in assets pass outside the will: through joint ownership and the named beneficiaries of living trusts, annuities, Individual Retirement Accounts or life insurance policies. In non-community property states, you can generally leave this property to anyone you want—even if your spouse winds up without a dime.

The new UPC would stop all that. It says that, when a married person dies, all the assets of both spouses must be added up, including life-insurance proceeds. The surviving spouse gets a share of the entire pot but no less than \$50,000 (unless the spouse has formally waived his or her rights). Spouses in long marriages get a larger share than spouses in short ones.

Seven states have adopted this idea

so far. But life insurance has been excluded in four of them (Colorado, Montana, North Dakota and West Virginia), as well as New York, which reformed along different lines from the UPC. There, a spouse can still be shortchanged, says Professor Lawrence Waggoner of The University of Michigan Law School.

Insurers think that the person who buys the coverage should decide where it goes, says Michael Bartholomew, managing counsel for the ACLI. Bartholomew also claimed that, if a spouse could challenge the contract, insurers would have to go to court to figure out who to pay.

That's not true, however. The UPC says that insurers can pay the policy's named beneficiary, if the spouse hasn't entered a contrary claim. If the spouse makes a claim, the payment goes to a court with no proceedings necessary for the insurance company. In both cases, the insurer has no further liability.

Bartholomew backpedaled in a second interview. He knows of no state that requires a court proceeding. I mention this incident because some of the information used by the insurance lobby to defeat the UPC is similarly misleading.

Bartholomew says that there's no proof that life insurance is used to disinherit a spouse. He's right that no data exist. But Denver attorney James Wade is sure that it's done. "It's a strategy discussed in estate-planning programs," he says.

If the UPC ends other ways of disinheriting spouses, why should life insurance be exempt?

1. Each newspaper writes its own headline. The above came from the Chicago Tribune, Sunday, Nov. 19, 1995, § 5, at 3.

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October 3, 1995

Representative Pat Parnell
Alaska State Legislature
716 W. 4th Ave.
Anchorage, AK 99501

VIA FACSIMILE 258-3966

Re: Support for House Bill 308
Uniform Probate Code Revisions

Dear Representative Parnell:

Please consider this letter an expression of my support for the passage of House Bill 308. As an estate planning and probate legal practitioner in this State since 1977, I have noted a number of difficulties that clients have had through the years with the current Probate Code. House Bill 308 is the type of legislation that helps resolve some of those problems that have been encountered by families of decedents and at the same time relieves a decedent's heirs of a lot of aggravation and excessive expenditures by clearing up a number of problems that often led to protracted probate proceedings and/or litigation.

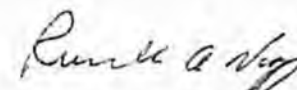
Although I am the current Chairperson of the Alaska State Bar Estate Planning and Probate Section, I write my letter of support of House Bill 308 solely as a private practitioner and not as a Chairperson or member of any Bar Section.

I appreciate your support of the Bill, as well as all of your efforts expended in these regards over the past several years.

Sincerely,

Law Offices of Russell A. Nogg

By:


Russell A. Nogg

RAN:jn

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: HB 308

1 Page 14, line 24, following "to":

2 Delete "one-third of the augmented estate"

3 Insert "the value of the elective share percentage of the augmented estate, determined
4 by the length of time the spouse and the decedent were married to each other, in accordance
5 with the following schedule:

6	If the decedent and the spouse	The elective share
7	were married to each other:	percentage is:
8	Less than 1 year	supplemental amount only:
9	1 year but less than 2 years	3 percent of the augmented estate;
10	2 years but less than 3 years	6 percent of the augmented estate;
11	3 years but less than 4 years	9 percent of the augmented estate;
12	4 years but less than 5 years	12 percent of the augmented estate;
13	5 years but less than 6 years	15 percent of the augmented estate;
14	6 years but less than 7 years	18 percent of the augmented estate;
15	7 years but less than 8 years	21 percent of the augmented estate;
16	8 years but less than 9 years	24 percent of the augmented estate;
17	9 years but less than 10 years	27 percent of the augmented estate;
18	10 years but less than 11 years	30 percent of the augmented estate;
19	11 years but less than 12 years	34 percent of the augmented estate;
20	12 years but less than 13 years	38 percent of the augmented estate;
21	13 years but less than 14 years	42 percent of the augmented estate;
22	14 years but less than 15 years	46 percent of the augmented estate;
23	15 years or more	50 percent of the augmented estate"

24 Page 20, line 23, following "to":

1 Delete "two-thirds of the augmented estate"

2 Insert "the applicable percentage for the augmented estate; in this paragraph, the
3 "applicable percentage" means twice the elective share percentage set out in the schedule in
4 AS 13.12.202(a) appropriate to the length of time the spouse and the decedent were married
5 to each other"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE PARNELL

TO: HB 308

1 Page 1, line 3:

2 Delete "amending Alaska Rule of Probate Procedure 5;"

3 Page 37, line 11:

4 Delete "The"

5 Insert "During the testator's lifetime, the"

6 Delete "sealed and"

7 Page 37, line 16:

8 Delete "resealed and"

9 Following "kept"

10 Insert "confidential and"

11

12 Page 78, following line 30:

13 Insert a new subsection to read:

14 "(b) An instrument referred to in (a) of this section may designate as a
15 beneficiary, payee, or owner, a trustee named or to be named in the will of the person
16 entitled to make the designation. The designation may be made before or after the
17 execution of the designator's will. It is not necessary to the validity of the underlying
18 trust that there be in existence a trust corpus other than the right to receive benefits
19 or to exercise the rights resulting from the designation."

20 Reletter the following subsection accordingly.

21 Page 84, line 28:

- 1 Delete "type of"
- 2 Insert "terms of the"
- 3 Delete "The type"
- 4 Insert "The terms"

5 Page 84, line 29, following "of":

- 6 Insert "the"

7 Page 84, line 30:

- 8 Delete "type of"
- 9 Insert "terms of the"

10 Page 87, line 13:

- 11 Delete "type of"
- 12 Insert "terms of the"

13 Page 94, lines 22 - 24:

- 14 Delete all material.

15 Renumber the following bill section accordingly.

Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL



716 WEST 4TH AVENUE, SUITE 320
ANCHORAGE, ALASKA 99501
(907) 258-8194

While in session
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-2995 1-800-365-2995

HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT House Bill 308

"An act relating to the Uniform Probate Code, including non probate transfers, guardianships, trusts, and multiple-party accounts; relating to the Uniform Simultaneous Death Act; amending Alaska Rule of Probate Procedure 5; and providing for an effective date."

In an effort to clear up confusion and alleviate unneeded litigation and legal fees to the public, the National Conference of Commissions on Uniform State Law (NCCUSL) developed a Uniform Probate Code in 1969. Alaska Adopted this code in 1972. Since that time, the NCCUSL continued to study and improve existing uniform codes and in 1990 issued new recommendations for two sections (2 & 6) of the Uniform Probate Code, which have become dated through changes in societies financial and family practices (for example the proliferation of divorces and second families). Additionally, HB 308 repairs glitches in the code discovered since its' drafting in 1969.

HB 308 adopts the NCCUSL's newly revised Uniform Probate Code with a few modifications. The provisions contained in this bill were reviewed in depth by Alaska's uniform law commissioners and by the members of the Alaska Bar Association's Probate and Estate Planning Section. In drafting this legislation, any changes from current law which could not be agreed upon by interested parties were set aside for discussion in separate legislation.

Eight states (States with Community Property laws do not need this) have already adopted the new Uniform Probate Code and at least five others are considering them this year. The Alaska Code Commissioners and the members of the Alaska Bar Association's Probate and Estate Planning Section agreed on some changes so that the new code would dovetail with current Alaska Law. One issue could not be agreed on and lacking any consensus was left out.

I respectfully request your support.

HB

311

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 8, 1996

FURTHER REFERRALS:

Date of Committee Action: 3/13/96

The JUDICIARY Committee considered:

HB 311

HOUSE BILL NO. 311

REPEAL LIMIT ON HOURS EMPLOYED IN MINES

"An Act repealing the limitation on the hours a person may be employed in a mine; and making a related technical amendment to avoid changing the penalties for failing to make payments into an employee benefit fund."

recommends it be replaced with the following committee substitute CS HB 311 (JUD) [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____

[] fiscal note(s) _____

[] zero fiscal note(s) _____

[x] zero fiscal note(s) Later, Nat. Resources (3/8/96)

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows include signatures of Brian Foster, David Zimbleman, and others with checkmarks in the DP column.

CHAIR'S SIGNATURE Brian Foster

CS FOR HOUSE BILL NO. 311(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES VEZEY, Toohey, Martin

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the hours a person may be employed in a mine; and
2 requiring that workers be paid for certain time worked in a mine."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 23.10.410 is repealed and reenacted to read:

5 Sec. 23.10.410. LIMITATION ON PERIOD OF EMPLOYMENT IN
6 UNDERGROUND MINES AND REQUIREMENT FOR PAY FOR CERTAIN WORK.

7 (a) Except as provided in (d) of this section, a miner may not be employed in an
8 underground mine or workings for more than 10 hours in 24 hours, except on a day
9 when a change of shift is made. The 10-hour limitation applies only to work actually
10 performed at the mine face or other place where the work is actually carried on and
11 excludes time for meals, travel to or from the mine site, and travel between the mine
12 portal and the mine face, whether in going on or off shift, or in going to or returning
13 from meals. However, an employer shall pay wages for the time worked from the time
14 the miner enters the mine at the mine portal, whether or not work is performed at the
15 mine face or other place where the work is actually carried on, until the miner leaves the

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mine.

(b) If life or property is in imminent danger, the 10-hour period may be extended for the continuance of the emergency.

(c) The department may not, by regulation, impose more restrictions on the hours of work of miners than are imposed by this section.

(d) On application from an employer, the commissioner may grant a variance that permits employment in an underground mine or workings for more than 10 but not more than 12 hours in a 24-hour period if the commissioner finds that

(1) the additional working time is permitted under the terms of a collective bargaining agreement entered into by a bargaining organization that represents workers performing the work covered by the variance; or

(2) the extension is in the best interest of resident workers of the state.

(e) In this section, "miner"

(1) means a person who works in an underground mine or workings and is engaged in actual mining operations;

(2) does not include mechanics, warehousemen, electricians, and other support personnel at an underground mine or workings.

AMENDMENT

By Representative Finkelstein

OFFERED IN HOUSE JUDICIARY
TO: CSHB 311 (JUD)

Page 1, line 8:
Delete "10"
Insert "8"

Page 1, line 9:
Delete "10"
Insert "8"

Page 2, line 2:
Delete "10"
Insert "8"

Page 2, line 7:
Delete "10"
Insert "8"

Page 2, line 8:
Delete "12"
Insert "10"

Sec. 1 is amended to read:

Sec. 1. AS 23.10.410(a) is amended to read:

(a) ~~Except as provided in subsection (d),~~ a person may not be employed in an underground coal mine, underground lode mine, underground placer mine, underground coal, lode, or placer workings, or other underground mine, or workings for more than ten hours in 24 hours, except on a day when a change of shift is made. The ten hour limitation applies only to work actually performed at the mining face and excludes the intermission of time for meals, traveling to the mine site, traveling between the mine's portal to the face, or otherwise going to or from the place where the work is actually carried on, whether in going on or off shift, or in going to or returning from meals; provided, however, that workers are paid for all time worked from mine entrance to mine entrance whether or not it is performed at the mining face.

Sec. 2. AS 23.10.410(b) is amended to read:

(b) ~~Except as provided in subsection (d),~~ it is the purpose of this section to limit the hours of employment in 24 hours to ten hours of actual labor at the face, or other place where the work or labor to be done is actually performed.

Sec. 3. AS 23.10.410 is amended by adding new subsections to read:

(d) On application from an employer, the commissioner may grant a variance that permits employment in an underground mine or workings for more than 10 but not more than 12 hours in a 24-hour period if the commissioner finds that

(1) the additional working time is negotiated as part of a collective bargaining agreement by a collective bargaining organization that represents workers performing the work covered by the variance; or

(2) the extension would not adversely impact the health or safety of ~~is in the best interest of resident workers of the state.~~

(c) The department shall issue orders and adopt regulations necessary to carry out this section.

Alaska State Legislature



House of Representatives

House Judiciary Committee

March 12, 1996

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

TO: House Judiciary Committee members

FROM: Tom Meyer

RE: Materials for HB 311 Underground mine hours

Attached are three versions of HB 311 including the draft CS for Judiciary and a letter for your packets. The bill will be heard tomorrow, March 13.

CS FOR HOUSE BILL NO. 311()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES VEZEY, Toohey, Martin

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the hours a person may be employed in a mine; and
2 requiring that workers be paid for certain time worked in a mine."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 23.10.410 is repealed and reenacted to read:

5 Sec. 23.10.410. LIMITATION ON PERIOD OF EMPLOYMENT IN
6 UNDERGROUND MINES AND REQUIREMENT FOR PAY FOR CERTAIN WORK.

7 (a) Except as provided in (d) of this section, a miner may not be employed in an
8 underground mine or workings for more than 10 hours in 24 hours, except on a day
9 when a change of shift is made. The 10-hour limitation applies only to work actually
10 performed at the mine face or other place where the work is actually carried on and
11 excludes time for meals, travel to or from the mine site, and travel between the mine
12 portal and the mine face, whether in going on or off shift, or in going to or returning
13 from meals. However, an employer shall pay wages for the time worked from the time
14 the miner enters the mine at the mine portal, whether or not work is performed at the
15 mine face or other place where the work is actually carried on, until the miner leaves the

1 mine.

2 (b) If life or property is in imminent danger, the 10-hour period may be extended
3 for the continuance of the emergency.

4 (c) The department may not, by regulation, impose more restrictions on the hours
5 of work of miners than are imposed by this section.

6 (d) On application from an employer, the commissioner may grant a variance
7 that permits employment in an underground mine or workings for more than 10 but not
8 more than 12 hours in a 24-hour period if the commissioner finds that

9 (1) the additional working time is permitted under the terms of a
10 collective bargaining agreement entered into by a bargaining organization that represents
11 workers performing the work covered by the variance; or

12 (2) the extension is in the best interest of resident workers of the state.

13 (e) In this section, "miner"

14 (1) means a person who works in an underground mine or workings and
15 is engaged in actual mining operations;

16 (2) does not include mechanics, warehousemen, electricians, and other
17 support personnel at an underground mine or workings.

CS FOR HOUSE BILL NO. 311(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/8/96

Referred: Judiciary

Sponsor(s): REPRESENTATIVES VEZEY, Toohey, Martin

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the hours a person may be employed in a mine."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 23.10.410(a) is amended to read:

4 (a) Except as provided in (d) of this section, a [A] person may not be
 5 employed in an underground coal mine, underground lode mine, underground placer
 6 mine, underground coal, lode, or placer workings, or other underground mine, or
 7 workings for more than eight hours in 24 hours, except on a day when a change of shift
 8 is made, excluding, however, an intermission of time for meals, or otherwise going to
 9 or from the place where the work is actually carried on, whether in going on or off shift.
 10 or in going to or returning from meals.

11 * Sec. 2. AS 23.10.410 is amended by adding new subsections to read:

12 (d) On application from an employer, the commissioner may grant a variance
 13 that permits employment in an underground mine or workings for more than eight but
 14 not more than 10 hours in a 24-hour period if the commissioner finds that

15 (1) the additional working time is permitted under the terms of a

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collective bargaining agreement entered into by a bargaining organization that represents workers performing the work covered by the variance; or

(2) the extension is in the best interest of resident workers of the state.

(e) The department shall issue orders and adopt regulations necessary to carry out this section.

HOUSE BILL NO. 311

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES VEZEY, Toohey, Martin

Introduced: 4/18/95

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act repealing the limitation on the hours a person may be employed in a
2 mine; and making a related technical amendment to avoid changing the penalties
3 for failing to make payments into an employee benefit fund."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 23.10.045(b) is amended to read:

6 (b) Each violation of this section is a separate offense and a person found
7 guilty of a violation is punishable under (c) - (d) of this section [IN ACCORDANCE
8 WITH THE SCHEDULE OF PUNISHMENT SET OUT IN AS 23.10.415].

9 * Sec. 2. AS 23.10.045 is amended by adding new subsections to read:

10 (c) A person who, whether as principal or agent, violates this section is guilty
11 of a misdemeanor and upon a first conviction is punishable by a fine of not less than
12 \$100 nor more than \$500 or by imprisonment in a jail for not less than 60 days, nor
13 more than six months, or by both.

14 (d) Upon a second conviction for a violation of this section, the punishment

1 is imprisonment in a jail for not less than 60 days, nor more than one year. A "second
2 conviction" under this section means a conviction for a violation of this section that
3 was committed within two years after a previous conviction for a violation of this
4 section. Other convictions are first convictions.

5 * Sec. 3. AS 23.10.405, 23.10.410, and 23.10.415 are repealed.

3/5/96

Marc Livingston
617 Marine Drive
Bellingham, WA 98225-1528
E-Mail marcusto@pacificrim.net
(360)-738-3855 Voice and Fax

Representative Kim Elton
Juneau, AK
FAX 907 465 2108

Dear Representative Elton,

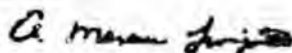
As someone who has worked in both the Sheep Creek Mine and in power tunnels on two dams in Southeast, I would like to urge a cautious and compassionate look at the situation before overturning laws meant to protect miners, for instance the eight hour work day. Being a construction worker myself as well as a commercial fisherman I have often worked long hours at physical and dangerous work, and sure, I like overtime pay.

However, I would like to point out that if you are concerned about jobs for Alaskans that if you support giving fewer workers more hours you will in effect be reducing the total number of jobs available. We must keep circumspect priorities in mind. Certainly many people would encourage industries to come to Alaska to help the economy, but most people would agree that worker safety should be paramount. Our natural resources are not going to go anywhere by themselves, and they will last only so long once they are tapped. And if a corporation finds that it is to their economic advantage to harvest these resources they should be made to do so in a socially acceptable way, keeping worker safety as a high value. Why allow some corporation to take the State's natural resources while bolstering their profits by cutting on worker safety? Many people fought long and hard for the eight hour workday.

One factor which should cause us to look closely at overturning the eight hour day for miners is that miners often have to spend several hours coming and going to their work for which they are often not paid. For instance, those who work at Greens Creek have a long boat ride before they even start their shift, and another boat ride at the end of their shift before they can go home to rest. When I worked at the Sheep Creek mine there was also a fairly long and dangerous drive to work which was the first of the strenuous and tiring tasks before I even went on the payroll.

I have great respect for miners and I believe them to be some of the **hardest** working people on **earth**. Like John Henry many miners will not turn down a challenge or long hours, even if it means working themselves into the ground. I hope that those who make laws and vote on laws will take their jobs as seriously as miners do and consider the effect of their actions on the people affected by the laws.

Sincerely,



A. Marcus Livingston

**Amendment to House Judiciary Committee
Substitute for House Bill 311**

1. Line 7, page 1, delete the word "miner" and substitute the word "person."
2. Line 14, page 1, delete the word "miner" and substitute the word "employee."
3. Line 12, page 2, delete all words after "extension" to the end of the sentence and substitute the phrase:

"would not adversely impact the health or safety of employees
working in an underground mine or workings."
4. Lines 13-17, page 2, delete subsection (e) in its entirety.

Alaska State Legislature

House of Representatives

Official Business



State Capitol
Juneau, Alaska 99801-1182
(907) 463-3718

House Majority Leader

SPONSOR STATEMENT

HB-311 "An Act repealing the limitation on the hours a person may be employed in a mine;"...was introduced to correct the current statutes that contemporary, advanced underground mining technology have made obsolete. The source of the original legislation is found in 43-2-1,2,&3 ACLA 1949.

At the time this legislation was introduced, underground mining was performed by people using hand tools, pneumatic drills and push cars. There were no state or federal safety or health laws like we have today. There were also no wage and hour laws in those days. The explosives used in those days produced large amounts of noxious fumes and ventilation was almost non-existent. Air operated drills used without water and wetting agents produced large amounts of dust. Silicosis was a serious occupational hazard. The methods used to prevent cave-ins and inhalation of foreign material were primitive, at best.

Times have changed and so have the methods used to mine underground. Today's underground mining activities are performed by machines with the operator supervising the operation. The health safety standards are among the highest in the world. Accident and injury rates are among the lowest for any industrial operation in Alaska. They are almost half that of the norm for the construction industry. The engineering methods of insuring safety have also dramatically improved.

HB-311 will result in increased wages for miners, increased profits for mining companies and more miners working in more mines for all Alaskans.

- Sponsor Statement -

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 23, 1996

SUBJECT: Sectional Summary of HB 311. (Repealing the limitation on the hours a person may work in a mine)

TO: Representative Al Vezey
Attn: Joe Ryan

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 incorporates the punishment schedule enacted in bill section 2, into the statute that makes failure of an employer to make benefit payments a violation of law. This subsection currently incorporates the schedule of punishment set out in AS 23.10.415 which is repealed by this bill.

Sec. 2 sets a schedule of punishment, which is taken from the current provisions of AS 23.10.415, for violation of AS 23.10.045.

Sec. 3 repeals three statutes relating to employment in underground mines.

AS 23.10.405 declares that employment in underground mines is injurious to health and dangerous to life and limb.

AS 23.10.410 sets an eight-hour limit on the number of hours in a day that a person may be employed in an underground mine. (There is an exception for days with a change of shift.)

AS 23.10.415 establishes a schedule of penalties for violation of AS 23.10.410. This is the statute that is transferred, with conforming amendments, by bill section 2.

Please let me know if you have additional questions on this matter.

TBC:glc
96-034.glc

- Sectional -

Legislative Research Agency

Alaska State Legislature



130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

April 25, 1995

MEMORANDUM

TO: Representative Al Vezey

FROM: Dale Brandt *DB*
Legislative Analyst

RE: Legislative History of AS 23.10.410 "Limitation on Period of Employment in Mines"
Research Request 95.194

You asked for background information on the original adoption of the eight-hour day for underground miners in territorial law (now AS 23.10.405-415).

An eight-hour day for underground miners and mill workers was adopted during the first session of Alaska's territorial legislature in 1913. There was considerable labor legislation at that time. In addition to the eight-hour day for miners, the legislature adopted an eight-hour day for employees of the territorial government and all municipal governments in Alaska. During the next session—1915—the legislature extended the coverage of the miners' eight-hour day to include placer miners and others. Also, the legislature adopted a measure to hold a referendum on the question of extending the eight-hour day to all employment in the territory. The referendum passed by a large measure, so at the next biennial session—1917—the legislature adopted a "universal" eight-hour day. It also further extended the coverage of the miners' eight-hour day.

We can only speculate that the impetus for the legislation was the arduous and dangerous conditions in Alaska mines and mills at the time. Juneau and Douglas lode mines were among the largest in the country.

Attached are copies of pertinent laws and excerpts from the Report of the Territorial Mine Inspector to the Governor of Alaska for the Year 1917.

We hope this information is helpful. Call us if you have questions or desire further information.

Attachments

- Background -

Kennecott Greens Creek Mining Company
P.O. Box 32199
Juneau, Alaska 99803-2199
(907) 789-8110
FAX (907) 789-8108

Clynt Nauman
General Manager

Kennecott
Minerals

**Before the State House Labor Committee
Peter Kott, Chair**

Testimony by Clynt Nauman, General Manager, Kennecott Greens Creek Mining Company, Regarding the Need to Amend Alaska Statute 23.10.410 to Increase the Number of Hours a Person May Work in an Underground Mine to 10 Hours at the Face

Chair Kott and Committee members, my name is Clynt Nauman. I am the General Manager of Kennecott Greens Creek Mining Company (Greens Creek). While I have only been in this job since April, I lived in Fairbanks for 12 years during the 1970's and 1980's and am really glad to be back in Alaska.

Greens Creek is offering this testimony today on behalf of itself and the Council of Alaska Producers. The purpose of the change in law proposed here today is to improve the economics of those companies which are operating in the State and to improve the investment climate for those companies which are considering whether or not to come to the State. The Minerals Commission recognized this in recommending that the law be changed from 8 hours to 12 hours. The discussion regarding Greens Creek, below, should be viewed as an example of how changing the law could benefit individual mining companies by enhancing operation economics and could benefit Alaska by providing year-round, high-paying jobs.

Greens Creek plans to reopen its mine on Admiralty Island this summer. This reopening provides an opportunity to create jobs for Alaskans throughout the State. In Southeast Alaska there are numerous workers trained in construction work and heavy equipment operation who have been laid off as a result of job losses in the timber industry. These workers may be ideal employees for Greens Creek because appropriately qualified workers could be quickly trained to perform similar tasks at the mine.

To facilitate hiring workers from Southeast Alaskan communities, we are considering a mechanism to underwrite the cost of their travel to Greens Creek. We also propose to house them at the site for reasonable working periods. For example, Greens Creek could have workers spend twenty days on site and ten days off.

In addition to providing jobs for appropriately qualified workers from timber dependent communities, this proposal would prevent friction with the housing-short Juneau community. Our figures show that while the rest of Southeast has experienced an employment loss of 4.1% between 1990 and 1995, Juneau has experienced a 7.1% job growth. Adding another 100 workers or more at Greens Creek would put added pressure on Juneau's housing market.

To proceed with this plan, we would need to have underground employees work 10 hours at the face instead of the 8 hours limit presently provided in the law. The Company would pay overtime for the extra two hours.

The overall benefit to the Company of revising the 8-hour statute and of housing workers at the site is increased operating efficiency which improves our competitive position in the global metal markets into which we sell our products. Increased operating efficiency has the additional benefit of reducing the economic exposure of the mine to the inevitable fluctuations in metal prices, helping to ensure that the mine will continuously operate over the long-term (17 years with current ore reserves and plans.)

I cannot stress how important this is to the mine's economics. It should help us avoid being a "swing producer" which must close when metals prices plummet. We can avoid "boom/bust" impacts on Alaska with this proposal.

The "8-hour rule" now embodied in AS 23.10.410(a) was originally introduced in 1917 to protect worker health and safety, largely because most mining was done by hand labor and because the industry was not subject to state or federal regulatory control. Miners' health was also threatened by respiratory diseases, fatigue, cave-ins, and other adverse underground environmental conditions.

Today, however, ore from underground mines is produced in large part by the use of modern machinery rather than hand labor, and stringent state and federal laws and regulations are in place which control industry labor practices and provide a high degree of protection for employees' health and safety.¹ In light of these and other innovative changes in the mining industry, the 8-hour rule has become obsolete.

Provided with my written testimony are studies prepared by representatives of the U.S. Bureau of Mines advocating expanded work shifts for underground mining operations. Several substantial benefits for expanding the work shift are recognized in these studies:

¹ See, for example, the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801 et seq.).

- ✓ No increase in safety incidents in moving from an 8 to 10 hour shift
- ✓ increased employee morale and job satisfaction due to longer periods of off-work time
- ✓ lower absenteeism
- ✓ fewer health problems
- ✓ increased efficiency and continuity in mining operations
- ✓ increased mineral production

The change proposed for the current law will not increase safety incidents for underground mine employees. Travel time to and from the mine site, as well as travel time to and from the mine's portal to the mining face, will not be calculated as part of the 10 hour shift. In Greens Creek's case, the rotation of shifts will eliminate the need for the daily commute from Juneau.

Many states have already amended their mining laws to account for these benefits and for advancements in industry technology and health and safety conditions. Although several states establish an eight hour base, many have provided exceptions to that requirement. Some states, such as Washington, Texas and New Mexico, do not even impose a limitation. Attached to my written testimony is a table providing a comparison of the status of laws in several states, including Alaska, regarding the number of hours employees may work in an underground mine.²

As has been recognized in several states and in various studies conducted on the issue, underground mine workers and mine operators such as Greens Creek will benefit substantially by the implementation of a 10 hour work shift. Therefore, I urge the Committee to support a change in the 8 hours rule to allow 10 hours at the mining face (exclusive of travel time to the face). A draft copy of our proposed legislation is attached.

Thank you for your consideration.

² Copies of these state statutes are provided for your reference in this notebook (in alphabetical order by state name).

State	Hours Limitation	Exceptions to Application of Limitation on Hours
Alaska (ALASKA STAT. § 23.10.410(a)) (Supp. 1990))	8	No
Arizona (ARIZ. REV. STAT. ANN. § 23-282) (1995))	8	No
California (CAL. LABOR CODE §§ 750-752) (Deering Supp. 1996))	8	Yes → pursuant to majority consent or collective bargaining agreement; no cap on hours ³
Colorado (COLO. REV. STAT. § 8-13-102) (Supp. 1995))	8	Yes → provided mine operator gives reasonable notice to employees of expanded work shift or pursuant to collective bargaining agreement; no cap on hours
Idaho (IDAHO CODE § 44-1104 (Supp. 1995))	8	Yes → up to 10 hours w/ permission of the Director of the Idaho Department of Labor and Industrial Services when there is a majority consent by employees; however, may not exceed 40 hour work week
Missouri (MO. REV. STAT. § 290.020 and § 290.050 (1994))	8	Yes → individual employee's consent; no cap on hours
Montana (MONT. CODE ANN. § 39-4-103 (1995))	8	No

³ Formerly, California law had provided a 12-hour cap on expanding hours under collective bargaining agreements. In 1995, legislation was passed which repealed the 12-hour cap. (CAL. LABOR CODE § 750.5.)

Nevada (NEV. REV. STAT. ANN. § 608.200 (Michie 1995))	8	Yes → pursuant to majority consent or collective bargaining agreement; no hourly cap
North Dakota (N.D. CENT. CODE §34.06.03 (Supp. 1995))	No hour limitation; however, the Commissioner of Labor is given the authority to regulate the number of hours to be worked	
Utah (UTAH CODE ANN. §34-21-2 (1994))	8	Yes → If Utah Industrial Commission approves longer work period; no cap on hours
Wyoming (WYO. STAT. § 27-5-102 (1994))	8	Yes → By mutual agreement between employee or employees' representative and employer; cannot exceed 16 hours.

Sec. 1 is amended to read:

Sec. 1. AS 23.10.410(a) is amended to read:

(a) A person may not be employed in an underground coal mine, underground lode mine, underground placer mine, underground coal, lode, or placer workings, or other underground mine, or workings for more than ten hours in 24 hours, except on a day when a change of shift is made. The ten hour limitation applies only to work actually performed at the mining face and excludes the intermission of time for meals, traveling to the mine site, traveling between the mine's portal to the face, or otherwise going to or from the place where the work is actually carried on, whether in going on or off shift, or in going to or returning from meals.

Sec. 2 is amended to read:

Sec. 2. AS 23.10.410(b) is amended to read:

(b) It is the purpose of this section to limit the hours of employment in 24 hours to ten hours of actual labor at the face, or other place where the work or labor to be done is actually performed.

Sec. 3 is deleted.

**TESTIMONY ON HOUSE BILL 311
REPEAL OF THE 8-HOUR WORK DAY**

**Presented by Eric Klepfer,
Manager of Environmental and Regulatory Affairs,
Coeur Alaska, Inc.**

Mr. Chairman, members of the committee, good afternoon, my name is Eric Klepfer with Coeur Alaska, Inc. I would like to thank the committee for giving Coeur the opportunity to testify today during these hearings.

Coeur is the owner and operator of the Kensington Project which is located approximately 45 miles north of Juneau. The Kensington Project is an underground gold mine with an ore reserve of approximately 1.95 million ounces of gold. Capital costs for the project are estimated at \$195 million and will have an annual payroll of about \$28 million dollars. The project is expected to employ approximately 300 people during operation and produce approximately 200,000 ounces of gold per year. Coeur is presently in the process of permitting the operation and expects to be in a position to make a construction decision by fourth quarter of 1996.

The Kensington Project is a remote mine operation accessible only by plane or boat. Due to the remote nature and limited access, a personnel camp will be built to house employees during their off-hours. It is Coeur's intent to provide both an environment in which our employees can safely and productively work while having a place to relax during their off shift hours.

Coeur is committed to local and Native hire and employment. Recently, we entered into an agreement with 3 Native Corporations in Southeast Alaska to that end. Our goal: to develop local human resources as part of the mineral resource development effort at Kensington. In order to accomplish this, we have been working with the State Department of Labor, University of Alaska and the Native groups to set up mine training programs in Southeast.

The best alternative Coeur can provide employees that work at a remote site is a schedule that will provide extended time home with their families. Coeur needs a modification of the present 8-hour work day restriction for underground mines to provide employment opportunities and schedules that allow flexible work shifts. With an extension of the 8 hour work day, Coeur could consider schedules such as two weeks on, two weeks off, rather than the 8 hour alternative of 2 weeks on, four days off.

Coeur is working with local Southeast communities including Juneau and Haines to develop a "local community project concept." This can be achieved only if there is flexibility in the current law which allows us a similar flexibility in scheduling.

The majority of Alaska's extensive natural resources are located in remote area. Development of these resources will required companies to establish remote camps and use innovative work schedules to meet project objectives and employee needs. Remote operations, by their nature, are well suited to the extended work day and, more importantly, dictate different work schedules.

It is important for this committee to recognize that the 8 hour underground law must be changed in some manner that permits Coeur to use alternative schedules to meet production and employee needs for the Kensington Project while remaining competitive in a world market. Without change, Coeur is restricted in its ability to provide flexible work schedules that benefit the project and most importantly, our employees, Southeast Alaska and the State as a whole. Alaska is one of the last active mining states that has not changed this law in some manner.

Numerous reports and studies have been completed by organizations such as the US Bureau of Mines and other knowledgeable groups regarding extended shifts and safety in mining. James C. Duchon, former U.S. Bureau of Mines Safety Division research analyst and expert on shiftwork and safety training in mining is here today via teleconference to testify on the results of these studies and answer any questions this committee may have.

To be competitive and attract quality employees, Coeur's operations must be able to:

- provide a safe work environment;
- offer reasonable work schedules which provide the employee opportunity to spend quality time with families;
- meet project objectives and goals; and
- minimize costs.

There are several inherent benefits that Coeur and its employees gain by extending the 8 hour underground work day. These are:

- high paying jobs with work schedules that meet both project and employee needs;
- employment opportunities in communities such as Haines and Juneau;
- minimizes the need for families from outlying Alaska communities to relocate to Juneau;
- reduces the number of helicopter flights to and from the site (safety and environmental conservation); and
- provides much needed job opportunities to Southeast Alaska communities.

As you can understand, the remote location of the project, limited access and other considerations make it imperative that the 8-hour underground restriction be changed. This is extremely important to the project and will play a pivotal role in the final decision for project development. Coeur must be able to operate the underground mining operation beyond the 8 hour work day. We urge the committee to support a bill that changes this restriction. By doing so, Alaska is moving in concert with other states in removing work day restrictions for underground mining operations that other industries in Alaska enjoy. Anything less will hinder the future of mining in Alaska.

Coeur is committed to Alaska and the Kensington Project and will assist the committee in anyway to change the existing 8-hour day restriction imposed upon the mining industry. Thank you Mister Chairman and Committee members for the opportunity to testify.

February 16, 1996

Representative Pete Kott
Alaska State Legislator
State Capitol, Room 432
Juneau, AK 99801

SUBJECT: House Bill 311

Dear Representative Kott:

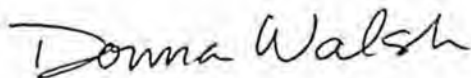
As you may be aware, Coeur Alaska, Inc. (Coeur) is in the process of permitting to reopen the Kensington Gold Mine Project, 45 miles north of Juneau, Alaska. Coeur is optimistic that we will be in a position to begin construction in late 1996, and go into operation early 1998. During construction, we expect to employ approximately 500 persons, including support. During operation, we plan to employ approximately 350 workers. The Kensington project is an underground mine, with a current mine-life of 12 years.

Given this overview, as you might expect, we have been anxiously watching the developments in regard to House Bill 311. At the February 14, 1996 hearing, the question was asked if there was any information on the psychological effects of a person working underground. Attached is a report by James C. Duchon, former U.S. Bureau of Mines research analyst, that explains in some detail the effects of working underground. In addition, Coeur has contracted Duchon to write an executive summary on extended shiftworks, safety in mining, etc. Coeur has also asked Duchon if he would be willing to testify at the next hearing. The outline for Duchon's executive summary is attached. If you are interested in additional items not listed on the attached outline, please let me know as soon as possible, and we will add it to the list. We hope to have Duchon's report by the end of next week.

I hope the attached information is useful. Unless I hear otherwise from you or your staff, I will continue forwarding information I receive on the subject of extended underground workdays to your office. I can be reached at: (907) 463-5425.

Also, I wanted to thank you for finding time in your busy schedule to meet with Dennis Wheeler, President and CEO of Coeur during his visit to Juneau next week.

Sincerely,



Donna Walsh
Community Affairs Coordinator

Enclosures



C O E U R
THE PRECIOUS METALS COMPANY

ALASKA GROUP

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Juneau, Alaska 99801
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Main Fax 907-463-5429
Env. Fax 907-463-5428

Proposal for an Executive Summary entitled "The Usage of Extended Workshifts In Underground Mining: Is it Safe?"

- I. Purpose of this summary
- II. Extended Workshifts-what are they? What are the factors associated with them such as a) long work days, b) short workweeks, c) night shifts
- III. Safety in mining today
- IV. Studies in all industries regarding safety in extended workshifts.
- V. Studies in underground mining, including the Bureau of Mines Study.
- VI. Conclusions and Recommendations

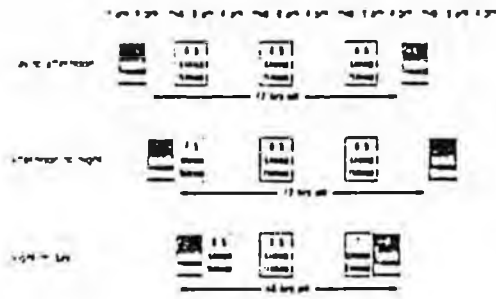


BULLETIN

August 1995

INSIDE:
Shiftwork
Lubricity
Reminder for blasters
Prostate health

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The Holmes Safety Association Bulletin contains safety articles on a variety of subjects: fatal accident abstracts, studies, posters, and other health and safety-related topics. This information is provided free of charge and is designed to assist in presentations to groups of mine and plant workers during on-the-job safety meetings.

PLEASE NOTE: The views and conclusions expressed in "HSA Bulletin" articles are those of the authors and should not be interpreted as representing official policy or, in the case of a product, represent endorsement of the Mine Safety and Health Administration.

KEEP US IN CIRCULATION—PASS US ALONG

2

Shiftwork: a guide for schedule design

By James C. Duchon¹

Abstract

Based upon the perturbed performance, increased or more serious accidents, lowered production, higher absenteeism, health problems, familial problems, low morale, and job dissatisfaction due to working nights and shiftwork, the U.S. Bureau of Mines has analyzed shiftwork schedule design at mining operations. The purpose of this paper is to discuss in practical terms what mining companies can do if they are considering changes in their shiftwork practices. It is not the intent of this paper to persuade management or any workers that they should change their shiftwork schedule.

This paper discusses various design considerations or dimensions that may vary. These dimensions are (1) fixed versus rotating schedules, (2) speed of rotation, (3) direction of rotation, (4) length of shift, and (5) starting time of shift. Also, extended workdays and other management considerations, such as training and evaluation, are discussed.

Introduction

In the mining industry, the proportion of employees working shiftwork is increasing. Data from the U.S. Bureau of Labor Statistics indicate that in 1991, 28.4 pct of all mine employees worked evening, night, or rotating shifts, as compared with 21.9 pct in 1985. Further, the percentage of

miners working shifts other than straight days is considerably larger than the combined average of all U.S. industries (17.8 pct).

There are several practical reasons why shiftwork in mining is prevalent, including (1) the increased demand for goods and services combined with limited overhead; (2) the need to maximize costly equipment for quick capital recovery; (3) the need to take advantage of lower utility costs at offpeak-hour utility rates; and (4) the need to keep equipment running continuously because of high startup costs.

It has been demonstrated in published studies that workers in various industrial groups, such as mining, power, chemical, nursing, factory, and oil refineries, have displayed perturbed performance, increased or more serious accidents, lowered production, higher absenteeism, health problems, familial problems, low morale, and job dissatisfaction due to working nights and shiftwork (1-10).²

An excellent review of these effects can be found in a recent document completed by the U.S. Congress, Office of Technology Assessment (1). It is easy to understand, therefore, why there is a growing interest among all industries, including mining, to examine shiftwork interventions.

A discussion of alternative work schedules provided other reasons why there is a recent trend in the United States toward

new and better schedules (11). For instance, an increase in relative affluence creates a climate where many of life's privileges and comforts have become necessities. Employees are examining alternative schedules consistent with this. Also, cultural changes, changes in employment rates, an aging work force, labor force participation, and a shift to service work all contribute toward this move to seek alternative schedules.

For these reasons the U.S. Bureau of Mines (USBM) has been involved in research on various shiftwork issues to enhance the safety of the mine worker. The purpose of this paper is to discuss in practical terms what mining companies can do if they are considering changes in their shiftwork practices. It is not the intent of this paper to persuade management or any workers that they should change their shiftwork schedule. In many cases, current work scheduling practices are used successfully. Changes in such situations may, in fact, worsen their situation in spite of all good intentions.

Ergonomic considerations of schedule design

The perfect shift does not exist. Figure 1 illustrates that there are three ergonomic considerations for any schedule that are associated with various causes and effects, such as production, absenteeism, accident rates, worker fatigue, and morale. These considerations include

¹ Engineering research psychologist, U.S. Bureau of Mines, Twin Cities Research Center, Minneapolis, MN.

² Italic numbers in parentheses refer to items in the list of references at the end of this article.

biocompatibility, sociocompatibility, and job compatibility. A comprehensive assessment of any schedule, therefore, must consider each of these components. While each of these considerations are interrelated, they will for the sake of simplicity be discussed and treated independently.

Biocompatibility refers to how a schedule conforms or does not conform to human physiology that may affect performance. It is well known that humans have innate "biological clocks" that control certain physiological functions. Circadian rhythms are those functions that have an approximately 24-hr cycle, such as the excretion of human growth hormone and cortisol potassium, variation of body temperature, and sleep-wake cycle. The sleep-wake

cycle refers to the body's natural tendency to maintain wakefulness during the daylight hours and sleep during the night. There are two observable consequences that can occur as a result of disrupting the sleep-wake cycle. First, remaining awake at night results in fatigue or a feeling of being tired. This fatigue occurs even when "enough" sleep is taken prior to the night shift. Fatigue occurs at night because of a physiological push for sleep manifested by sleepiness, performance deficiencies, lowered body temperature and heart rate, and other signs associated with a need for sleep. When body temperature is used as an indicator of alertness, the trough of this cycle tends to occur at approximately 3:00 am for an individual who is not adjusting to a different

schedule or time zone.

A second situation related to circadian rhythms is referred to as occupational jet lag. Just as our bodies adjust to different time zones during travel, so too must our bodies adjust to rotations from day or evening shifts to night shifts. Fatigue, malaise, disturbed sleep, and general flu-like symptoms occur as a result of circadian rhythm desynchronization and physiological adjustment to the new shift (time zone). Such a biological adjustment to new time zones may take from 3 to 10 days, whereas adjustment to a night shift may take longer or may never occur because of conflicting day-night cycles, i.e., working during the night and sleeping during the daylight hours, as well as conflicting social and family cues on workdays and

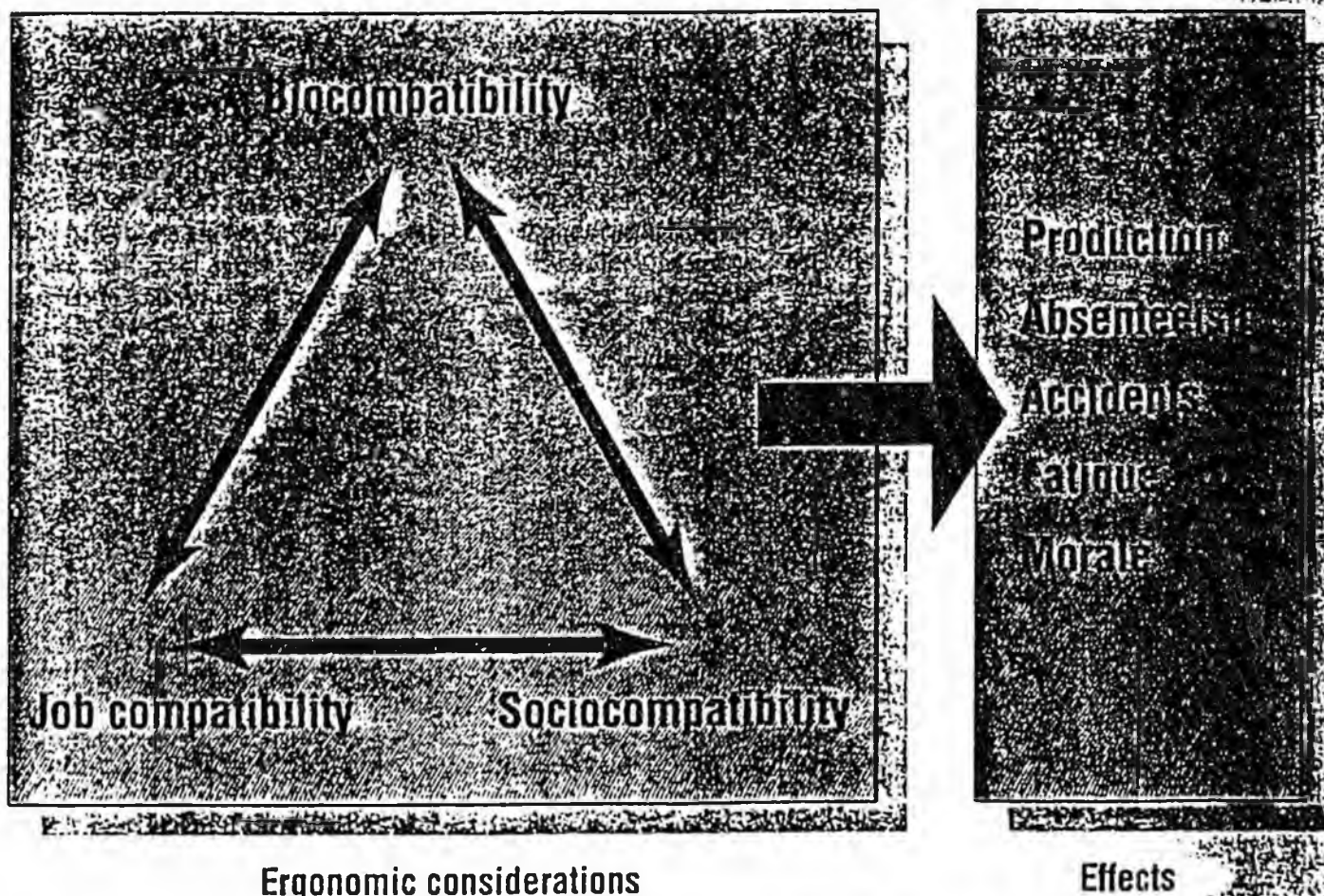


Figure 1.—Ergonomic considerations and effects of shiftwork schedules.

4

off days.

Sociocompatibility refers to a compatibility between work schedule design and social-family life schedules. This design consideration is perhaps the most critical aspect from the perspective of the shift worker. The norm in our society is an 8-to-5, Monday-through-Friday schedule. Deviation from this could potentially create social conflict. For many workers, the most disliked shift in this respect is the evening shift. Working between 3:00 pm and 11:00 pm precludes a satisfactory family-social life. Working weekends, an unavoidable consequence of continuous operations, is a major source of social incompatibility.

Job compatibility refers to how a schedule conforms with or competes with job or organizational demands. For instance, certain companies or industries require training days to be built into a schedule. Some underground mining companies have blasting periods that should be considered in a schedule. Such things as need for weekend work, need

for equal personnel across the 24-hr day, commuting times for employees, union regulations, exposure to harmful environmental agents, etc., should be considered in the choice of schedule design. Any schedule that involves evening, night, or rotating shifts will create problems for some people.

Management-labor differences

The focus of "important" schedule considerations can be different depending upon one's perspective. Figure 2 illustrates the concerns management and labor typically consider critical in a "good" schedule. Traditionally, management tends to emphasize issues of job compatibility, while labor tends to emphasize issues of sociocompatibility. This is not to say that management ignores the welfare of its employees or that employees do not consider the job considerations that are necessary for company survival. In fact, insight into each position is ultimately necessary for a successful and workable schedule. Until recently, biocompatibility issues in schedule designs were often ignored.

However, research in the past 10 years has evaluated human sleep, biological rhythms, nutrition, etc. in relation to shiftwork schedules and has offered important considerations that should be of value to all parties.

Recommendations

While there are virtually unlimited schedule designs, there are limited dimensions of the schedule that can vary. These dimensions are (1) night and evening shift, (2) fixed versus rotating shifts, (3) slow or fast rotation schedules, (4) forward or backward rotation, (5) early or late shift start times, and (6) length of shift. The following is a discussion of each of these.

Night and evening shift

As mentioned earlier, working night shifts has been associated with a variety of health and performance measures. It is the night shift that is incompatible to our body's natural rhythms. The night shift is also disliked by many workers because of social factors. There are situations, however, where individuals prefer working nights because of certain

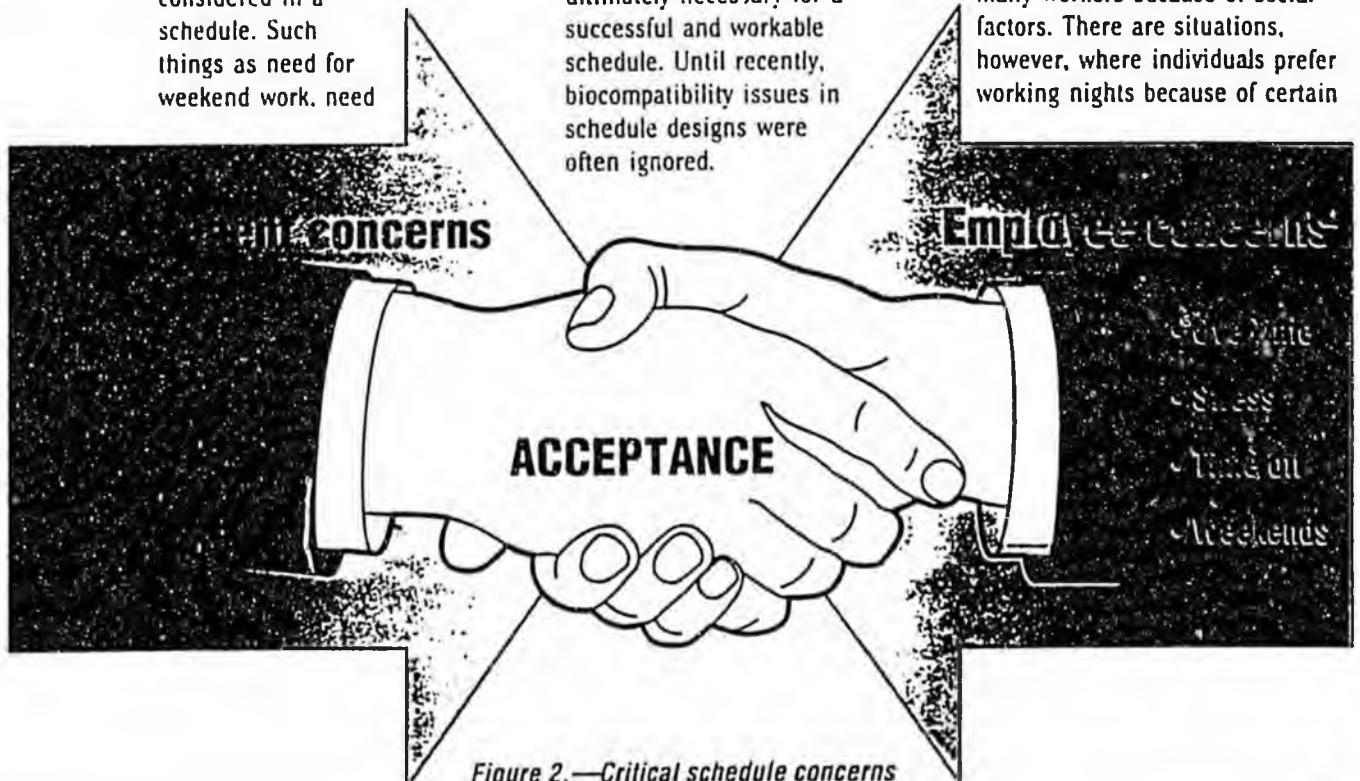


Figure 2.—Critical schedule concerns

benefits, such as pay differentials and less pressure or less supervision at work. Working nights also allows for more parental involvement in child care and the associated cost savings.

Considering only the criteria of adequate sleep, the evening shift is for most people the perfect shift. Virtually all studies have indicated that the evening shift is associated with the greatest sleep length when compared with the day or night shift. Nevertheless, it is the evening shift that is the least preferred by workers. Clearly, this dislike for the shift is due to issues of sociocompatibility.

Recommendations:

1. Before anything else, an employer should consider the possibility of decreasing use of night shifts.
2. The use of overtime should be avoided for workers on night shifts. Many workers nap prior to the shift and begin sleep immediately following the night shift. Therefore, any overtime may eat into the worker's total sleep length, which is already shortened.

- c. Ample opportunity for a hot and healthful variety of foods via machine or food cart should be made available to these "offshift" workers.
- d. Lunch breaks should occur at a consistent time of the night shift, i.e., meals should be eaten at approximately the same time each night.

Fixed versus rotating shifts

Fixed or permanent shifts are more common in Monday-through-Friday, 24-hr operations. In these 5-day operations, three crews each working day, evening, or night shifts can cover a 24-hr operation with either permanent or rotating shifts. However, in continuous operations, utilizing 8-hr shifts, where each job totals 168 hrs per week (24 hrs/day times 7 days/wk), a minimum of four crews is needed to cover all three shifts. Therefore, at least some shift rotation is typically required. The question then becomes, Should the use of permanent shifts be minimized or maximized when possible? Table 1 shows one of

using fixed shifts, such as permanent days, evenings, and nights, is to allow workers on the night shift to "adjust." However, research has consistently shown that night workers never completely adapt to that shift. Nearly all night permanent shift workers revert to a "normal" day schedule on their days off. They are, therefore, constantly rotating their work-sleep cycles in spite of having a fixed shift. Several studies have indicated that permanent night workers, as do rotating shift workers, tend to sleep several hours less before the night shift than any other shift. Working consecutive night shifts, therefore, may result in a cumulative "sleep debt." A summary of the pros and cons of fixed versus permanent shifts is as follows:

Advantages of Fixed Shifts:

1. Often allows workers to choose the evening or night shifts. These shifts are actually more sociocompatible for some workers.
2. Allows a large percentage of employees to avoid the night shift altogether.

3. Less disorienting since rotation among the other shifts is not required.

Advantages of Rotating Shifts:

1. A "fair" schedule. No preferences given to individuals for the favored shifts.
2. Minimizes the exposure to the night and evening shift to any particular group of employees by "spreading out" the exposure among all employees.
3. If rotations are fast (see next section) then there may be less physiological disruption of

Table 1.—Schedule consisting of four-crew, 8-hr, 7-day backward rotating "Southern Swing" pattern

Crew/week	Mon	Tues	Weds	Thurs	Fri	Sat	Sun
1	—	—	E	E	E	E	E
2	E	E	—	M	M	M	M
3	M	M	M	—	—	G	G
4	G	G	G	G	G	—	—

E = Evening shift G = Night shift M = Morning shift Dashes indicate off days

3. When night shifts are used, several special precautionary measures should be taken. These are:

- a. Longer or more frequent mandatory rest breaks when work is between midnight and 6:00 am.
- b. Physically or mentally difficult assignments should be left for

the most commonly used schedules in continuous operations. This schedule maximizes rotating shifts by requiring all workers to rotate on a weekly basis. In contrast, table 2 shows a schedule that utilizes three fixed crews (1, 2, and 3) and one rotating or "grasshopper" shift (crew 4). One argument in favor of

circadian rhythms, i.e., occupational jet lag would not be an issue.

Recommendations:

1. The primary consideration

shorter stretches of nights to avoid a cumulative sleep deprivation that may occur with too many contiguous night shifts (12). On the other hand, it can be argued that a slower rotation has the

and (4) sleep quality results indicated that on the second week of the night shift, workers reported significant improvements in all four mood descriptors for the second half of their shift. Also,

Table 2.—Schedule consisting of 6-day-on and 2-day-off pattern, repeating every 8 days.

Crew-week	Mon	Tues	Weds	Thurs	Fri	Sat	Sun
1 ¹	M	M	M	M	M	M	—
2 ¹	—	—	E	E	E	E	E
3 ¹	G	G	—	—	G	G	G
4 ²	E	E	G	G	—	—	M

E = Evening shift G = Night shift M = Morning shift Dashes indicate off days
¹ Fixed ² Grasshopper shift, rotating every 2 days

sleep quality as measured by awakenings during sleep improved on the second week of the night shift. None of the variables showed a worsening on the second week

should be the possibility of the reduction of the work force on the night shift.

2. Unless the night shift and the evening can be filled by workers voluntarily choosing to work permanent shifts, rotating shifts are recommended.

advantage of letting workers adjust to night shifts, thereby lessening the negative effects of night work (13).

The USBM conducted a study to determine whether or not there is an advantage to working the second week of a 2-week cycle, as would be indicated by reports of more positive health, mood, and sleep items on the second week as compared with the first week

of nights. These results do not support a "cumulative trauma" effect for the schedule studied in this paper. On the basis of this study, it could be recommended that 2-week cycles are superior to 1-week cycles.

However, a truly fast rotation schedule, rarely used in U.S. industries, is common in European countries. Table 3 shows a typical fast rotating schedule.

Slow or fast rotation schedules

Rotating shifts can differ with respect to how quickly workers rotate from one shift to another, or the number of contiguous days on each shift. In U.S. mining operations, rotations tend to be as short as 1 week and as

Table 3.—Rapid rotation schedule often used in European work systems¹

Crew-week	Mon	Tues	Weds	Thurs	Fri	Sat	Sun
1	M	M	E	E	G	G	G
2	—	—	M	M	E	E	E
3	G	G	—	—	M	M	M
4	E	E	G	G	—	—	—

E = Evening shift G = Night shift M = Morning shift Dashes indicate off days
¹ This schedule requires four crews working a repeating 2-2-3 pattern. For instance, crew 1 works 2 days, 2 evenings, 3 nights, 2 off days, 2 day shifts, 2 evening shifts, etc.

long as 2 or more weeks on the same shift. It is not typical to find "rapid" rotations of 1 or 2 days, as is found in some service industries or as is typical in the European community. The rapid rotation will be discussed below.

There are reasonable hypotheses for suggesting either the 1 week, or the slower rotation cycles of 2 or more weeks. On the one hand, it can be argued that it is more advantageous to work

(14). Forty-two workers at a surface mine in the Midwest filled out the work, food, and sleep diary for 4 to 6 weeks. They rotated every 2 weeks, going from days to nights to evenings with all weekends off. The dependent measures were defined as (1) health, the daily frequency of reported symptoms; (2) mood, based on a self-evaluation of four descriptors—alert, sleepy, grouchy, and relaxed; (3) total sleep length;

Experts agree that there are several advantages to fast rotating shifts (15-17). First, individuals do not have time enough on any shift to adjust his or her circadian rhythms, thereby avoiding the physiological dyschrony associated with working stretches of night shifts. Second, working only two or three consecutive nights does not allow a sleep debt to occur, which is associated with working several consecutive nights. Third,

short stretches of nights allow for more regular social contacts.

Recommendations:

1. On a rotating schedule, it is

to night to evening shift (table 1). Unfortunately, there are virtually no published studies that have systematically reversed ONLY the direction of the shift rotation in a

pattern: (1) a forward rotation produces a 72-hr-off period between a day and evening shift, a 72-hr-off period between an evening and night shift, and a 48-

Table 4.—Crewless schedule consisting of 2 contingent weeks of nights¹

Crew-week	Mon	Tues	Weds	Thurs	Fri	Sat	Sun
1	—	M	M	M	M	M	M
2	M	—	—	M	M	M	M
3	M	M	M	—	—	M	M
4	E	E	E	E	E	—	—
5	—	G	G	G	G	G	G
6	G	—	—	G	G	G	G
7	G	G	G	—	—	E	E
8	E	E	E	E	E	—	—

E = Evening shift G = Night shift M = Morning shift Dashes indicate off days
 This schedule requires eight shift workers covering two positions around the clock. The shift workers are placed at 1-week intervals in an 8-week cycle.

recommended that schedules have 2 weeks of a particular shift (with days off), as compared with 1 week. Table 4 shows an example of a schedule for an eight-worker continuous operation, utilizing 2-week rotations.

2. A fast rotation, such as the one shown in Table 3, may be considered as an alternative for those groups of workers wanting

mining or industrial setting that would show the benefit of such an intervention. There are, however, a few studies that have made shift changes, which have included direction of rotation as one part of the total change. For instance, the most widely cited study is the intervention study at Great Salt Lake Minerals (10). In this study, the group that changed to a

period between a day and night shift. The shorter the off period, the less time for rest and recovery. Therefore, they conclude that since a forward rotation produces only one short, between-shift interval and a backward rotation produces two short, between-shift intervals, the forward rotation is recommended.

Premise 2: A second and more popular reason for prescribing the forward rotation relates to circadian rhythms that are disrupted during phase advances or delays. Since humans have

to avoid long stretches of night shifts.

Forward or backward rotation

One popular suggestion offered by shiftwork experts is to prescribe schedules that rotate in a forward direction. Rotating from a day to evening to night shift (table 5) is preferred over rotating from a day

forward direction AND went from a weekly to a 21-day rotation schedule improved on measures of health, production, and turnover.

There are two viewpoints as to why there may be benefits using a forward rotating schedule: Premise 1: First, Knauth and Rutenfranz (16) state that for a discontinuous three-shift system with a five-shift, two-days-off

circadian rhythms that are over 25 h, it is easier to phase delay than to phase advance. Phase advances merely refer to adjustment of our circadian rhythms to earlier clock times. Phase delay refers to adjustment to later clock times. Research has shown that transmeridian air travelers have a much easier time adjusting to westward travel ("phase delay" or

hr-off period between a night and day shift, and (2) a backward rotation produces a 56-hr-off period between a night and evening shift, a 56-hr-off period between an evening and day shift, and an 80-hr-off

forward rotation) as opposed to eastward travel ("phase advance" or backward rotation) (18-20). Based on this research, many authors have recommended that shift rotation schedules take advantage of this finding by constructing schedules with forward rotations to hasten adjustment to each new shift (10, 16, 21-22). Unfortunately, no single study has compared the patterns of adjustment or completeness of adjustment for a group of shift workers who have rotated in each direction with all other factors being equal. In fact, no study has demonstrated complete circadian adjustment for shift workers rotating in either direction.

The USBM challenged these viewpoints using an analysis based upon sleep times taken from survey data and attempted to evaluate the argument that forward rotations are BETTER than backward rotations. The primary concern in rotating shiftwork is rotating onto and off of the night shift. Therefore, each between-shift interval prior to or subsequent to a night shift was scrutinized. This paper is based on sleep timing only. Other factors that could influence adjustment, such as eating and social behaviors, internal biological functions, and rhythms should not be ignored.

Night shifts are typically considered either the first or third

shift, depending upon the placement within the overall schedule. For instance, in a Monday-through-Friday workweek, a night shift is the first shift if it begins at or about Sunday night and ends Monday morning. However, a night shift is considered the third shift if it begins late Monday night and ends early Tuesday morning.

It was shown that when nights are the third shift, the recovery interval after the night shift on

When nights are the first in the series, the recovery intervals after a night shift are relatively long for both forward and backward shifts. However, the backward rotation contains a potential for three full night's sleep, as opposed to only two full night's sleep for the forward rotation.

Therefore, when primary importance is placed upon recovery from night shifts, if nights are the third in the series, the backward rotation is the most

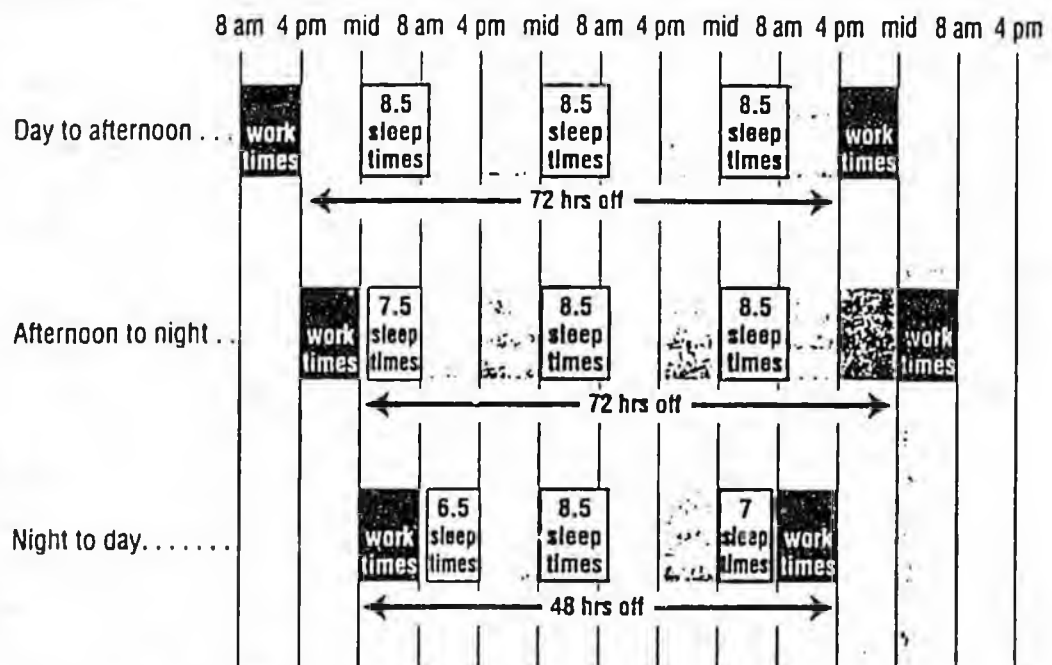


Figure 3.—Forward rotation with night as third shift. mid = midnight

both the forward and backward rotations are "short" intervals (figs. 3-4). However, the forward rotation contains only one full night's sleep and two shortened sleep times. Further, the day shift follows this, which could itself contribute to sleep deprivation. On the backward rotation, the recovery interval after a night shift contains two full night's sleep, following a shortened day sleep. The next afternoon series could actually help in recovery since these shifts are associated with the longest sleep lengths of any shift.

desirable.

The amount of sleep and time off prior to working a series of night shifts was also inspected (figs. 3-4). Ideally, individuals who are well rested will have a better chance of adjusting and coping with their night shifts. Where nights are the third in the series, both the forward and backward rotations have a long between-shift interval prior to the night shift, 72- and 80-hr, respectively. Both allow three separate sleep periods to recover from the night shift.

Where nights are the first in

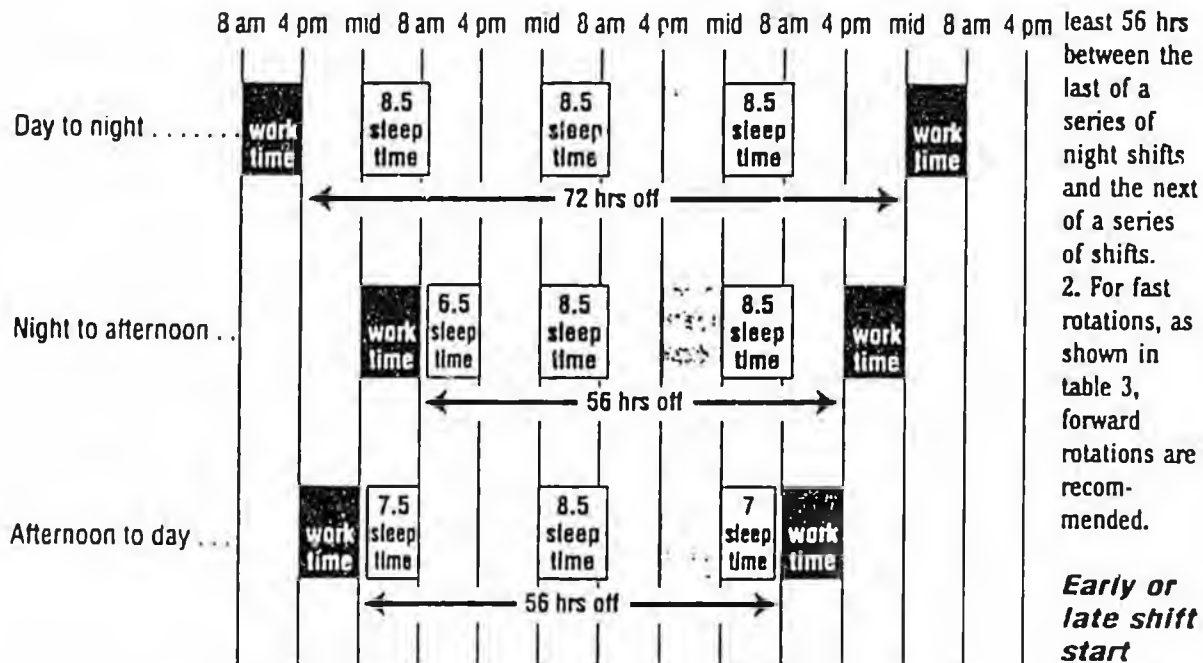


Figure 4.—Backward rotation with night as third shift. mid = midnight

least 56 hrs between the last of a series of night shifts and the next of a series of shifts.
2. For fast rotations, as shown in table 3, forward rotations are recommended.

Early or late shift start times
Various

the series, both the forward and backward rotations have a "short" between-shift interval, 48-hr and 56-hr, respectively. The day-to-night shift change on the backward schedule and the evening-to-night shift change on the forward schedule have only two nighttime sleep periods.

Therefore, when analyzing sleep behaviors prior to night shifts, having nights as the third shift for both forward and backward shifts are more desirable than having nights as the first shift.

Perhaps the more popular reason for promulgating the forward rotation is its apparent consistency with the idea that it is biologically quicker to adjust when rotating in the forward direction than in the backward direction. Forward rotations have been compared with east to west travel, where sleep-wake cycles are phase delayed; i.e., sleep occurs later than what has been typical for an individual. Just looking at work start times, it appears that workers are phasing in a forward direction; i.e., day to

evening to nights. However, when looking at the sleep-wake cycles of actual workers, they are not consistently rotating forward.

Based upon typical sleep times, the number of phase advances and phase delays are exactly equal for forward and backward rotating shift workers. Adjustment, therefore, should be the same for both conditions.

Recommendations:

1. Where the speed of rotation is relatively slow (i.e., 1 week or more), the preferred direction of rotation is linked to the amount of time off between changes. The amount of time off is related to the position of the night shift, first versus third. An analysis of time off and typical sleep periods indicates that the backward rotation with nights as the first shift may be more conducive for recovery from a stretch of nights. However, a backward rotation with nights as the third shift offers the best opportunity for sleep in preparation and recovery from the night shift. In general, it is suggested that there should be at

factors can influence a preferred start and end time. In the realm of job-compatibility, certain factors should be considered. For instance, daily blasting schedules are often coordinated with shift start times for underground mines, since evacuation of the mine is necessary. Sociocompatibility issues involve such concerns as driving through rush hour and being home at particular times to coincide with meal times or child care. Biocompatibility issues include such concerns as sleep quality and sleep length, as well as individual differences such as morning and evening types. Morning types or larks are those individuals who tend to prefer to go to bed early and wake up early. Evening types or owls are those individuals who prefer to go to bed late and wake up late. This factor may be an important consideration as the work force ages. Older workers are associated with being morning types.

In general, research has shown that when working a day shift, sleep length decreases with earlier work start times. Also, sleep taken

between night shifts are of shorter duration the later the work times start and end. Therefore, to maximize sleep length before the morning shift, the shift should not start too early. However, to maximize sleep length after a night shift, the shift should not end too late.

Knauth and Rutenfranz (16) discussed studies of start times in various industries. In a coal mine, an experimental change on the day shift from a 6:00 am to a 7:00 am start time was associated with a 23.8 pct accident rate decrease. Similar findings of later start times being associated with fewer accidents or error rates have been found with bus drivers and train drivers. The study also suggested that earlier start times on a "late shift," between 1:00 pm and 4:00 pm, was associated with more frequent accidents.

Recommendations:

1. On a one-shift system (i.e., a day shift), a 7:00 am to 9:00 am start time is suggested.
2. For 24-hr operations, it is suggested that a 7:00 am, 30 min start time be employed. A later start time will hamper the ability of night shift workers to get adequate sleep.
3. Ideally, a flexible start time should be used

if possible. This allows for individual preferences and differences.

Length of shift

There is very little doubt that "extended workdays," regular shifts of 10 or 12 hrs, maintaining an approximately 40-hr week, is a very popular alternative among the work force because of the

significant increase in days off, including weekends, especially when compared with traditional rotation schedules of working seven straight shifts or having only one weekend off every 4 to 6 weeks.

While the popularity of extended workdays has been on the increase, there are some serious concerns by management, workers, unions and various governmental policy-makers that working 10- or 12-hr days may create an added risk of accidents and health problems (23). Unfortunately, there is very little objective information available regarding the nature and degree of safety and health risks associated with the application of extended workday schedules (1, 24-25). As a consequence, when it comes to questions of designing and managing extended workdays, decisionmaking by management must now proceed on limited information.

Health and safety issues are not important considerations for the implementation of 12-hr shifts in relatively safe workplaces such as white collar settings. However, in labor-intensive and environmentally stressful conditions as in mining, where accidents and health are major concerns, or

application of extended workday schedules by U.S. industries will become increasingly widespread over the decade, it is imperative that a careful and comprehensive evaluation of safety and health risks associated with such schedules be initiated. In a report requested by the House Committees on Appropriations; Energy and Commerce; Science, Space, and Technology; Veterans Affairs, and the Senate Subcommittee on Science, Technology, and Space of the Office of Technology Assessment, it was stated that there is "...a compelling need for more studies of the interactions between work schedules and safety in the workplace." (1, p. 18).

The change from an 8-hr rotating shift to a 12-hr rotating shift implies several critical schedule differences (26). Below are the crucial similarities and differences between 8-hr rotating shifts and 12-hr rotating shifts. These are the factors that could make a difference in workers' tolerance to their schedules:

1. Length of the workday.—An extended workday is typically considered a 10- or 12-hr workday, while still maintaining an approximately 40-hr workweek. Table 6 shows an example of "2-3-

Table 6.—Schedule consisting of two-three-two,¹ every other weekend off, 12-hr shift pattern.

Crew-week	Mon	Tues	Weds	Thurs	Fri	Sat	Sun
1	—	D	D	—	—	D	D
2	D	—	—	D	D	—	—
3	—	N	N	—	—	N	N
4	N	—	—	N	N	—	—

D = 12-hour day shift N = 12-hour night shift Dashes indicate off days
¹ This schedule is the continuous pattern of the days on-days off sequence; i.e., two shifts on, followed by 3 days off, followed by two shifts on, followed by two shifts off, etc.

where safety is a public concern as in the nuclear power industry, the application of long workdays must be carefully analyzed. Since all indications are that the

¹This schedule is the continuous pattern of the days on-days off sequence; i.e., two shifts on, followed by 3 days off, followed by two shifts on, followed by two shifts off, etc.

2 every other weekend off" extended workday schedule.¹

2. Amount of time off between workdays.—Extended workdays typically have less off-time between shifts. This would have implications for physical recovery from fatigue and potentially less time for sleep.

3. Length of the workweek.—Extended workweeks typically have shorter workweeks at the expense of longer workdays. This could have implications for adaptation of circadian rhythms or less cumulative fatigue across a workweek (27).

4. Amount of time off, i.e., length of "weekends."—Extended workdays usually allow more days off. This would have implications for recovery from fatigue or sleep deficit.

5. Speed of rotation.—U.S. shift workers usually rotate slowly, 1 week or more on any one shift. Extended workdays usually require faster rotations, 2 to 4 consecutive days, which would have implications for adaptation to circadian rhythms.

6. Time of day.—Both 8-hr schedules and 12-hr schedules can involve around-the-clock operations. Therefore, working the night shift will still be an issue in extended workdays.

The USBM conducted a study designed to examine the safety and health implications of extended workdays at an underground copper, lead, and zinc mining operation (28). Measures were taken before and after a change from the old 7-days-on, 2-days-off, 8-hr continuous schedule to the new 4-days-on, 4-days-off, 12-hr continuous schedule. These measures included (1) behavioral performance measures to analyze perceptual-motor changes, (2) continuous heart-rate monitoring and aerobic capacity to measure

physical fatigue, (3) pulmonary-respiratory measures to examine air contaminant exposure, and (4) a variety of self-report questionnaires to measure perceived adaptation and satisfaction with the new schedule. A control group consisting of 5-days-on, 2-days-off day shift workers at the same mine was also included.

Survey results indicated an overwhelming support for extended workdays at the underground copper, lead, and zinc mine (28). However, self-reported mood scales and the Stanford Sleepiness Scale indicated that workers on the 12-hr night shift experienced more sleepiness and lowered energy-alertness levels after the eighth hour into their shift. The 12-hr shifts did not seem to be associated with a decrease in most measures of performance across the shift. Only on one measure of physical endurance task (tapping lapses) was there a decrease in performance across the shift for the 12-hr night shift. Most of the physiological and pulmonary data indicated few differences between the 8- and 12-hr shifts.

In this study, because of the remote location of the mine, the workers on 12-hr shifts were expected to lodge at the minesite during their 4-day shift week. This undoubtedly had a beneficial effect on the sleep and rest between shifts. This was confirmed by the diary data that indicated improved sleep quality and no lessening of sleep length, as compared with the workers' 8-h schedule.

Based upon the overall acceptance of the new schedule by the workers and lack of evidence to suggest serious performance decrements, it was recommended that the mine retain the 12-hr schedule, with certain precautionary measures to ensure the safety

of the workers. Such measures included maintenance of the on-site lodging for 12-hr workers, continuous observation and evaluation of group and individual adjustment, and customizing work tasks and work breaks to accommodate longer work hours.

In an area fraught with inconsistencies, there are several valid comments that can be safely made: (1) workers tend to embrace the use of extended workdays; (2) in spite of item 1 above, some studies in some industries have shown performance and/or safety decrements associated with extended workdays; and (3) more research on extended workdays is needed, especially for companies and industries considering the use of extended workdays where safety is of major importance. These conclusions underscore the need for caution by companies using or considering the use of extended workdays. Based upon this review, it is recommended that the use of extended workdays be accompanied by special efforts to create safe working conditions. Also, since no *a priori* predictions from prior research can be made with certainty about the probable consequences of introducing 10- or 12-hr shifts into a mining company, evaluation of each miner should be made on a periodic basis.

Recommendations:

The use of extended workdays is recommended provided that certain precautions are considered. These are:

1. Extended workdays should not be considered where the frequency of accidents or near-miss accidents are at unacceptable levels. The use of extended workdays should not be expected to reduce the likelihood of accidents.

2. Extended workdays should not be considered for jobs that require extremely high physical workloads. For example, the American Industrial Hygiene Association recommends a workload not to exceed one-third VO₂max (maximum aerobic capacity) for an 8-hr workshift. While similar recommendations have not been made for extended workdays, this standard should be strictly enforced.

3. Job sharing and cross training should be considered where extended workdays are used. Since vigilance, boredom, and mental or physical fatigue can lead to errors, changing job tasks may alleviate these stressors.

4. Workers should not be expected to work overtime on extended workdays. Working on scheduled days off is not recommended.

5. If extended workdays are used, regular evaluation and assessment should be undertaken. For instance, survey methods have been developed by the USBM to evaluate schedules before and after changes are made (29). Also, long-term monitoring of health, accident, and production effects should be considered.

6. Hybrid schedules that utilize both 8- and 12-hr shifts should be considered. Table 7 is an example of a schedule utilizing both 8- and 12-hr shifts.

Management considerations

Changing a schedule: Equally important to the new schedule itself is how the process of choosing a schedule is carried out. There is not a single method that has been shown to be the best. A prescription for failure is for any one manager to take it upon himself or herself to decide upon a schedule and implement it without consulting those workers who would be affected by the change. This method, although seemingly efficient, sets up the potential for suspicion and inaccurate assumptions that could lead to possible rejection of the schedule, regardless of how good it is.

The following steps are recommended as one way that has proven effective:

1. Construct a company-wide shiftwork committee.
2. Evaluate work problems and worker needs. Social requirements of a schedule can be determined at this time. Focus groups or surveys can be used at this step.
3. Determine operational requirements.
4. Design alternative work schedules that consider the information from steps 2 and 3.
5. Evaluate alternative work schedules. This evaluation is based upon the opinions of the

7. Make the shiftwork change.
8. Evaluate the change 6 months, 1 year, and every year thereafter. If the presurvey was used for evaluation, a postsurvey can be used as a basis of comparison. Inform the work force of the results of the evaluation.
9. Decide to keep or reject the schedule.

Training and followup:

Offer training to the shift workers in ways to cope with shiftwork. Involve family members in this training.

Summary

For the vast majority of the work force, any schedule that involves hours outside the parameters of a "normal" schedule (i.e., 9 to 5), will involve sacrifice and physical and psychological distress. There seems to be, however, schedules that are better than others. This paper presents various aspects of schedules that have been studied and reported upon. The literature is full of studies and reports of actual work settings that have changed schedules with positive outcomes. Shiftwork practice is an ergonomic consideration, where the fit between the worker and workplace may have serious consequences caused by job, sociological, and biological compatibility.

Table 7.—Hybrid schedule consisting of both 8- and 12-hour shifts.

Crew-week	Mon	Tues	Weds	Thurs	Fri	Sat	Sun
1	E	E	E	E	E	—	—
2	—	M	M	M	M	M12	M12
3	M	—	—	—	G	G12	G12
4	G	G	G	G	—	—	—

E = Evening shift G = Night shift G12 = Shifts from 7 pm to 7 am M = Morning shift M12 = Shifts from 7 am to 7 pm Dashes indicate off days

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shiftwork committee, experts in the field, and/or other workers.

6. Choose three alternatives for a vote.

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This entire article was reprinted from the 1994 U.S. Bureau of Mines Special Publication 18-94: *Improving Safety at Small Underground Mines*.

Every move it makes

Underground storage is one disposal option for waste leftover from nuclear weapons research. Engineers pre-paring to put such materials in the earth are using U.S. Bureau of Mines (USBM) monitoring technology designed to protect workers who take coal out.

The Department of Energy has installed a USBM automated ground control management system at its Waste Isolation Pilot Plant near Carlsbad, New Mexico. The system is monitoring the stability of the underground repository that will someday hold tons of low-level radioactive wastes.

The system, which combines the

latest sensor technology with "smart" computer analysis techniques, can continuously collect and evaluate data from up to 15,000 instruments. It provides an around-the-clock assessment of the structural integrity of the underground rooms, drifts, and shafts at the storage site.

The USBM devised the real-time monitoring system to keep track of ground conditions in longwall coal mines where the rapid pace of mining can quickly create new hazards. Measuring ground pressure changes, strata movements, and other parameters during mining can help engineers detect potential

problems with roof support and identify ways to protect miners from cave-ins.

Use of the system at Cyprus-Amax Coal Company's Foidel Creek Mine in Oak Creek, Colo., allowed mine managers to monitor and respond to changing ground conditions during the development and mining of six longwall panels. USBM scientists are now working with Drummond Coal to install the monitoring system at the company's new Shoal Creek Mine located near Birmingham, Ala.

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ALASKA STATE DISTRICT COUNCIL OF LABORERS

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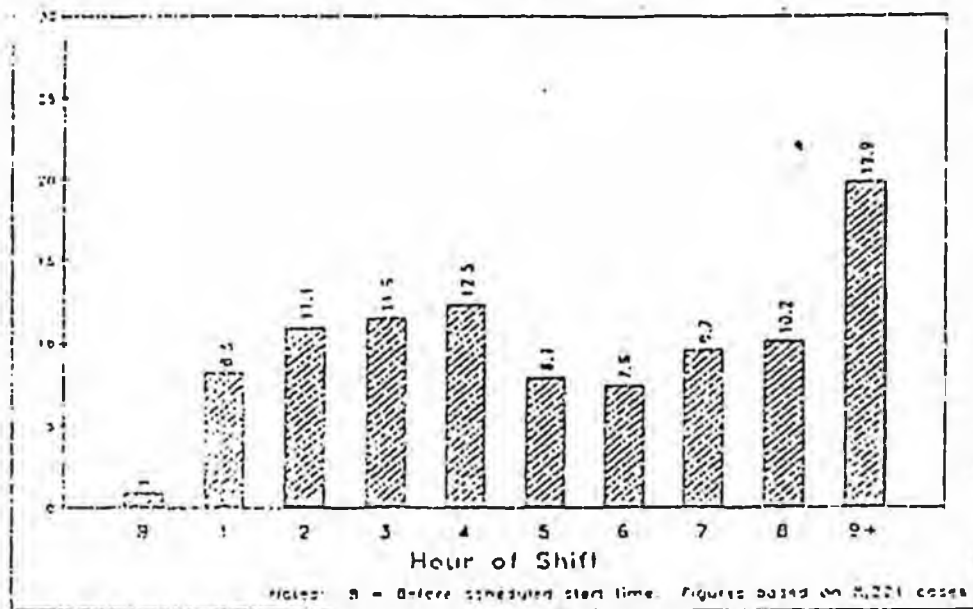
RE: MINING/UNDERGROUND MAXIMUM HOURS PROTECTION

DATE: FEB. 2, 1996

The Alaska law which protects miners safety by its 8 hour maximum hours provision was one of the very first laws enacted by the Territorial Legislature in 1913. One would expect that this historic Alaska standard would still be respected by Alaskan Legislators.

As the enclosed statistics demonstrate, the common sense basis for the 1913 law still exists today-- preventing accidents! These current statistics show that as a matter of proven fact: the rate of accidents after the 8 workhour increases drastically. And safety is not only of concern to employees and their families, but also important to Employer's worker compensation and general liability exposure.

FIGURE 2-14
Time Loss Injuries Percent Distribution
by Shift Hour Accident Occurred
Alaska 1984



distribution points out that fatigue plays a significant role in the occurrence of time loss accidents. A historical summary of the portion of cases after the eighth hour of work is given in Text Table 2-9. For industries which characteristically have long working hours, the percentage of accidents occurring after eight work hours is greater than the average.

Methodology

Claims for work injuries and illnesses are reported to the Alaska Division of Workers' Compensation using the Report of Occupational or Illness Form 6101 (Rev. 12/83). See Section 5 for a sample form. The information from the form is analyzed and coded for nature and source of injury or illness, part of body affected, and type of accident or exposure. The classification of these characteristics is defined by the American National Standards Institute's "Method of Recording Basic Facts Relating to the Nature of Occurrence of Work Injuries," ANSI Z16.2-1962 (R1973). The coding scheme for the supplementary data system is provided by the U.S. Bureau of Labor Statistics.

The occupation of the worker is classified according to the 1970 Census Classification of Industries and Occupations. Employer firms are classified into industries according to the 1972 *Standard Industrial Classification (SIC) Manual*. The industry code for every employer is available from an existing data base in the Department of Labor.

The data from the Workers' Compensation report forms is continuously coded and entered into a computer data base. When all data for the reference year have been entered, a magnetic tape is made which the U.S. Bureau of Labor Statistics uses to generate the SDS tabulations. Only those cases which occurred during the year and involved fatalities or one or more lost workdays beyond the day of injury were coded into the SDS system.

Text Table 2-9
Percent of Injuries after the 8th Work Hour
by Industry Division
Alaska 1980-1984

	1980	1981	1982	1983	1984
Private Sector	23.6	23.6	23.6	19.5	20.4
Mining	34.7	34.8	36.5	31.9	34.7
Oil & Gas	36.0	35.8	39.5	32.4	36.0
Construction	27.8	25.9	26.5	22.0	21.3
Manufacturing	27.0	25.1	24.0	19.8	24.9
Seafood	38.6	35.8	32.6	28.9	37.1
Lumber & Wood	17.8	16.5	15.2	11.1	16.1
Transportation	20.7	24.1	22.7	19.2	20.3
Trade	16.5	17.1	17.3	14.9	16.9
Finance	12.9	15.0	27.2	19.5	18.7
Services	19.1	20.2	20.5	16.3	16.2
St. & Local Govt.	13.4	14.9	18.1	15.4	17.0

MIS DATA FROM
 THE TABULATIONS
 IN 1985

TABLE 2-16
 Time Loss Injuries
 Hour of Shift During Which Injury Occurred
 Alaska 1984

	SIC	TOTAL	BEFORE SHIFT BEGAN	1st HOUR	2nd HOUR	3rd HOUR	4th HOUR	5th HOUR	6th HOUR	7th HOUR	8th HOUR	9th or LATER HOUR	SHIFT HOUR UNEXPL.
TOTAL PUBLIC AND PRIVATE SECTOR		10,777	65	686	913	956	1,029	664	619	795	835	1,637	2,556
TOTAL PRIVATE SECTOR		9,267	65	558	787	814	864	579	520	665	702	1,429	2,273
AGRICULTURE, FORESTRY & FISHING		54	.	8	2	4	4	3	2	3	7	4	17
MINING		515	4	21	34	33	34	31	14	29	39	128	146
Metal Mining	10	37	1	.	3	6	2	1	.	3	5	6	10
Oil & Gas Extraction	13	460	3	20	29	27	33	30	13	24	31	118	132
CONSTRUCTION		2,537	8	121	205	238	255	184	121	189	203	414	594
General Building Contractors	15	795	3	39	55	81	72	68	41	67	64	122	174
Heavy Construction Contractors	16	609	1	30	47	52	53	58	21	50	63	146	153
Special Trade Contractors	17	1,052	4	52	93	95	139	58	59	72	81	146	262
MANUFACTURING		1,253	5	72	110	91	122	73	72	76	69	225	332
DURABLE GOODS		516	.	29	51	40	54	35	33	34	29	65	133
Lumber & Wood Products	24	434	.	22	41	35	60	29	28	30	26	54	109
Stone, Clay, and Glass Products	32	40	.	5	5	1	1	5	2	2	1	6	12
Fabricated Metal Products	34	17	.	.	2	1	.	.	1	3	1	3	6
NON-DURABLE GOODS		737	5	43	59	51	58	38	39	46	40	159	200
Food, Kindred Products	20	570	5	24	31	31	39	24	21	34	32	142	197
Paper, Allied Products	26	54	.	7	7	8	9	4	5	3	4	4	3
Printing and Publishing	27	87	.	7	17	10	7	10	10	3	2	8	13
TRANSPORTATION & PUBLIC UTILITIES		1,225	13	97	113	113	107	69	67	81	93	192	250
Local & Interurban Passenger Transit	41	46	1	7	7	2	4	1	1	1	3	13	6
Trucking & Warehousing	42	326	1	14	24	35	33	23	14	22	26	46	52
Water Transportation	43	23	.	2	4	1	3	2	2	2	4	7	1
Transportation by Air	45	492	6	50	52	37	37	29	28	28	27	75	123
Pipelines, Except Nat. Gas	46	19	.	1	.	1	2	2	.	.	.	6	4
Transportation Services	47	19	.	1	1	2	2	2	2	1	3	2	3
Communication	48	173	5	16	10	16	13	5	11	18	17	30	35
Electrical, Gas & Sanitary Svcs.	49	122	.	6	15	17	11	5	9	9	15	13	27
WHOLESALE TRADE		509	1	29	50	50	51	25	36	39	43	68	110
Durable Goods	50	291	1	17	29	31	34	19	22	17	27	37	64
Non-Durable Goods	51	218	.	11	21	19	17	15	14	22	16	31	52
RETAIL TRADE		1,687	16	110	147	152	141	97	125	144	123	211	426
Building Mat'ls. & Garden Supplies	52	189	.	10	14	18	7	12	11	25	21	34	37
General Merchandising Stores	53	144	.	8	15	14	13	6	10	12	12	23	31
Food Stores	54	347	1	28	29	25	34	13	27	31	21	38	102
Auto Dealers & Service Stations	55	156	2	9	16	28	13	7	13	18	23	26	45
Apparel and Accessory Stores	56	19	1	1	1	3	1	1	.	.	1	1	6
Furniture and Home Furnishings	57	55	2	2	6	7	2	3	6	3	3	6	15
Eating & Drinking Places	58	583	9	45	49	37	54	47	50	43	28	54	152
Misc. Retail	59	154	1	7	17	20	14	8	8	12	11	17	39
FINANCE, INSURANCE & REAL ESTATE		168	2	16	17	11	17	16	11	8	11	25	34
Banking	60	36	.	5	3	3	2	2	7	1	2	5	6
Real Estate	65	59	.	5	5	3	5	5	3	.	4	13	14
Holding and Other Investment Offices	67	33	.	1	5	3	5	2	.	.	4	7	7
SERVICES		1,223	16	91	101	118	127	77	66	90	107	133	277
Hotels & Other Lodging Places	70	232	3	29	21	23	15	15	18	16	26	19	47
Personal Services	72	43	.	4	3	2	6	4	2	4	5	4	9
Business Services	73	260	5	16	18	15	29	19	12	21	11	48	72
Auto Repair, Svcs. & Garages	75	108	1	4	8	11	17	5	5	10	17	12	18
Misc. Repair Services	76	54	1	3	9	3	2	2	1	6	6	7	14
Amusement & Recreation Services	79	29	1	.	1	3	3	1	.	1	3	2	14
Health Services	80	143	2	11	10	14	15	16	8	7	8	11	41
Legal Services	81	6	.	2	1	1	1	.	.	.	1	1	1
Educational Services	82	6	.	.	.	2	.	.	.	2	1	1	1
Social Services	83	177	1	13	20	26	23	14	13	14	15	16	21
Membership Organizations	86	54	.	6	3	10	9	4	1	2	3	5	17
Misc. Services	89	107	2	3	7	8	7	5	6	7	11	27	24
NOT AVAILABLE		94	1	4	8	4	4	4	6	6	5	9	42
TOTAL PUBLIC SECTOR		1,510	19	118	124	142	165	87	99	130	133	208	281
State Government		568	3	42	37	57	63	28	35	51	52	84	111
Local Government		942	16	76	89	85	102	59	64	79	81	124	151

- = Zero Cases.
 SIC = Standard Industrial Classification Code.
 NOTE: Figures for SIC groups will not necessarily add up to the industry division total figure because some industries have been omitted.
 NOTE: Date includes only those reported cases which occurred during the year involving death of one or more lost workdays beyond the day of injury.
 SOURCE: Alaska SOS Table 222.