



HB

271

LEGAL SERVICES

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

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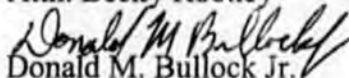
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 30, 2005

SUBJECT: Sectional Analysis for HB 271 (Work Order No. 24-LS0838F)

TO: Representative Peggy Wilson
Attn: Becky Rooney

FROM: 
Donald M. Bullock Jr.
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. States legislative findings and intent relating to limiting overtime for registered nurses for the benefit of persons receiving care from registered nurses; states that health care facilities should provide adequate and safe nurse staffing without the need for mandatory overtime.

Section 2. Adds a new chapter, AS 18.09 to AS 18 that includes the following sections:

Sec. 18.09.110. Provides that a nurse in a health care facility may not be required or coerced to accept an assignment of overtime, with certain exceptions, if, in the judgment of the nurse, the overtime would jeopardize patient or employee safety; lists five situations in which a nurse may be required to work overtime; provides for a minimum of eight consecutive hours of off-duty time after working 12 or more consecutive hours; requires a health care facility to provide an anonymous process for nurses and staff to make complaints related to staffing levels and patient safety; adds definitions for the section.

Sec. 18.09.020. Prohibits retaliation, including filing a report with the Board of Nursing, against a nurse for exercising rights under AS 18.09.

Sec. 18.09.030. Provides for enforcement of the chapter by the commissioner of labor and workforce development; sets the time period for filing a complaint alleging a violation of the chapter; provides increasing penalties for a violation of the chapter by a health care facility that range from a reprimand for a first violation to a penalty between \$2,500 and \$5,000 for a third violation within a 12-month period; requires the health care facility to pay a nurse three times the nurse's hourly rate for each hour worked in violation of the chapter.

Representative Peggy Wilson
April 30, 2005
Page 2

Sec. 18.09.900. Defines "health care facility," "nurse" (to mean a licensed registered nurse), and overtime.

Section 3. Makes the Act effective January 1, 2006, and will require a 2/3 vote in both houses.

If I may be of further assistance, please advise.

DMB:med
05-324.med

After speaking with the Dept. Health & Social Services and reviewing information from the Center for Medicaid and Medicare Services (CMS), the paragraph below attempts to define the term.

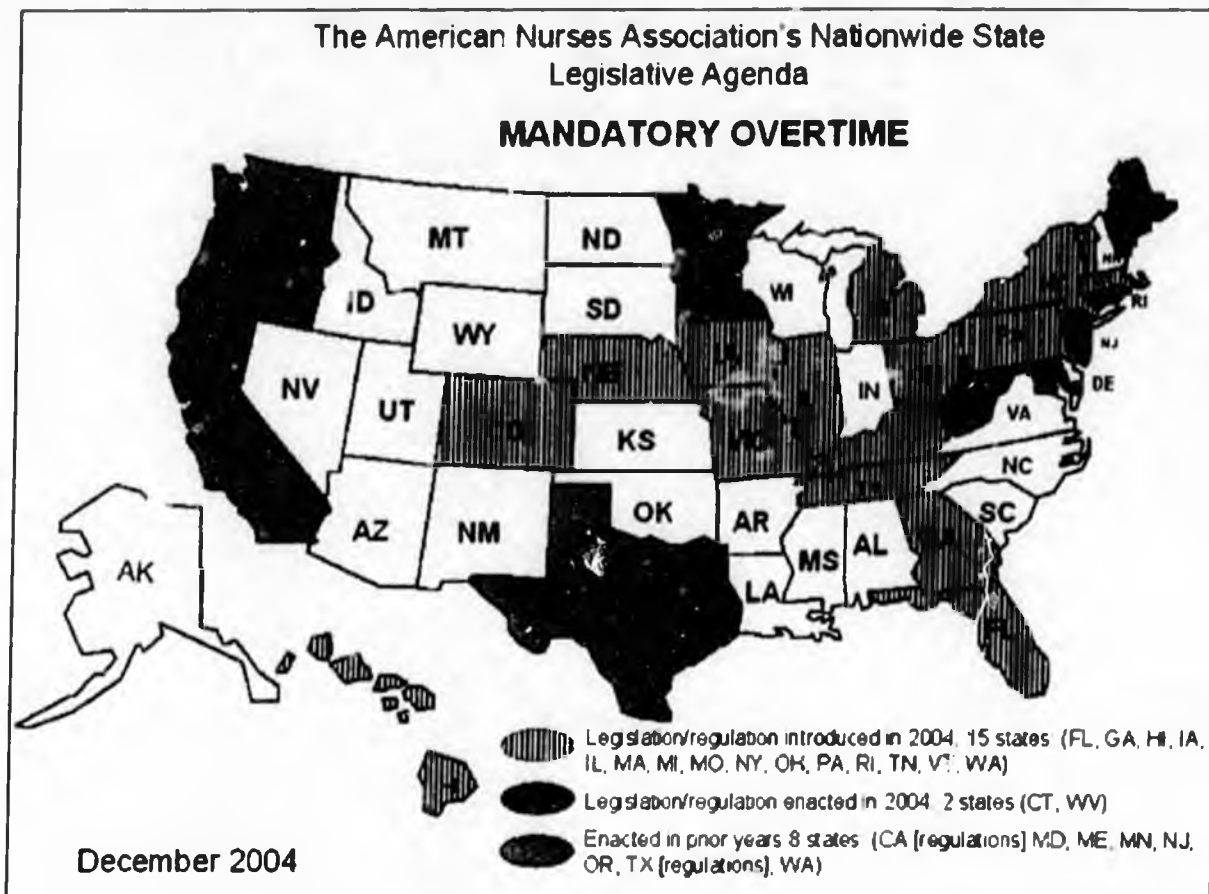
Critical access hospitals (CAH) are recognized by CMS for cost-based reimbursement purposes. To obtain eligibility as a CAH, the facility must be a Medicare hospital, a hospital that stopped operating on or after November 29, 1989, or a health clinic or health center that was a hospital before it was downsized. The geographic location of the facility plays a role in its designation as a CAH as well. The facility must be located in a rural area of a State that has established a Medicare rural flexibility program, or within a Metropolitan Statistical Area (MSA) of such a State. The CAH must be located more than a 35-mile drive from another hospital or CAH (15 miles in mountainous terrain, or areas with only secondary roads) unless it was designated by the state to be a 'necessary provider' before January 1, 2006. The facility must offer round-the-clock emergency care services, provide not more than 25 beds (acute and/or swing with SNF level care if the CAH has a swing bed agreement) and maintain an average length of stay of no more than 96 hours.

NursingWorld



ANA STATE GOVERNMENT RELATIONS

2004 Legislation: Mandatory Overtime (updated 12/04)



Background: Mandatory Overtime

Mandatory overtime is a difficult problem for RNs and health care facilities. Because of inadequate RN staffing, employers have used mandatory overtime to staff facilities often as a cost savings factor. Nurses are concerned about the health effects of long term overtime and the quality of care being provided.

As part of the American Nurses Association's (ANA) Nationwide State Legislative Agenda on the nurse staffing crisis, State Nurses Associations supported the enactment of mandatory overtime legislation in state legislatures and regulatory agencies. ANA also actively pushed for the passage of the federal mandatory overtime legislation, The Safe Nursing and Patient Care Act (HR 745/S 373) but it was not enacted this year.

In 2004, **WV** enacted legislation prohibiting a hospital from mandating a nurse to accept an assignment of overtime. The commissioner of labor is charged with the enforcement of the law and shall administer a penalty for any violations. **CT** enacted legislation prohibits a hospital from requiring a nurse to work in excess of a predetermined scheduled work shift except in certain circumstances such as participating in a surgical procedure until the procedure is completed, public health emergency etc. Legislation was also introduced in **FL, GA, HI, IA, IL, MA, MI, MO, NY, OH, PA, RI,**

TN, VT, and WA.

In 2003, three states, **LA, NV and WV**, enacted legislation requiring the establishment of study committees to further explore the issue. 22 other states introduced prohibition of mandatory overtime legislation/regulation designed to set maximum hours of work per day/week with protected right of refusal for work time requested in excess of predetermined maximums.

In 2002, the following states created laws to have an impact on this important issue: **MD** law states that an employer may not require a nurse to work more than the regularly scheduled hours according to the predetermined work schedule. There are some exceptions including an emergency situation that could not be reasonably anticipated and if a nurse has critical skills and expertise that are required for the work. **MN** law prohibits action against a nurse who refuses mandatory overtime because it would jeopardize patient safety. **NJ** enacted legislation prevents a health care facility from requiring an employee to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week. **TX** regulations require hospitals to develop policy and procedures for mandatory overtime. **WA's** new language states that acceptance of mandatory overtime by a nurse is strictly voluntary and refusal is not grounds for adverse actions against the nurse.

Legislation enacted in 2001 in **ME** would prevent a nurse from being disciplined for refusing to work more than 12 consecutive hours except in certain circumstances and must be given 10 consecutive hours off following overtime. **OR** enacted legislation prevents a nurse from being required to work more than 2 hours beyond a regularly scheduled shift or 16 hours in a 24 hour time period. Regulations adopted in **CA** prior to 2001 prevent an employee scheduled to work a 12 hour shift from working more than 12 hours in a 24 hour period except in a health care emergency.

▶ [Return to ANA 2004 State Legislative Trends Report](#)

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Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

SPONSOR STATEMENT

HB 271

“ An Act relating to limitations on overtime for registered nurses in health care facilities and providing for an effective date.”

This bill will prohibit an employer from assigning mandatory overtime and from threatening or retaliating against a nurse who refuses overtime. It will also give the nurse the latitude to make the judgment call about whether they are safe to practice (work overtime) or not. The bill assigns the administration of implementation and enforcement to the Commissioner of Department of Labor.

Mandatory overtime hours are those hours above an agreed upon, predetermined, regularly scheduled shift, which the employer makes compulsory (as opposed to voluntary). The threat of reprisals includes but is not limited to discharge, discipline, demotion or assignment to unattractive tasks or work shifts or in some cases licensure removal, retaliatory reporting, and charges of “patient abandonment”.

Mandatory overtime contributes to poor quality patient care because fatigue and loss of concentration, which results from excessive overtime, increases the likelihood of errors. According to a study by the National Institute for Occupational Safety and Health (NIOSH), when staff plans to work additional shifts on a volunteer basis, they are more likely to be prepared and get plenty of rest immediately prior to working the extended shift. However, when an employer mandates overtime, this occurs with little or no prior notice. The result is high levels of fatigue and thus increased errors.

For nurses, these errors or mistakes may cause life-threatening situations for both the patient and the nurse. These situations run the gamut from back injuries for the nurse to patient medication errors to even death. The evidence is very strong that prolonged work hours and fatigue affect worker performance.

Emergency situations and Critical Access Hospitals are exempt from this bill.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB271-DOLWD-WH-04-19-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Limit Overtime for Registered Nurses RDU: Labor Standards and Safety
 Component: Wage and Hour
 Sponsor: Representative Wilson
 Requester: House L&C Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	59.9	59.9	59.9	59.9	59.9	59.9
Travel	3.0	3.0	3.0	3.0	3.0	3.0
Contractual	7.5	7.5	7.5	7.5	7.5	7.5
Supplies	3.8	0.5	0.5	0.5	0.5	0.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	74.2	70.9	70.9	70.9	70.9	70.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	74.2	70.9	70.9	70.9	70.9	70.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	74.2	70.9	70.9	70.9	70.9	70.9

Estimate of any current year (FY2005) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill establishes a penalty when under certain circumstances a registered nurse is required to work beyond a scheduled shift. There are currently approximately 5,000 registered nurses working in Alaska and this is projected to be a rapidly growing occupation. The Alaska Department of Labor and Workforce Development will be required to investigate complaints, collect evidence, interview witnesses, subpoena records, make determinations and collect any penalties determined to be due. This is anticipated to require a full-time Wage & Hour Investigator position funded with General Funds. Costs include \$59.9 for salary and benefits and \$14.3 in various associated position costs.

Prepared by: Grey Mitchell, Director Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 4/19/05 9:28 AM
 Approved by: Greg O'Claray, Commissioner Date: 4/19/2005
 Agency: Department of Labor and Workforce Development



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What will legislation regulating mandatory overtime really do?

The mandatory overtime legislation being suggested does not prohibit nurses from working overtime. It will discourage an employer from assigning mandatory overtime and will prohibit an employer from threatening or retaliating against a nurse who refuses overtime. It will support the nurse who believes patient care would be compromised if that nurse is forced to work overtime. We must be able to count on the professional nurses who are providing care to make the judgment call about whether or not they are safe to practice.

Basic Facts on Mandatory Overtime

In the United States there has been an overall increase in overtime hours for all American workers over the last two decades. Almost one third of the workforce regularly works more than 40-hours a week and one fifth work more than 50 hours. It has been no different in health care where working overtime is becoming an every day occurrence. "Time after Time: Mandatory Overtime in the US Economy" Briefing Paper. January 2002. 1

"Mandatory overtime hours" are those hours above an agreed upon, predetermined, regularly scheduled shift, that the employer makes compulsory (as opposed to voluntary) with the threat of job loss or reprisals such as discharge, discipline, demotion or assignment to unattractive tasks or work shifts or in some cases licensure removal, retaliatory reporting, and charges of "abandonment". RN schedules are often 12, 10 or 8 hour shifts and some nurses do not get overtime for staying additional time unless they have reached 40 hours in one week. For example, a RN could work their regular 8 hour shift, but then be mandated to work an additional 8 hours for a total of 16, but not qualify for overtime pay.

1 - 18 page report available at <http://www.epinet.org/briefingpapers/120/bp120.pdf>

Why do nurses care so much about the issue of mandatory overtime?

Mandatory overtime contributes to poor quality patient care because fatigue and loss of concentration ability, which results from excessive overtime, increases the likelihood of errors. According to a study by the National Institute for Occupational Safety and Health (NIOSH), when staff plan to work additional shifts on a volunteer basis, they are more likely to be prepared and get plenty of rest immediately prior to working the extended shift. However, when overtime is mandated by an employer, this occurs with little or no prior notice. The result is high levels of fatigue and thus increased errors. 2

Why Should We Worry About Mandatory Overtime for Nurses? Patient Safety...

For nurses, these errors or mistakes may cause life threatening situations for both patient and the nurse (from back injuries to med errors to client deaths). With these mistakes and errors, there is also the chance of law suits with loss of licenses and increases in malpractice insurance rates. The evidence is very strong that prolonged work hours and fatigue affect worker performance. The Agency for Healthcare Research and Quality (AHRQ), a division of U.S. Department of Health and Human Services was authorized to contract with the IOM to study nurse work hours and health care errors. 3

The study and subsequent large report by the Institute of Medicine, provides compelling evidence that nurses' working long hours has an adverse effect on patient safety.

The Institute of Medicine estimates between 44,000 to 98,000 hospital deaths can be attributed to medical errors each year. Mandatory overtime is a serious contributing factor to medical errors. The final recommendation of the IOM is that all overtime, voluntary and mandatory/involuntary done by Nurses should be curtailed. 4

2 Occupational Health and Safety Administration (OSHA) <http://www.osha.gov>. National Institute for Occupational Safety and Health (NIOSH) <http://www.cdc.gov/niosh>. Spurgeon A, Harrington JM, Cooper CL. Health and safety problems associated with long working hours: a review. *Occupational and Environmental Medicine*. 1997 June, 54(6):367-75. Tucker P, Barton J, Folkard S. Comparison of eight and 12 hour shifts: impacts on health, wellbeing, and alertness during the shift. *Occupational and Environmental Medicine*. 1996 Nov, 53(11):767-72. Lawrence Mishel, Jared Bernstein and John Schmitt. *The State of Working America 2000-2001*. Economic Policy Institute. Washington, D.C. 2001. pp. 454.

3 This decision can be viewed at <http://www.nap.edu/openbook/0309090679/html/23.html#pagetop>.

4 See brief article and/or order the study at: <http://www.iom.edu/project.asp?id=4671>
<http://www.iom.edu/report.asp?id=16173>

A recent study, published in July 2004, shows a strong link between medical errors and the long work hours of nurses and it has called on congress to take action on the Safe Nursing and Patient Care Act (H.R. 745, S. 373), which would strictly limit the use of mandatory overtime for nurses.

5

Ann E Rogers, Wei-Ting Hwang, Linda D. Scott, Linda H. Aiken, and David F. Dinges did an important study called, "The Working Hours Of Hospital Staff Nurses And Patient Safety", which was published in the July/August issue of Health Affairs⁶

This study found that the risk of making an error was three times higher when nurses had to work shifts that were longer than 12 hours, when they worked significant overtime or when they worked more than 40 hours in a week. Working overtime increased the odds of making at least one error, regardless of how long the shift was originally scheduled. Fatigue related to working overtime was identified as the cause of approximately 12% of the absences reported by a random sample of Canadian staff nurses.

This reported outcome reinforced the findings of the 2003 Institute of Medicine Report, "Keeping Patients Safe: Transforming the Work Environment of Nurses" (7), which also said that nurses' long working hours pose a serious threat to patient safety⁷.

...And Because We Are Losing Nurses

Mandatory overtime is one of the main reasons nurses leave nursing. Recent studies indicate that one in five nurses are considering leaving nursing. When polled on their reasons for leaving, mandatory overtime is always listed in the top ten reasons. In the face of a severe nursing shortage, we need to keep nurses at the bedside.

Surveys have shown that the exodus of registered nurses, therapists, technologists, technicians and service and maintenance workers is directly attributable to difficult working conditions, including inadequate staffing, mandatory overtime and insufficient compensation. This is not expected to improve over the next decade because as well as leaving the bedside, much fewer numbers of people are looking to nursing as a career.

5 Safe Nursing and Patient Care Act of 2003 (Introduced in Senate) [S.373.IS]
Safe Nursing and Patient Care Act of 2003 (Introduced in House)[H.R.745.IH]
<http://thomas.loc.gov/cgi-bin/thomas>

6 . Available for purchase at <http://www.healthaffairs.org/> .

7 <http://www.iom.edu/project.asp?id=4671>

In Addition, It is Impacting the Nurses' Health

Mandatory overtime has also been associated with unhealthy weight gain, increased use of alcohol and tobacco and lower levels of functional ability and job performance. The effect on family life is harder to quantify, but may be even worse. Many healthcare workers who are forced to work mandatory overtime say that the time away from their families has caused marital and child care problems and a general decline in the emotional well-being of the family. Mandatory overtime strongly affects workers' relationships with spouses, children and friends.

Where Should the Burden of Proof Lie?

The burden of proof should be on the health care industry to show that the current system of not restricting the hours health care professionals can work is safe. The Patient Safety Foundation has a statement of principle on its Web site that states that "[e]very health care institution has an ethical obligation to protect the safety of patients by providing staff in sufficient numbers and with adequate skills to deliver quality care."

Dennis O'Leary, president of the Joint Commission on Accreditation of Healthcare Organizations, in his testimony to the U.S. Senate, 8, outlined strategies he believes are crucial to a "true culture of safety," including creating a blame-free environment, reinforcing the systems approach to prevent medical errors, investing in information infrastructure, establishing performance incentives and enacting patient safety legislation. He also noted in his testimony that "health care professionals who work under continuous high stress will make errors." 9 The JCAHO Report on adverse conditions faced by nurses (including mandatory overtime) refers to nurses as "canaries in a coal mine."10

8 See: U.S. Congress. Senate. Committee on Governmental Affairs. Patient safety: instilling hospitals with a culture of continuous improvement. Washington, DC. 107th Cong, 2nd Sess; 2003. Available at: http://www.senate.gov/~gov_affairs/061103witnesspsi.htm, accessed 6/3/2003

Testimonies given before the Permanent Subcommittee on Investigations on June 11, 2003. Witnesses were: Goeltz, Bagian of the VA, O'Leary of JCAHO, Clancy of AHRQ, Page of Fairview, Krawisz of NPSF, Mandernach of Minnesota DoH, and Delbanco of Leapfrog Code: ADM; GEN / CA: 2003 Jun 1

9 see

<http://www.jcaho.org/about+us/public+policy+initiatives/health+care+at+the+crossroads.pdf>

10 *ibid.* page 47

Retaliation by Employers

Nurses do suffer retaliation from employers for refusing to accept overtime hours. There are reports from all over the country. According to a report, The Minnesota Nurses Association has documented complaints from nurses who were threatened by their employer. These nurses were told that if they would not work additional shifts, they would be reported to the State Board of Nursing for "patient abandonment". While the Board does not view the refusal to accept additional shifts because of fatigue as "patient abandonment", the fear of such a complaint often compels nurses to work against their better judgment. Another form of retaliation is more direct and involves simply firing or suspending the nurse who refuses overtime. In this situation, the nurse is forced to choose between their ethical obligation to the patient to provide quality care and their livelihood. This is a choice that nurses should not have to make.

What is this term ABANDONMENT?

According to the New Jersey Board of Nursing, the term "patient abandonment" should be differentiated from the term "employment abandonment," which becomes a matter of the employer-employee relationship and not that of the Board of Nursing. It should be noted that from a regulatory perspective, in order for patient abandonment to occur, the nurse must have first accepted the patient assignment and established a nurse-patient relationship, then severed that nurse-patient relationship without giving reasonable notice to the appropriate person (supervisor, employer) so that arrangements can be made for continuation of nursing care by others. Providing appropriate nursing personnel to care for patients is the responsibility of the employer. Failure of a nurse to work beyond his/her scheduled shift, refusal to accept an assignment, refusal to float to another unit, refusal to report to work, and resigning without notice are examples of employment issues and not considered by the New Jersey Board to constitute patient abandonment.

What are other states doing?

In 2003, three states, LA, NV and WV enacted legislation requiring the establishment of study committees to further explore the issue. 22 other states introduced prohibition of mandatory overtime legislation/regulation designed to set maximum hours of work per day/week with protected right of refusal for work time requested in excess of predetermined maximums.

Approximately 28+ states have completed or initiated steps toward legislation to restrict mandatory overtime for RNs, LPNs and, in some cases, all health care workers. In 2004, WV enacted legislation prohibiting a hospital from mandating a nurse to accept an assignment of overtime. CT enacted legislation that prohibits a hospital from requiring a nurse to work in excess of a predetermined scheduled work shift except in certain circumstances (emergency etc). Legislation was also introduced in FL, GA, HI, IA, IL, MA, MI, MO, NY, OH, PA, RI, TN, VT, and WA.

The Working Hours Of Hospital Staff Nurses And Patient Safety

Both errors and near errors are more likely to occur when hospital staff nurses work twelve or more hours at a stretch.

by Ann E. Rogers, Wei-Ting Hwang, Linda D. Scott, Linda H. Aiken, and David F. Dinges

ABSTRACT: The use of extended work shifts and overtime has escalated as hospitals cope with a shortage of registered nurses (RNs). Little is known, however, about the prevalence of these extended work periods and their effects on patient safety. Logbooks completed by 393 hospital staff nurses revealed that participants usually worked longer than scheduled and that approximately 40 percent of the 5,317 work shifts they logged exceeded twelve hours. The risks of making an error were significantly increased when work shifts were longer than twelve hours, when nurses worked overtime, or when they worked more than forty hours per week.

SEVERAL TRENDS IN HOSPITAL USE and staffing patterns have converged to create potentially hazardous conditions for patient safety. High patient acuity levels, coupled with rapid admission and discharge cycles and a shortage of nurses, pose serious challenges for the delivery of safe and effective nursing care for hospitalized patients.¹ While systematic national data on trends in the number of hours worked per day by nurses are lacking, anecdotal reports suggest that hospital staff nurses are working longer hours with few breaks and often little time for recovery between shifts.² Scheduled shifts may be eight, twelve, or even sixteen hours long and may not follow the traditional pattern of day, evening, and night shifts. Although twelve-hour shifts usually start at 7 p.m. and end at 7 a.m., some start at 3 a.m. and end at 3 p.m. Nurses working on specialized units such as

Ann Rogers (aerogers@nursing.upenn.edu) is an associate professor in the School of Nursing and in the Center for Sleep and Respiratory Neurobiology, School of Medicine, University of Pennsylvania, in Philadelphia. Wei-Ting Hwang is an assistant professor in the Department of Biostatistics and Epidemiology, Center for Clinical Epidemiology and Biostatistics, University of Pennsylvania School of Medicine. Linda Scott is an associate professor in the Kirkhof College of Nursing, Grand Valley State University, in Grand Rapids, Michigan. Linda Aiken is the Claire M. Fagin Leadership Professor of Nursing and a professor of sociology at the University of Pennsylvania. David Dinges is a professor in the Division of Sleep and Chronobiology, Department of Psychiatry, Center for Sleep and Respiratory Neurobiology, University of Pennsylvania School of Medicine.

surgery, dialysis, and intensive care are often required to be available to work extra hours (on call), in addition to working their regularly scheduled shifts. Twenty-four hour shifts are becoming more common, particularly in emergency rooms and on units where nurses self-schedule.

No state or federal regulations restrict the number of hours a nurse may voluntarily work in twenty-four hours or in a seven-day period.¹ Even though state legislatures in approximately nineteen states have considered bans on mandatory overtime for nurses and other health care professionals, bills prohibiting mandatory overtime for nurses have passed only in California, Maine, New Jersey, and Oregon. No measure, either proposed or enacted, addresses how long nurses may work voluntarily.⁴ The recent Institute of Medicine (IOM) report, *Keeping Patients Safe*, explicitly recommends that voluntary overtime also be limited.⁵

The well-documented hazards associated with sleep-deprived resident physicians have influenced changes in house staff rotation policies.⁶ In contrast, although shift-working nurses have been the focus of numerous studies, it is not known if the long hours they work have an adverse effect on patient safety in hospitals.⁷ The purpose of this paper is to examine the work patterns of hospital staff nurses and to determine if there is a relationship between hours worked and the frequency of errors.

Study Data And Methods

■ **Sample.** A cover letter explaining the study and eligibility criteria was mailed to a random nationwide sample of 4,320 members of the American Nurses Association (ANA) during the winter of 2002; 1,725 nurses expressed interest by returning their completed demographic questionnaire to the Survey Research Institute at Temple University in Philadelphia. Two logbooks covering a two-week period each, instructions for completing the logbooks, and postage-paid envelopes were mailed to 891 eligible subjects (unit-based hospital staff nurses working full time). Three hundred sixty-two subjects returned both logbooks, and thirty-one completed only one of the two logbooks, for a return rate of approximately 40 percent. The Institutional Review Board at the University of Pennsylvania approved this study, and subjects were paid \$140 for their participation.

■ **Subjects.** The sample of 393 registered nurses (RNs) was predominantly female (92 percent), Caucasian (79 percent), middle-aged (mean age 44.8 ± 8.8 years, range: 22-66), and experienced (mean 17.2 ± 10.0 years). Only 26.3 percent of the participants reported less than ten years' experience, while 41.9 percent reported twenty or more years. All participants worked full time (at least thirty-six hours per week) as hospital staff nurses. Half reported working in hospitals with more than 300 beds; only 11 percent reported working in a hospital with less than 100 beds. The majority of participants were employed at hospitals located in urban (56 percent) or suburban (19 percent) areas. The remaining participants worked in hospitals located in small towns (18 percent) or rural areas (7 percent). The characteristics of

nurses in the study sample did not differ significantly from those of nurses in the 2000 National Sample Survey of Registered Nurses (NSSF.N) in terms of sex, age, marital status, and work environment (hospital size, urban/rural location, and type of hospital unit).⁸ Our sample has slightly more nurses who identified their ethnicity as Asian (10.7 percent) than among participants in the NSSF.N (3.8 percent).

■ **Instruments.** Spiral-bound logbooks were used to collect information about hours worked (both scheduled and actual hours), time of day worked, overtime, days off, and sleep/wake patterns. Subjects completed seventeen to forty items per day; all forty questions were completed only on days the nurses worked. Questions regarding errors and near errors were included, and space was provided for nurses to describe any errors or near errors that might have occurred during their work periods. On days off, nurses were asked to complete the first seventeen questions about their sleep/wake patterns, mood, and caffeine intake. All items in the logbook and the logbook format itself were pilot-tested before this study began.

Logbooks (both paper and electronic) have been used to collect data during field studies of pilots' cockpit alertness for more than ten years, and from various other groups of subjects including air traffic controllers, flight controllers during space shuttle missions, and emergency room physicians.⁹ Data recorded about sleep patterns in these logbooks compare well with data recorded using objective measures such as wrist actigraphy or ambulatory polysomnography.¹⁰

Although logbooks are not often used to collect information about medical errors, there is some evidence that daily, anonymous, end-of-shift reporting of errors in a logbook is a valid approach to ascertaining the nature and prevalence of nursing errors. During a one-month study period of medication errors at a large military hospital, nurses completed formal incident reports on only 6 percent of the medication errors and 15 percent of the near errors that they reported using daily, anonymous coupons.¹¹ Another study found that resident physicians also were more likely to report potential injuries to patients using a confidential e-mail system with daily prompts about reporting than they were to complete traditional incident reports.¹²

■ **Analysis.** Data from demographic questionnaires and logbooks were summarized using descriptive statistics and frequency tables. The duration of scheduled and actual work hours per shift was calculated and aggregated per nurse and per week. Cutpoints for classifying shift durations were chosen as 8.5 hours and 12.5 hours because "eight-hour" and "twelve-hour" shifts are usually scheduled to allow for a half-hour handover period at the end of the shift. A work shift was classified as an overtime shift if the actual work hours were longer than the scheduled hours or if the nurse reported that the shift was "scheduled overtime."

A binary response for making an error during a worked shift was used as the primary outcome in analyses. When a nurse caught him/herself before making an error during a shift, a binary near-error variable was reported and treated as the secondary outcome. Errors and near errors were codified into categories by study

investigators, based on the descriptions provided in logbooks (for example, medication administration, procedural, transcription). The univariate associations between the risk of making an error or a near error and (1) the actual duration of the shift, and (2) overtime were estimated separately using logistic regression models. The effect of overtime was also examined by stratifying shifts by their expected duration. Since multiple work shifts from the same nurse contributed to this analysis, procedures based on Generalized Estimating Equation (GEE) were used to determine the odds ratio (OR) while accounting for the nonindependence between repeated measurements.¹³ Significance tests were two-sided with $\alpha = .05$. Multivariate analyses also were conducted to evaluate the adjusted associations between errors (or near errors), work hours, and overtime, while controlling for other variables including age, hospital size, and type of hospital unit. For the week-level data, logistic regression models were performed to assess if working more than forty hours or fifty hours would increase the probability of making one or more errors (or near errors) in a week.

Study Results

Data collected on 5,317 work shifts revealed that hospital staff nurses worked longer than scheduled daily, and generally worked more than forty hours per week. Half of the shifts worked exceeded ten and a half hours. Although 31 percent of the scheduled shifts were scheduled for durations greater than or equal to 12.5 hours, there were 2,057 shifts (39 percent) where nurses worked at least 12.5 consecutive hours (Exhibit 1). Fourteen percent of the respondents reported working sixteen or more consecutive hours at least once during the four-week pe-

EXHIBIT 1
Description Of Work Patterns Of Full-Time Hospital Staff Nurses, 2002

Variable	Number of shifts	Percent
Number of shifts	5,317	100.0
Scheduled shifts ^a		
Up to 8.5 hours	2,452	46.1
8.5-12.5 hours	1,103	22.5
12.5 or more hours	1,623	30.9
Actual shifts ^b		
Up to 8.5 hours	771	14.5
8.5-12.5 hours	2,484	46.8
12.5 or more hours	2,057	38.7
Number of overtime shifts	4,292	81.4
Number of mandatory overtime shifts	360	6.8

SOURCE: Authors' analysis of survey results.

^aScheduled shift hours were missing from 59 shifts. Mean length (hours): 10.3 (standard deviation, ± 2.3); range: 1.0-22.5 hours.

^bActual work hours were missing from 5 shifts. Mean length (hours): 10.8 (SD, ± 2.5); range: 1.2-23.7 hours.

period. The longest shift worked was twenty-three hours, forty minutes.

Nurses reported leaving work at the end of their scheduled shift less than 20 percent of the time during the study period. Although overtime was reported at the end of all types of shifts, the proportion of shifts involving overtime was significantly higher ($p = .0001$) when eight-hour shifts (85 percent) were compared to shifts scheduled for eight to twelve hours (79 percent) and twelve hours or longer (78 percent). Overall, our participants worked, on average, fifty-five minutes longer than scheduled each day, and all participants worked beyond their scheduled work shift (overtime) at least once during the twenty-eight-day data-gathering period. Almost two-thirds of the nurses worked overtime ten or more times during that period, and a third reported working overtime each day they worked during that period. There were 360 shifts where nurses reported being mandated to work overtime and another 143 shifts where they described being "coerced" to work voluntary overtime. Even though nurses worked approximately four days per week, averaging 40.2 (± 12.9) hours per week (range 8-97.2 hours per week), one-quarter worked more than fifty hours per week for two or more weeks of the four-week period.

There were 199 errors and 213 near errors reported during the data-gathering period. More than half of the errors (58 percent) and near errors (56 percent) involved medication administration. Other errors included procedural errors (18 percent), charting errors (12 percent), and transcription errors (7 percent). Approximately 6 percent of the errors and 29 percent of the near errors reported lacked sufficient information for categorization. Thirty percent of the nurses reported making at least one error, and 32 percent reported at least one near error. One nurse reported eight errors, while another nurse reported nine near errors.

Our analysis showed that work duration, overtime, and number of hours worked per week had significant effects on errors. The likelihood of making an error increased with longer work hours and was three times higher when nurses worked shifts lasting of 12.5 hours or more (odds ratio = 3.29, $p = .001$) (Exhibit 2). Working overtime increased the odds of making at least one error, regardless of how long the shift was originally scheduled (OR = 2.06, $p = .0005$). Our data also

EXHIBIT 2
Association Of Errors Or Near Errors With Nurses' Work Duration, 2002

Work duration (hours)	Number of shifts	Shifts with one or more errors			Shifts with one or more near errors		
		Number	Percent	OR (p value)	Number	Percent	OR (p value)
Up to 8.5	771	12	1.6	1.00	20	2.6	1.00
8.5-12.5	2,484	77	3.1	1.85 (.06)	94	3.8	1.44 (.18)
12.5 or more	2,057	103	5.0	3.29 (.001)	97	4.7	1.80 (.04)
Total	5,312	192	3.5		211	4.0	

SOURCE: Authors' analysis of survey results.

NOTES: Five shifts with four errors cannot be classified because of missing work durations. OR is odds ratio.

suggest that there is a trend for increasing risks when nurses work overtime after longer shifts (OR = 1.34, 1.53, and 3.26 for scheduled eight-hour, eight-to-twelve-hour, and twelve-hour shifts, respectively), with the risks being significantly elevated for overtime following a twelve-hour shift ($p = .005$) (Exhibit 3). Although the effects of working prolonged shifts were clearly associated with errors, there was no interaction between scheduled shift duration and overtime ($p = .17$). Finally, working more than forty hours per week and more than fifty hours per week significantly increased the risk of making an error (Exhibit 4). Results were somewhat similar for near errors (Exhibits 2-4).

Nurse and employment characteristics were also examined as potential confounders in the multivariate models. Our results suggest that the relationships of errors or near errors and work hours and overtime were not affected by age, hospital size, or type of hospital unit.

Discussion

This study represents one of the first nationwide efforts to quantify hospital staff nurse work hours and work patterns, and to determine whether extended staff nurse work hours contribute to errors and near errors. Our findings confirm that the work schedules of hospital staff nurses are unpredictably prolonged. All nurses reported working longer than scheduled at least once, and the majority reported working longer than scheduled ten times or more in a twenty-eight-day period, as well as working more than forty hours per week. Almost one-sixth of the sample reported working sixteen or more consecutive hours at least once during the period, which suggests that double shifts (or longer) are not confined to rare emergencies. Mean daily overtime durations were slightly higher than those

EXHIBIT 3
Association Of Errors Or Near Errors With Nurses' Scheduled Work Duration And Overtime, 2002

Scheduled work duration (hours)	Number of shifts	Shifts with one or more errors			Shifts with one or more near errors		
		Number	Percent	OR (p value)	Number	Percent	OR (p value)
Up to 8.5							
No OT	377	8	2.1	1.00	15	4.0	1.00
OT	2,075	65	3.1	1.34 (.42)	76	3.7	0.90 (.74)
8.5-12.5							
No OT	246	6	2.4	1.00	3	1.2	1.00
OT	937	36	3.8	1.53 (.36)	42	4.5	2.32 (.08)
12.5 or more							
No OT	360	6	1.7	1.00	8	2.2	1.00
OT	1,263	70	5.5	3.26 (.005)	67	5.3	2.34 (.03)
Total	5,258	191	3.6		211	4.0	

SOURCE: Authors' analysis of survey results.

NOTES: Fifty-nine shifts with five errors and two near errors cannot be classified because of missing scheduled work durations. OR is odds ratio. OT is overtime.

EXHIBIT 4
Association Of Errors Or Near Errors With The Number Of Hours Worked Per Week By Nurses, 2002

Hours worked	Number of weeks	Weeks with one or more errors			Weeks with one or more near errors		
		Number	Percent	OR (p value)	Number	Percent	OR (p value)
More than 40							
No	743	64	8.6	1.00	75	10.1	1.00
Yes	681	101	14.8	1.96 (<.0001)	92	13.5	1.42 (.03)
Total	1,424	165	11.6		167	11.7	
More than 50							
No	1,110	112	10.1	1.00	120	10.8	1.00
Yes	314	53	16.9	1.92 (.0001)	47	15.0	1.46 (.03)
Total	1,424	165	11.6		167	11.7	

SOURCE: Authors' analysis of survey results.

NOTE: OR is odds ratio.

reported in two small observational studies (fifty-five minutes, compared with forty-two and forty-five minutes, respectively).¹⁴

Although the occurrence of errors did not increase significantly until shift durations exceeded 12.5 hours per day, risks began to increase when shift durations exceeded 8.5 hours. Since errors are relatively rare, it is possible that this study lacked sufficient power to detect the effects of work hours or overtime on errors when nurses were scheduled to work shorter shifts (less than 12.5 hours). Certainly the trend toward increasing errors with longer work durations is consistent with other studies that have demonstrated that extended work periods are associated with increased accidents and neuropsychological deficits among nurses and have contributed to at least two hospitalwide epidemics of *Staphylococcus aureus*.¹⁵ Investigations of these epidemics showed that nurses, who were fatigued and stressed by high patient caseloads and understaffing, made frequent mistakes and procedural errors. Despite the lack of information about accident rates involving nurses, probed performance tests reveal that nurses working twelve-hour simulated shifts make more frequent errors on grammatical reasoning tasks and medical record reviewing.¹⁶

There are already hints that the fatigue associated with working twelve-hour shifts is contributing to absenteeism and job dissatisfaction among RNs. Fatigue related to length of shift or the potential of overtime at end of shift, or both, was identified as the cause of approximately 12 percent of the absences reported by a random sample of Canadian hospital staff nurses. Not only did RNs report an unusually high number of sick days year (7.4 days, compared with 3.2 for other workers), but also nurses working twelve-hour shifts reported significantly higher absenteeism rates than nurses working traditional eight-hour shifts. Nurses who worked twelve-hour shifts also expressed lower levels of job satisfaction than nurses working eight-hour shifts.¹⁷

Inasmuch as the probability of making an error because of long work hours or

"The long and unpredictable hours documented here suggest a link between poor working conditions and threats to patient safety."

overtime was not altered significantly by the age or experience of the nurses, or by the type of unit or hospital size, other factors may be important. More specifically, physiological factors such as fatigue, system variables such as increased work intensity, or a combination of fatigue and increased work intensity may contribute to the errors and near errors we observed. It is also possible that heavy workloads themselves may increase the risk of making an error.

The use of mandatory overtime to cover staffing vacancies is a controversial and potentially dangerous practice.¹⁸ More than one-quarter of nurse participants (28.7 percent) reported working mandatory overtime at least once during the data-gathering period, a percentage that is quite similar to that reported in two surveys of more than 47,000 nurses and in a "Quick Poll" posted on the American Association of Critical Care Nurses Web site.¹⁹

Mandatory overtime is generally defined as nurses' being told that they could be fired, be subjected to disciplinary proceedings, or lose their nursing license if they refused to stay beyond their regularly scheduled shift or come in to work on their day off.²⁰ Although not actually threatened with job loss or disciplinary proceedings, many nurses also report feeling that there will be repercussions if they refuse to work extra hours or that overtime "is voluntary but feels like it is required."²¹ Perhaps that is why approximately 60 percent of the participants in the American Nurses Association Staffing Survey (N = 4,258) reported being "forced to work voluntary overtime."²²

Our data are derived from the self-reports of a relatively small number of hospital staff nurses and may not be representative of the work schedules and clinical practices of other U.S. hospital nurses. However, the demographic characteristics of our nurse sample and our findings about hours worked are consistent with data reported by hospital staff nurses in the NSSRN, a probability-based sample.²³ In addition, the percentage of staff nurses who identified twelve-hour shifts as their usual shift pattern (60.6 percent) is quite similar to Marlene Krümer and Claudia Schmalenberg's report that almost two-thirds of the 279 staff nurses they interviewed worked twelve-hour shifts.²⁴

Although our response rate was lower than that usually reported for surveys of nurses, this study required more effort than the usual survey; subjects were asked to respond to between seventeen and forty items every day for twenty-eight days.²⁵ Given the subject burden, it is possible that responders were more invested than nonresponders were in documenting a relationship between the hours they worked and effects on patient safety. However, the amounts of overtime reported varied, with some nurses indicating minimal overtime and others reporting extremely long shift durations or working more than fifty hours per week, or both.

Perhaps more important, the major unit of analysis for this study was the actual work shift (N = 5,317) rather than the nurse (N = 393).

The definition of *error* was not specified in the survey instrument. Nevertheless, all incidents described by participants were obvious deviations from current standards of practice. Reported medication errors clearly fell into the categories familiar to all nurses: wrong patient, wrong medication, wrong dose, wrong route (such as intravenous, oral), wrong time, and errors of omission.²⁶ Nurses were asked whether they made an error, not to assess whether it led to harm.

By not collecting data that could identify where participants worked, we reduced the fears usually associated with reporting errors. Studies have shown that nurses typically underreport errors because they fear repercussions, including disciplinary action by employers and regulatory agencies. As a result, only those errors considered potentially life-threatening, or approximately 5 percent of significant errors, are usually reported.²⁷ Errors that are considered "minor" or are intercepted before reaching the patient are almost never reported.²⁸ In fact, near errors are now considered nonreportable events by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).²⁹

The errors nurses reported in this study occurred in the context of well-documented deficiencies in nurses' practice conditions in U.S. hospitals, deficiencies that nurses have been reporting for well over a decade.³⁰ The long and unpredictable hours documented here suggest a link between poor working conditions and threats to patient safety. As advocated by the IOM report on medical errors, safer patient care is more likely to result from changes in the environment in which health care is provided than from blaming health care professionals, who may be providing the best care possible under poor circumstances.³¹

Hospital staff nurses' long hours may have adverse effects on patient care; we found that both errors and near errors are more likely to occur when hospital staff nurses work twelve or more hours. Because more than three-fourths of the shifts scheduled for twelve hours exceeded that time frame, routine use of twelve-hour shifts should be curtailed, and overtime—especially that associated with twelve-hour shifts—should be eliminated. Additional research with larger samples, inclusion of other variables such as workload and patient acuity, and more precise measurements of error is suggested.

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Changes in population health and morbidity, the health care workforce, and health care delivery have led to significant changes in the health care workplace. The Institute of Medicine was asked by the Agency for Healthcare Research and Quality of the US Department of Health and Human Services to study the working conditions of nurses and their relationship to patient safety. This project identified:

- key aspects of the work environment for nurses that likely have an impact on patient safety; and
- potential improvements in health care working conditions that would likely improve patient safety.

The study committee was made up of individuals with experience in areas such as: patient safety, health care quality, engineering, operations research, multidisciplinary practice, human factors, industrial psychology, and communications.

The committee reviewed existing evidence, commission papers and receive expert testimony. Evidence from both the health care industry and other industries was reviewed. This project was assessed in the context of current policy debates on regulation of nursing work hours, workload and will cover topics such as: extended work hours and fatigue, including mandatory overtime; nurse staffing; workplace processes such as patient care documentation, decision support systems, and communication with other members of the health care team. The deadline for this project was September 30, 2003.

Project Meetings

Public Briefing of Report, Keeping Patients Safe: Transforming the Work Environment of Nurses November 4, 2003

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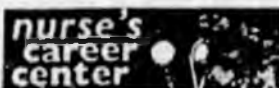
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ANA Calls for Action on Legislation to Limit Mandatory Overtime

Cites New Study that Shows Link between Patient Safety and Nurses' Work Hours

Washington, DC - The American Nurses Association (ANA) praised a new study released yesterday that shows a strong link between medical errors and the long work hours of nurses and called on Congress to take action on the Safe Nursing and Patient Care Act (H.R. 745, S. 373), which would strictly limit the use of mandatory overtime for nurses.

The study, published in the July/August issue of *Health Affairs*, found that the risk of making an error greatly increased when nurses had to work shifts that were longer than 12 hours, when they worked significant overtime or when they worked more than 40 hours per week. It reinforced findings of the 2003 Institute of Medicine Report, "Keeping Patients Safe: Transforming the Work Environment of Nurses," which said that nurses' long working hours pose a serious threat to patient safety.

"This study is more evidence that patient safety is closely linked to nurses' working conditions," said ANA President Barbara Blakeney, MS, APRN, BC, ANP. "The growing trend of mandatory overtime for nurses is one of the greatest threats to patients' and nurses' safety. We call on Congress to protect the public by taking action to limit mandatory overtime for nurses. Doing so will help protect patients from preventable errors and retain nurses in the workforce."

To date, 10 states have taken action to limit mandatory overtime for nurses, and similar measures have been proposed in 20 other states.

The study, "The Working Hours of Hospital Staff Nurses and Patient Safety," by Ann Rogers, PhD, RN, and colleagues at the University of

Pennsylvania School of Nursing, was funded by the Agency for Health Care Research and Quality. Researchers examined logbooks kept by 393 registered nurses around the country who worked full-time in hospitals. Data collected on 5,317 work shifts revealed that in nearly 40 percent of the cases, nurses worked at least 12.5 consecutive hours. More than 25 percent of the participants in the study reported working mandatory overtime at least once during a one-month period.

According to a 2001 ANA health and safety survey, 67 percent of respondents reported working some form of mandatory or unplanned overtime every month. The ANA has long warned that mandatory overtime is dangerous for patients and nurses, and that the practice has been driving nurses away from the profession, thus exacerbating an emerging nursing shortage that is expected to worsen dramatically over the next 10 years.

"Poor working conditions are a major contributor to the nursing shortage," said Blakeney. "As this study shows, nurses are consistently working long and unpredictable hours, often caring for a large number of critically ill patients. To improve the quality of care and patient safety, we must value nurses' contributions more and make a greater investment in nursing," she said.

To counter staffing insufficiencies that are already occurring, many health care facilities across the nation have increasingly imposed mandatory overtime as a common practice.

Typically, an employer may insist that a nurse work an extra shift (or more) or face dismissal for insubordination, as well as being reported to the state board of nursing for patient abandonment, a charge that could lead to a loss of license for the nurse. At the same time, ethical nursing practice prohibits nurses from engaging in behavior that they know could harm patients, thus leading to a dilemma for many nurses.

The Safe Nursing and Patient Care Act would prohibit health care facilities from forcing exhausted nurses to work extra shifts, an unsafe practice that puts both patients and nurses at risk.

The Safe Nursing and Patient Care Act would:

- Prohibit health care facilities that receive Medicare funding from requiring a registered nurse (RN) or licensed practical nurse (LPN) to work beyond an agreed-to, predetermined, regularly scheduled shift.

In no instance could a nurse be required to work more than 12 hours in a 24-hour period or for more than 80 hours in a two-week period - a provision that would prevent an institution from altering shift schedules in a way that would undermine the law.

- Include nondiscrimination protections for nurses who refuse overtime and for nurses who provide information and/or cooperate with investigations about the use of overtime.
- Include an exception in the case of a declared national, state or local emergency. Such an emergency would be in response to an unpredictable disaster, not in response to a staffing deficiency resulting from management practices.
- Provide for a study by the Department of Health and Human Services on the maximum number of hours that may be worked by a nurse without compromising patient safety.

#

The American Nurses Association is the only full-service professional organization representing the nation's 2.7 million registered nurses (RNs) through its 54 constituent member associations. The ANA advances the nursing profession by fostering high standards of nursing practice, promoting the economic and general welfare of nurses in the workplace, projecting a positive and realistic view of nursing, and by lobbying the Congress and regulatory agencies on health care issues affecting nurses and the public.

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Carol Goss Widman
8461 Brookridge Drive
Anchorage, Alaska 99504
907-333-8797

Rep. Peggy Wilson
State Capitol
Room 108
Juneau, Alaska 99801

April 28, 2005

To Whom It May Concern:

I am writing this letter in support of House Bill 271 "an act relating to limitations on overtime for registered nurses in health care facilities; and providing for an effective date". I am a registered nurse who works for the state of Alaska and is subject to mandatory overtime. I have been mandated to work 16 hour shifts so many times I have lost count. During these times I have had to give medications to 20-30 patients. I personally would not like to have a nurse give me medications who has worked 16 hours. Numerous transcription errors, medication errors, and judgment errors are caused by this unfortunate practice used to staff hospitals. If a nurse refuses to work mandatory over time they are subject to disciplinary action.

Many states have passed bills outlawing this practice due to it being unsafe and very dangerous to patients. Nurses who work night shift 11pm - 7 am are forced to work till 3 pm -- then they are required to return to work again that night. This practice is very dangerous to patients and staff. I feel this bill is very important for the welfare of patients and citizens of the state of Alaska. Mandatory overtime is a practice that needs to be stopped.

Sincerely,

Carol Goss Widman RN

Carol Goss Widman, RN

TO: REP PEGGY WILSON 907 465 3175
 FROM ESTHER PETRIE, RN 907-337-4656

Dear Rep Wilson

I am writing to urge
 you to absolutely limit
 overtime for registered
 nurses

I am speaking as a nurse

of 35 yrs career, in 7 states,

1 territory and 17 years in Alaska @ Providence;
 always evening or night shift. Prehospital and
 emergency dept. nursing here in Alaska and
 never have I seen a safe situation, where
 overtime was used. Not only is the nurse
 tired, he/she is unable to make sound
 judgments or assessments; this is where mistakes
 are made and that can result in INJURY or
 DEATH.

This year is a major effort being made
 about hospital deaths + mistakes; so overtime is
 not a safe health care option EVER

Sincerely

Esther Petrie, RN



Esther S. Petrie
 Unit 2
 4101 E. 20th Ave.
 Anchorage, AK 99508





t/ 907-274-0027
f/ 907-272-0292

2207 East Tudor Rd, Suite 34
Anchorage, AK 99507-1069
www.aknurse.org
aknurse@aknurse.org

April 27, 2005

Representative Peggy Wilson
State Capitol
Room 108
Juneau, AK 99801

Dear Representative Wilson,

Let me take this opportunity to thank you on behalf of the Alaska Nurses Association and its labor program for your sponsorship of House Bill 271, "an act relating to limitations on overtime for registered nurses in health care facilities..."

I have been an RN for 26 years and have tried to work within the health care system to improve patient care. We really need to provide a safe environment for patients as well as to address the needs of the professional trying to deliver this quality care. Unfortunately, our voices as nurses often seem to go unheard. To have you, a registered nurse, in the Alaska House of Representatives, a person who both understands these issues and is able to vocalize them on our behalf, is quite a step and we are quite pleased.

As you know, hospitals and health care facilities in this country are using mandatory overtime to staff hospitals everyday. Here in Alaska, the problem is currently most acute at the Alaska Psychiatric Institute but that does not mean that with the growing nursing shortage, the problem could not become much larger affecting patient care in all of our major hospitals if it is not addressed now.

It is appropriate for the state to notify hospital administrations today that whatever staffing problems loom on the horizon, involuntary, mandatory overtime will not be tolerated as a long term solution. There is no better way than imposing mandatory overtime to drive the nurses we still have out of the profession for good.

The Alaska Nurses Association and the Providence Registered Nurses Bargaining Unit are proud to stand up for their nursing colleagues at the Alaska Psychiatric Institute and elsewhere who are being forced to work multiple additional shifts in a given week. This practice is unsafe for patients and unsafe for nurses. Ultimately, it is unsafe for our community.

Again, we want to thank you for your support and indicate our strong support for House Bill 271.

Sincerely,

Donna Phillips, RN, BSN
Member, Alaska Nurses Association Board of Directors
Chair, AANA Labor Council
Treasurer and Membership Chair,
Providence Registered Nurses Bargaining Unit

MICHELLE MURPHY, RN

3425 Patterson Street
Anchorage, Alaska 99504
(907) 240-2980
mimrn@acsaalaska.net

April 28, 2005

Rep. Peggy Wilson
State Capitol
Room 108
Juneau, AK 99801

Dear Representative Wilson,

I am writing this letter to express my enthusiastic and sincere support for HB 271. This bill is very important because it would ensure the safety of Alaskans by banning the use of mandatory overtime as a means for hospitals and other healthcare institutions to provide nursing staff during the nursing shortage.

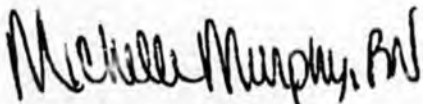
As both a full-time working RN and the Health and Safety officer for the Providence Registered Nurses union, banning mandatory overtime is a critical step for ensuring the health and safety of both the patients and the nurses caring for them. Numerous studies and statistics have shown how this practice has very adverse affects on both nurses and patients and therefore it should be banned.

Why should Alaska make this a law? Because if hospitals and other health care institutions could be trusted not to practice the unsafe use of mandatory overtime to staff their nursing shortage they would have already been doing it.

I have included an article written by Sara Markle - Elder from the United American Nurses that outlines the negative impacts on both the patients and the nurses.

Please enact this bill in Alaska and make us a leader in participating in the regulation of the dangerous use of mandatory overtime for nurses.

Sincerely,



Michelle Murphy, RN



UNITED AMERICAN NURSES, AFL-CIO

Nurses' Safety and Health Risks Due to Mandatory Overtime and Inadequate Staffing

The impact of mandatory overtime for nurses and nurses having too many patients to care for has been well documented as a serious risk to patients' safety. The Institute of Medicine reports that 27 percent of hospital nurses work over 13 consecutive hours one or more times per week, increasing the risk of medical errors caused by fatigue. Insufficient nurse staffing levels are associated with increased infections, bleeding, and cardiac and respiratory failure. In medical-surgical units, the average nurse-to-patient ratio is 1 to 6, but 23 percent of hospitals reported that day shift medical-surgical nurses cared for 7 to 12 patients each.¹

Mandatory overtime and inadequate staffing also affect nurses' health, increasing their risk of musculoskeletal injuries (MSDs—back, neck, and shoulder injuries), as well as causing hypertension, cardiovascular disease, and depression. MSDs are common among health care workers due to the cumulative effects of frequent lifting and repositioning of patients. Nurses aides and orderlies sustain the most MSDs of any occupation and registered nurses rank eighth among all other workers.²

Staffing and scheduling compound the risk of MSD injuries. Health care personnel in facilities that are understaffed lift patients more frequently. If they work too many hours or rotating shifts, they do not have enough recovery time between shifts to rest and heal from the day's lifting. Nurses working 12 or more hours per day and 40 or more hours per week increase their odds of getting a back, neck, or shoulder injury two fold.³ Nurses working nights or weekends also significantly increased their risk, most likely due to lower staffing levels on those shifts.⁴ Nurses working rotating shifts had twice the number of reported accidents as those working day or night shifts only.⁵

The stressfulness of working too many hours in an understaffed facility impacts nurses' cardiovascular health. Several studies have shown greater risk of hypertension and cardiovascular disease from long working hours, including higher blood pressure among workers completing over 60 hours of overtime per month and increased risk of acute myocardial infarction among those working more than 11 hours per day.⁶ Other research has shown that the stressful psychological demands inherent in health care, combined with little control over work organization has been linked to job stress, hypertension, and mental illness.⁷

Ten states (CA, CT, MD, ME, MN, NH, NJ, OR, TX, WA, WV) have enacted laws or regulations on mandatory overtime for nurses, most prohibiting hospitals from requiring overtime except in the event of a public health emergency. Mandatory overtime legislation or regulation has been considered in another 15 states (FL, GA, HI, IA, IL, MA, MI, MO, NY, OH, PA, RI, TN, VT).⁸ On the federal level, the Safe Nursing and Patient Care Act of 2005 (H.R. 791/S.B. 351) would strictly limit mandatory overtime for nurses except in the case of a state of emergency.

Nurse-to-patient ratio laws are in effect in CA and ME, requiring specific minimum registered nurse staffing levels in all patient care areas. Similar legislation has been considered in HI, IA, MO, TN, and CT, and legislation which would combine ratio requirements with hospital-based staffing systems has been discussed in IL, MA, MI, NY, PA, RI, and TN. NJ and NY passed bills in 2005 requiring hospitals to report on their staffing levels and make the information available to the public.⁹ The Safe Nurse Staffing and Quality of Care Act of 2005 (H.R. 1222) would establish federal minimum RN nurse-to-patient ratios.

¹ Institute of Medicine, *Keeping Patients Safe: Transforming the Work Environment of Nurses*, 2003.

² U.S. Department of Labor, Bureau of Labor Statistics, *Last-Worktime Injuries and Illnesses: Characteristics and Resulting Days Away from Work*, 2003.

³ Lipcomb, Jane A., Alison M. Trinkoff, Jeanne Geiger-Brown, and Barbara Brady, "Work-schedule characteristics and reported musculoskeletal disorders of registered nurses," *Scandinavian Journal of Work and Environmental Health*, 2002; 28(6):394-401.

⁴ Ibid.

⁵ Gold, D., S. Rogacz, N. Bock, T. Tosteson, T. Baum, C. Czeisler, "Rotating shift work, sleep, and accidents related to sleepiness in hospital nurses," *American Journal of Public Health*, 1992; 82(7):1011-1014.

⁶ Hayashi, et al., 1996, <http://www.cdc.gov/niosh/topics/workschedules/abstracts/kojola.html>.

⁷ Cheng, Yawen, Ichiro Kawachi, Eugenie H. Coakley, Joel Schwarz, "Association between psychosocial work characteristics and health functioning in American Women," *British Medical Journal*, 2000; 320:1432-1436.

⁸ American Nurses Association, <http://www.nursingworld.org/gova/state/2004/mandatory.htm>.

⁹ American Nurses Association, <http://www.nursingworld.org/gova/state/2004/staffing.htm>.

HB

272

FAILS

AMENDMENT #1

OFFERED IN THE HOUSE
TO: HB 272

BY REPRESENTATIVE CRAWFORD

- 1 Page 9, Line 15;
- 2 Delete, "\$25,000"
- 3 Insert, "\$250"
- 4
- 5 Page 11, Line 1;
- 6 Delete, "\$10,000"
- 7 Insert, "\$100"
- 8
- 9 Page 11, Line 3;
- 10 Delete, "\$10,000"
- 11 Insert, "\$100"

FAILS

24-LS0916A.1
Kurtz
4/21/05

AMENDMENT #2

OFFERED IN THE HOUSE
TO: HB 272

BY REPRESENTATIVE CRAWFORD

- 1 Page 9, line 9, following "person":
- 2 Insert "that is a charitable organization, a civic organization, or a service organization,
- 3 as those terms are defined in AS 05.15.690,"
- 4
- 5 Page 9, lines 19 - 21:
- 6 Delete "if the applicant is an individual, two sets of the individual's fingerprints;
- 7 (3) if the applicant is not an individual,"
- 8
- 9 Page 10, line 6, following "information;":
- 10 Insert "or"
- 11
- 12 Page 10, lines 7 - 9:
- 13 Delete "is an officer, a director, or a managerial employee of a person described in (1)
- 14 or (2) of this subsection; or
- 15 (4) employs an individual described in (1), (2), or (3)"
- 16 Insert "employs an individual described in (1) or (2)"

FAILS

AMENDMENT #3

BY REPRESENTATIVE GUTTENBERG

OFFERED IN THE HOUSE
TO: HB 272

- 1 Page 12, Line 6;
- 2 Following; "with"
- 3 Insert; "all of"

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 272 (L&C)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
Title Card Rooms & Operations RDU Treasury and Tax
Component Tax Division
Sponsor Representative Kott
Requester (H) L&C Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES	*	*	*	*	*	*
-----------------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	*	*	*	*	*	*
-------------------------------	---	---	---	---	---	---

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
(see attached)

Prepared by: Larry Meyers & Brett Fried Phone 465-2320
Division Tax Division Date/Time 4/1/2005
Approved by: Jerry Burnett, Special Assistant to the Commissioner Date _____
Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB 272 (L&C)

ANALYSIS CONTINUATION

Revenue Discussion

This bill would legalize non-banked card rooms in Alaska, with the caveat that "the total number of owner's licenses issued in a municipality may not exceed the total population of the municipality divided by 30,000". A non-banked card room is one in which players compete against each other rather than against the house and the house has no stake in the outcome of a game. Texas Hold-Em poker is an example of a game that might be played in a non-banked card room. It is not clear if "the most recent federal census information" refers to the Decennial Census or the most recent estimate by the U.S. Bureau of Census for purposes of determining the number of card rooms allowed. We used the April 1, 2000 U.S. Census to determine that a maximum of 13 card rooms would be possible under this bill: 8 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 1 in the Matanuska-Susitna Borough. If we were instead to use the July 1, 2004 annual estimates of population from the Census Bureau, then 15 card rooms would be possible: 9 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 2 in the Matanuska-Susitna Borough. We assume the definition of "municipality" in AS 29.71.800, which includes first-class and home-rule cities and boroughs.

There are three reasons why we did not include a revenue or cost estimate on the front page of this fiscal note. First, the decision to open and operate a card room is a business decision that will be made by potential licensees. Second, under this bill the department is given authority to set many rules and regulations that will affect this business decision. Third, the fees imposed on card rooms in different states and localities vary widely and make comparisons to Alaska difficult. For example, the state of Montana charges a processing fee to cover the cost of determining whether to issue a license plus \$250 for the first table and \$500 for each additional table. Washington charges \$3,650 for up to 5 tables and \$1,060 per additional table up to a maximum of 15, plus any investigation costs exceeding the license fees. SB 165 imposes an owner's license fee of \$25,000 to apply for a five-year license plus an annual \$10,000 per table fee. Operators are also responsible for investigation costs that exceed the portion of the \$25,000 fee that is assessed for the investigation, and the department is authorized to set occupational licensing fees.

Based on several assumptions, we estimate that the maximum of 13 card rooms in Alaska would generate about \$2.5 million in fees for the state in the first year. During years 2-5, we estimate the maximum of 13 card rooms in Alaska would generate \$2.1 million in annual fees for the state. These estimates assume that there will be the maximum of 13 card rooms with an average of 15 tables each (15 is the maximum allowed in Washington and in California the average is 14.3). All card rooms are assumed to pay their owner's license fees in the first year and would not transfer ownership over the 5-year license period. These estimates also assume an occupational licensing system similar to Washington, where annual licenses are \$175 initially and \$84 for renewals. We assume that Washington's average of 6.7 gaming employees per table will hold in Alaska and that after the first year, two-thirds of the licenses will be renewals. We assume that, like in Washington, all gaming employees will be covered but non-gaming employees such as bartenders will not require licenses. Of course, a significant variable affecting revenues is the actual number of tables any individual card room would have. This is difficult to estimate, as in California non-banked card rooms range from a single table to 243 in the Commerce Casino in Los Angeles with the average being 14.3 tables per card room. One or more very large card rooms in Alaska could significantly boost revenues. California and Washington are useful comparisons because both states have data available specifically for non-banked card rooms.

This bill stipulates that card rooms must hold at least one card tournament per quarter with proceeds donated to a nonprofit group. There are many variables that would help determine tournament proceeds, including the number of card rooms, the number of tables, rules and regulations adopted by the department, and other factors. In Michigan the average Texas Hold-Em tournament generates \$1,099 in profit for charities, with a \$500 per person per day prize limit. Any prize limits in Alaska would be determined by the department and may influence the profitability of tournaments. In an article in the Boston Globe, card tournament supplier Mike Sheehy estimated that "A well-run tournament will attract up to 200 players, each of whom pays a \$100 entrance fee [...] A tournament of that size can offer pots of \$5,000 for the first-place player and a few thousand for the second and third and still generate \$10,000 for the charity after expenses."

Cost Discussion

The costs of implementing this bill are difficult to estimate because we do not know the number nor size of potential card rooms. Given the assumptions in our revenue discussion, we would anticipate \$448,600 in total costs with \$371,600 in personnel costs and related expenditures and \$77,000 in RSAs to Public Safety for fingerprint background checks. The personnel costs are for an Investigator IV, four investigator III's and an Admin Clerk III. Based on the experience of other states and our own experience, this staff should be sufficient to investigate, license and regulate up to 13 card rooms with an average of 15 tables each. Also having two teams of investigators would ensure that teams could be available during all hours of card room operations (assumed to be 12:00 noon to 2:00 am). If the card rooms are larger on average than the assumed 15 tables we would require additional staff and resources for investigation and regulation. We did not include any additional costs that would be incurred by municipalities as a result of this Bill.

LEGAL SERVICES

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

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 21, 2005

SUBJECT: Card Rooms and Indian Gaming (HB 272)

TO: Representative Pete Kott

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

You asked whether this bill would affect Indian gaming in Alaska. I do not think this bill will open the door to class three gaming.

The federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., gives Indian tribes the authority to conduct gaming and gambling on Indian lands. The Indian Gaming Regulatory Act divides gaming into three classes:

- (1) Class I gaming includes social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations;
- (2) Class II gaming includes bingo, lotto, pull-tabs, punch boards, tip jars and non banking card games, as well as banking card games operated on or before May 1, 1988;¹ and
- (3) Class III gaming includes casino-type gambling, pari-mutual horse and dog racing, lotteries, and all other forms of gaming that are not class I or II gaming.

Class I gaming on Indian lands is within the exclusive jurisdiction of the tribes and is excluded from the provisions of the IGRA. Class II gaming on Indian lands is within the jurisdiction of the tribes but is subject to the provisions of the IGRA, including oversight by the National Indian Gaming Commission. For example, an Indian tribe seeking to conduct bingo games could choose to do so under the authority of state law or could do

¹ Class II gaming does not include:

- (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
- (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

25 U.S.C. § 2703(b).

so separately under a permit from the National Indian Gaming Commission. Class III gaming activities are lawful on Indian lands only if authorized by a tribal ordinance or resolution, the activities are conducted on lands located in a state that permits such gaming for any purpose by any person, organization, or entity, and the activities are conducted in conformance with a tribal-state compact entered into by the tribe and state.

The Act provides a framework for negotiation of a tribal-state compact -- the tribe requests the state to enter into negotiations; upon receiving such a request, the state "shall" negotiate with the tribe in "good faith" to enter into such a compact.

There has been a good deal of litigation involving the various provisions of the IGRA since its passage. Some of that has involved the definition of "Indian lands." Although Alaska has only one remaining reservation, it is not safe to assume that there are no other "Indian lands" in Alaska. There certainly are parcels that are held in trust by the United States that might qualify for purposes of IGRA.

This underscores the significance of the difference between class II and class III gaming. If the legislature permitted class III gaming in state law, it would pave the way for tribes to conduct class III gaming on Indian lands under federal law. However, HB 272 permits only non-banking card games, specifically poker, pan, rummy, bridge, and cribbage games. Poker falls under IGRA's definition of class II games. 25 C.F.R. 502.3; National Indian Gaming Commission Opinion dated June 17, 1999, Re: Game Classification Opinion - "Poker Club."² House banked card games, such as blackjack and baccarat, as well as player banked games, such as chemin de fer, are class III games, 25 C.F.R. 502.4; National Indian Gaming Commission Bulletin No. 95-1, April 10, 1995, but those types of games are not permitted in card rooms under HB 272.

KLK:med
05-284.med

² According to this National Indian Gaming Commission opinion, "Banking games, as commonly understood and defined in the NIGC regulations, are games in which the banker (usually the house) takes on, that is, competes against, all players, collecting from losers and paying winners. See 25 C.F.R. 502.11(c). Conversely, non-banking card games are games where players play against each other. Poker is the typical example of a non-banking card game." The opinion went on to conclude that the proposed poker club would constitute class II, rather than class III gaming: "[A]s proposed, the players in the Nation's Club would play against each other in a non-banking format, not against the house or other banker. Turning Stone and its dealers would not have an interest, financial or otherwise, in the outcome of any poker game. Thus, the poker games to be played at the Club qualify as non-banking card games."

HB 272 - "An Act relating to card rooms and card operations."

Possible gross sales & employee information for card room operations

\$4 Rake							
Tables	5	10	15	25	50	100	150
\$90/hr avg	\$450.00	\$900.00	\$1,350.00	\$2,250.00	\$4,500.00	\$9,000.00	\$13,500.00
9hrs/day avg table use	\$4,050.00	\$8,100.00	\$12,150.00	\$20,250.00	\$40,500.00	\$81,000.00	\$121,500.00
Yearly Sales*	\$1,478,250.00	\$2,956,500.00	\$4,434,750.00	\$7,391,250.00	\$14,782,500.00	\$29,565,000.00	\$44,347,500.00

*exclusive of non-card game operations

Avg # Employees Per Table	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Total Number of Employees	22.5	45	67.5	112.5	225	450	675

Types of Employees

Dealer (Mimum Wage + Tips)	\$250-300/day *
Cashiers (part-time)	\$10/hr *
Janitorial/Maintenance	\$8/hr *
Security	\$10/hr *
Brushperson	\$10/hr *
Shift Manager	\$45,000/yr *
Card Room Manager	\$65,000/yr *
	*Plus Benefits



PRESBYTERY OF ALASKA

5750 Glacier Highway, C-16 • Juneau, AK 99801

(907) 780-6100
FAX (907) 780-4017

presbyt1@alaska.net
INBOX: PBY ALASKA

April 20, 2005

The Honorable Tom Anderson
Chair, House Labor and Commerce Committee
Alaska State Representative, District 19
Room 408
State Capitol
Juneau, AK 99801-1182

Dear Representative Anderson:

It has come to our attention the House Labor and Commerce Committee will be conducting a public hearing on House Bill 272 "An Act relating to card rooms and card operations". At this time we are not certain that we will be able to have somebody speak in person on this bill at this hearing; however we would still like to go on record strongly opposing the passage of this bill.

Included with this letter is a full statement giving some of the reasons for this position and additional supporting information.

In particular, we would urge the committee to seek out independent research on the social ills that would accompany expanded legalized gambling within the state. We would also encourage the legislature to seek official opinions on the likelihood that this legislation would expand the amount of non-state regulated "Indian Gaming". Our belief is that contrary to some opinions, the enactment of this law would permit this expansion.

On behalf of the Presbytery, which is made up of 15 Presbyterian churches from Metlakatla and Ketchikan to the south and Yakutat to the north, I sincerely encourage you to consider these materials when debating this legislation.

Sincerely,

Elder Guy Warren
Stated Clerk, Presbytery of Alaska

enclosures

World Poker Tour Statistics

A recent World Poker Tour event had 376 players paying \$15,000 each for the chance to win \$1,770,218. Prizes are traditionally given to the top 20 to 30 players. This means that at least 346 of those players went home empty-handed, with \$15,000 less than they started with.

Federal Indian Gaming Act

In an article in the April 9, 2005 edition of the *Anchorage Daily News*, Anchorage Attorney Lloyd Miller is reported as holding that "it didn't appear as though the card room plan would trigger the potential for any tribal operations beyond what is allowed in the bill. I would strongly encourage the Legislature to seek an independent legal opinion on this matter. Our research into this matter leads us to a different conclusion, namely that the legalization of card rooms within the State of Alaska, would permit the tribal operation of their own card rooms, and that these rooms would be exempted from the limits provided in the original version of SB 195. The following is a quote from an overview of the Federal Indian Gaming Regulatory Act appearing on the Indian Gaming Commission website.

"The Indian Gaming Regulatory Act, enacted in 1988 as Public Law 100-497 and now codified at 25 U.S.C. §2701, establishes the jurisdictional framework that presently governs Indian gaming. The Act establishes three classes of games with a different regulatory scheme for each. Class I gaming is defined as traditional Indian gaming and social gaming for minimal prizes. Regulatory authority over class I gaming is vested exclusively in tribal governments.

Class II gaming is defined as the game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith) and if played in the same location as the bingo, pull tabs, punch board, tip jars, instant bingo, and other games similar to bingo. Class II gaming also includes non-banked card games, that is, games that are played exclusively against other players rather than against the house or a player acting as a bank. The Act specifically excludes slot machines or electronic facsimiles of any game of chance from the definition of class II games. **Tribes retain their authority to conduct, license, and regulate class II gaming so long as the state in which the Tribe is located permits such gaming for any purpose and the Tribal government adopts a gaming ordinance approved by the Commission, Tribal governments are responsible for regulating class II gaming with Commission oversight."**

URL: <http://www.niqc.gov/niqc/laws/igra/overview.jsp>

Emphasis ours

Further elaboration on this opinion can be found in the opinions issued by the General Counsel of the Commission. Within the State of Arizona, the General Counsel deemed non-banked Poker games as a Class II game. For the State of New York, the General Counsel deemed a "Poker Club" as a Class II game. In both cases, the Counsel held that as Class II games, they were subject to tribal and federal regulation only. Full details on these opinions can be found on the Indian Gaming Commission's website at the addresses:

<http://www.niqc.gov/niqc/documents/opinions/pokeraz.jsp>

<http://www.niqc.gov/niqc/documents/opinions/pokerclub.jsp>

Statement by the Stated Clerk of The Presbytery of Alaska on House Bill 272.

The Presbytery of Alaska consists of the 15 member churches of the Presbyterian Church U.S.A. from Yakutat in the north to Metlakatla in the south.

We believe that this bill represents a significant step towards situations, which will not be in the best interest of the state government or the citizens it serves. It will increase the social problems we face, and it will result in decreased state control through the introduction of increased "Indian gaming".

While some hold that the approval of this legislation will eliminate illegal gambling, we believe that the experience seen in other localities would demonstrate this is not the case. We also believe that the solution to illegal gambling is not simply to legalize it. Certainly we would believe that the legislature would never consider such a solution to other illegal acts. We also believe that the costs the state will incur attempting to repair the social ills that gambling brings with it will exceed whatever benefits the approval of this bill might bring. These social ills include increased domestic violence, various psychological and social problems and an increased incidence of suicide.

While others might disagree, we firmly believe that the introduction of legal card rooms within the state, will, through the terms of the Federal Indian Gaming Act, permit the introduction of similar facilities in locations this bill does not intend, and without any of the controls the state would want to see. We have provided the committee with additional materials from the Federal Indian Gaming Commission detailing our reasons for this belief.

We believe it would be prudent and o. y right for the Legislature to seek detailed and independently researched estimates on the social costs expanding legalized gambling will bring, and independent legal opinions on the status of the Indian Gaming Laws before introducing more gambling to the state.

The people of this state have spoken in the matter of gambling and they spoke loudly. A proposal to expand gambling within the state was presented to the people in 1990. This measure was defeated by over 40,000 votes, alm st a 2:1 margin. We would think it only appropriate that the legislature not override this clear mandate of the people.

Finally, we are not unaware of the increased popularity of card games in this country. Cable television has an impressive array of televised Poker games on display. The players of these games appear happy and certainly not troubled by the ills of gambling. There is a simple reason for this. Those seen in these programs have already won. As an example, the typical World Poker Tour program begins with six players. Each of these players will win thousands of dollars. What the program does not show is the hundreds of players who lost \$15,000 to \$25,000 each to finance the televised prizes. Do we ever hear the stories of the problems these losses cause? Naturally, we do not. Rest assured, these problems do exist there, and will exist at the card rooms, this bill would establish.

Our state's problems with illegal gambling are not nearly so desperate as to take the significant gamble this bill proposes. As a means of encouraging tourism, it should be remembered that the natural attractions we already have for bringing tourists to our state are unmatched, and provide a far better reason for traveling to Alaska than any card room ever could.

Thank you.

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 19, 2005

SUBJECT: Sectional Analysis of HB 272, relating to Card Rooms
(Work Order No. 24-LS0916\A)

TO: Representative Pete Kott
Attn: Mike O'Hare

FROM: Kathryn L. Kurtz *KK*
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. Intent language.

Section 2. Adds a new chapter providing for the regulation of card rooms.

Article 1. Card Games and Card Rooms.

Sec. 05.18.010. Notwithstanding the state laws criminalizing gambling, permits the operation of a card room by a licensed owner in accordance with the chapter. Permits the playing of non-banking poker, pan, rummy, bridge, and cribbage games in card rooms.

Sec. 05.18.020. Gives employees of the department of revenue the right to be present in a card room.

Sec. 05.18.030. Permits wagering on card games, under regulations adopted by the department. Limits wagering to those present in the room, prohibits wagering using negotiable currency, requires the purchase of tokens or chips from the owner of the card room.

Sec. 05.18.040. Prohibits persons under 21 years of age from being in card rooms, and from wagering on card games in card rooms.

Article 2. Administration.

Sec. 05.18.110. Authorizes and requires the department of revenue to administer and enforce the chapter.

Sec. 05.18.120. Requires the department to collect license fees, and to penalize non-criminal violations of the chapter. Gives the department access to premises held by a licensed card room owner.

Sec. 05.18.130. Requires the department to adopt licensing standards for licenses related to card rooms, sets certain standards, and requires the department to obtain certain information from applicants. Provides for hearings for individuals aggrieved by department actions related to licensing.

Sec. 05.18.140. Requires governor to appoint a five member card room advisory board to make recommendations on policy and licensing to the department.

Sec. 05.18.150. Authorizes the department to impose penalties on licensees and suspend licenses for violations of the chapter.

Sec. 05.18.160. Provides a process for licensees to complain to the department about unnecessarily disruptive investigations of card operations.

Sec. 05.18.170. Provides a process for transfer of licenses.

Sec. 05.18.180. Provide for suspension of an owner's license for card room health or safety issues.

Sec. 05.18.190. Provides for public access to records relating to license applications and information licensees are required to provide.

Article 3. Licenses.

Sec. 05.18.200. Provides for the issuance of licenses to own a card room and conduct card games. Specifies information required on the application, the application fee, and disqualifications.

Sec. 05.18.210. Lists factors for the department to consider in evaluating an application for an owner's license.

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Sec. 05.18.230. Requires licensed owners to hold quarterly card tournaments to benefit nonprofit educational institutions.

Sec. 05.18.240. Specifies that an owner's license has a five year term.

Sec. 05.18.250. Permits the department to revoke an owner's license if the licensee has begun regular operations more than 12 months after the license application is approved, if the department determines that revocation is in the best interests of the state.

Sec. 05.18.260. Permits an owner to renew an owner's license for an additional five year term, provided the requirements of the section have been met, the license fees paid, and the bond kept in force. Requires the department to conduct a complete investigation of the owner's compliance with the chapter every five years, and permits the department to investigate compliance at any time. Costs of investigations are to be borne by the licensed owner.

Sec. 05.18.270. Permits a licensed owner to operate a training school for occupational licensees.

Sec. 05.18.280. States that an owner's license is a revocable privilege and not a property right.

Sec. 05.18.290. Requires the department to identify the card room related occupations that are to be licensed under the chapter. Require that the department limit each occupational licensee to managing and operations for one licensed owner.

Sec. 05.18.300. Sets forth requirements for issuance of an occupational license; establishes two year validity of occupational license.

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Sec. 05.18.320. Sets out the requirements for an application for an occupational license.

Sec. 05.18.330. Lists grounds for rejection of an application for an occupational license.

Sec. 05.18.340. Lists grounds for suspending, revoking, or restricting an occupational license.

Sec. 05.18.350. States that the chapter does not prohibit a licensed owner from contracting with a school approved by the department for the training of occupational licensees.

Sec. 05.18.360. Provides that training of occupational licensees may take place at a card room or a school.

Sec. 05.18.370. Specifies that the department may issue an occupational license to a convicted felon, notwithstanding sec. 05.18.310, if the department determines that the individual has been rehabilitated, and outlines the criteria for making that determination.

Article 4. Crimes.

Sec. 05.18.400. Lists actions related to card rooms that constitute class A misdemeanors and class C felonies.

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Sec. 05.18.500. Creates the state gaming fund to receive all revenues from card room activities under the chapter.

Sec. 05.18.900. Definitions.

Section 3. Changes the definition of "gambling" in AS 11.66.280 for purposes of Alaska's criminal statutes to exclude card room activities authorized under AS 05.18.

Section 4. Provides that the office of administrative hearings shall conduct all adjudicative administrative hearings required under AS 05.18.

KLK:med
05-276.med

ALASKA STATE LEGISLATURE

Chair:
Legislative Council

Member:
Community and Regional Affairs
Judiciary
Labor and Commerce – Vice Chair



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-3777
Fax: (907) 465-2819
Toll Free (877) 861-5688

Interim:
10928 Eagle River Road – Suite 238
Eagle River, AK 99501-2133
Phone: (907) 694-8944
Fax: (907) 694-8945

REPRESENTATIVE PETE KOTT
DISTRICT 17 – EAGLE RIVER

Memorandum

To: Representative Tom Anderson
Chair, House Labor and Commerce Committee

From: Representative Pete Kott

Date: 19 April 2005

Re: HB 272 "An Act relating to card rooms and card room operations."

Dear Chairman Anderson,

I respectfully request that HB 272 be scheduled for a hearing in House Labor and Commerce Committee at your earliest possible convenience.

Thank you for your consideration.

ALASKA STATE LEGISLATURE

Chair:
Legislative Council

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REPRESENTATIVE PETE KOTT DISTRICT 17 – EAGLE RIVER

Sponsor Statement for

House Bill 272

An Act relating to card rooms and card room operations

The growing popularity of poker is obvious to who have recently surf TV channels. Many networks, from ESPN to the Travel Channel, are regularly televising Texas Hold 'em tournaments and enjoying sky rocketing ratings and subsequent advertising revenues. Men and woman, old and young are joining the poker trend, which shows no signs of slowing. Due to this growth in interest, the intent of HB 272 is to allow social card games to be played in a tightly controlled public environment. Alaska can address the trend and bring this popular pastime into compliance with the safety and revenue laws of the state.

Under HB 272 card rooms would be limited to boroughs with a population of 30,000 or more and only one card room establishment per 30,000 people. These card rooms would be limited to players 21 years of age or older, and they would only offer non-banked card games such as poker, cribbage, rummy, etc.

In addition to the taxable revenue generated by the card rooms, food and drink purchases, and table charges, the establishments would also pay \$10,000 per table annually to the state and would be required to hold quarterly tournaments to benefit a non-profit educational institution or group. As part of the licensing procedure, the card room operators would also be responsible for covering the administrative cost of licensing and subsequent enforcement through a \$25,000 application fee.

In addition to the revenue and job creation, regulated card rooms would allow for players to enjoy their hobby in a safe regulated environment rather than playing in an unsavory, and often unsafe "back room." Currently many players, in addition to their friendly home game, play in underground games where the "house" takes in large profits with little assurance of "fair" play. Although not an everyday occurrence, players at these games have in the past been held up at gunpoint with little recourse because of the shady and illegal nature of the game.

By recognizing this trend and the fact that we already allow this type gaming in our homes, Alaska can address the issue head on and make card games a legitimate, safe, social activity that will increase revenue and job opportunities while minimizing the negative effects of underground gambling.

LEGAL SERVICES

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(Work Order No. 24-LS0916A)

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Attn: Mike O'Hare

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

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KLK:med
05-276.med

HB

274



FAIRBANKS LEGISLATIVE INFORMATION OFFICE
119 N. CUSHMAN ST. SUITE 101
FAIRBANKS, AK 99701

WRITTEN TESTIMONY TRANSMITTAL SHEET

TO:	Representative Anderson, Chair	FROM:	Lorice/Fbx LIO
COMPANY:	House Labor & Commerce	DATE:	2/2/2006
FAX NUMBER:	465-2418		
PHONE NUMBER:	465-4954	FAXED ON:	
RE:	Written Comments	TELECONFERENCED ON:	2/1/2006

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS

Enclosed, please find the originals of the written testimony. Please distribute to committee members.

PHONE: 452-4448

FAX: 456-3346



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House LABOR & COMMERCE
 Committee on SS HB SB 274 Committee Name Dated 2/1/06
Bill / Subject

I am a CPA practising in Fairbanks, in a small local firm.

I support this bill because it allows the State Board more flexibility and allows them to make changes necessary to comply with national standards without requiring legislative action.

SIGNED:

R. Newell
 Testifier

ASCPA
 Representing

PO Box 70607, FAIRBANKS AK 99707 (907) 452 6676
 Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the HOUSE LABOR & COMMERCE
 Committee on SSHB 274 Dated 2/14/2006
Committee Name
Bill / Subject

I am a CPA who has practiced for over 20 years in Alaska. I am supporting this bill because (1) it updates the statutes to reflect the profession as it is now practiced nationally; (2) allows the Board to react to changes in the profession without introducing legislation (such as development of new forms of doing business like LLCs); (3) clarifies the rules for reciprocity for individuals licensed in other states to be allowed to practice as CPAs in the State of Alaska. I have no objection to the proposed amendment to the bill which retains the "safe harbor" language presently in the statute and treats the "safe harbor" language recommended under the Uniform Accounting Act as an alternative, not as a requirement.

SIGNED: Amy Connel
 Testifier

ALASKA SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS KOHLER, SCHMITT & HUTCHISON, PC
 Representing

P.O. Box 70607, FAIRBANKS AK 99707
 Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Labor & Commerce
 Committee on SB 274 Committee Name
Bill / Subject Dated 2/1/06

I am a CPA in Fairbanks and a recently appointed member of the State Board of Public Accountancy. I have been practicing as a CPA for over 10 years and its amendments.

I am in support of this Bill, Amending and adding to the State Statutes for conformity to the Uniform Accountancy Act. will benefit both the profession and the State Board of Accountancy. ~~The profession~~
~~and the State Board of Accountancy~~
~~will benefit both the profession and the State Board of Accountancy~~

Reciprocity is one example of how this will be advantageous. The UAA is a move towards allowing CPAs to practice in multiple jurisdictions without having to conform to multiple laws and requirements. This Act will also give flexibility to the State Board to amend regulations as the national organizations change the UAA.

SIGNED: Diane Williamson

Testifier

ASCPA

Representing

Kohler Schmitt & Hutchinson PC 430-66674

714 4th Ave Suite 303 Fairbanks AK 99701

Address / Phone Number

AMENDMENT

#1

ADDED
9/1/06

OFFERED IN THE HOUSE

TO: SSHB 274

1 Page 27, lines 9 – 20:

2 Delete "the following disclaimer language when used by nonlicensees in connection
3 with financial statements:

4 (A) "I (we) have prepared the accompanying (financial statements) of
5 (name of entity) as of (time period) for the (period) then ended. This
6 presentation is limited to preparing, in the form of financial statements,
7 information that is the representation of management (owners)."; or

8 (B) "I (we) have not audited or reviewed the accompanying financial
9 statements and, accordingly, do not express an opinion or any other form of
10 assurance on them." [COMPILATION OF FINANCIAL STATEMENT
11 LANGUAGE THAT DOES NOT EXPRESS OR IMPLY ASSURANCE OR
12 SPECIAL KNOWLEDGE OR COMPETENCE.]"

13 Insert

14 "(A) a compilation of financial statement language that does not express
15 or imply assurance or special knowledge or competence; or

16 "(E) the following disclaimer language when used by nonlicensees in
17 connection with financial statements:

18 (i) "I (we) have prepared the accompanying (financial
19 statements) of (name of entity) as of (time period) for the (period)
20 then ended. This presentation is limited to preparing, in the form of
21 financial statements, information that is the representation of
22 management (owners)."; or

23 (ii) "I (we) have not audited or reviewed the accompanying
24 financial statements and, accordingly, do not express an opinion or
25 any other form of assurance on them." [.]"

Amendment

Amend Section 7, page 3, lines 22-26:

Sec. 08.04.085. Regulations regarding attest functions. Under AS 08.04.080, the board shall adopt regulations per the procedures under negotiated regulation making that identify what activities constitute attest functions. To identify activities as attest functions, the board may adopt the criteria established by a nationally recognized professional organization for accountants.

Rationale:

- While the Alaska Board of Public Accountancy does not license independent accountants, the decisions it makes have significant impact upon the independent account's profession.
- The language under Section 7 provides the Board of Public Accountancy an "open book" for future changes which could negatively impact the independent accountant (i.e. restrict their practice) and the public interest (i.e. reducing competition and increasing the costs for accounting services).
- Negotiated Regulation Making procedures are used as a supplemental procedure to permit the direct participation of affected interests in the development of new regulations or the amendment or appeal of existing regulations.

AM. #2

REP. LYNN

FAILED



Frank H. Murkowski, Governor

Division of Corporations, Business and Professional Licensing
PO Box 110806
Juneau, AK 99811-0806
Telephone: (907) 465-2534
Fax: (907) 465-2974
Website: www.commerce.state.ak.us/dcc/

January 26, 2006

Representative Mike Hawker
State Capital
Room 502
Juneau, Alaska 99801-1182

Dear Representative Hawker,

Following is the Alaska Board of Public Accountancy's resolution that was unanimously approved on January 26, 2006 in support of House Bill 274.

Be it resolved: The Alaska Board of Public Accountancy unanimously supports the Sponsor Substitute for House Bill 274 in the legislature of the State of Alaska.

The Alaska Board would like to thank you and your staff for all your time and effort in moving House Bill 274 forward.

Sincerely,

Max Mertz, CPA
Chairperson
Alaska Board of Public Accountancy

Don Bremner
PO Box 20161
Juneau, Alaska 99802
Ph: 907-463-7124
E-mail: dbremner@gci.net

Feb 1, 2006

RE: Supportive Comment on SSHB 274

Dear Representative Anderson and members of the Committee;

My name is Don Bremner. I'm a Board of Director of the Yak-Tat Kwaan, Inc.(YKI) Native village corporation in Yakutat Alaska. YKI is formed under ANCSA of 1971 and State corporation laws.

I'm here to speak in favor of SSHB 274.

There are a couple of reasons that make clear the need for this Bill;

1. This Bill draws a clear line between qualified and unqualified accountants and accounting services.
2. This Bill addresses accountability and liability.

In my past experience as President of Yak-Tat Kwaan, Inc. and serving as an officer of other Profit-making and Non-Profit-making Native Corporations we encountered all levels of accounting services. I can say from experience, that when accounting services are bad, it is really bad for small companies that count on every dollar to succeed.

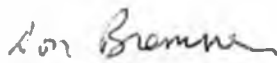
As Native Corporations we are exposed to every scheme and scam that folks can dream up, and they have cost us millions of dollars. I know of one Native corporation that was exposed to a Ponzi scheme that cost them over (7) million dollars.

These illegal investment schemes promised the Native Corporation investors impossibly high returns on their investments. These are scams in which money from later investors is used to pay earlier investors. The creators of the scheme get most of the profits while those who come later are left with nothing because there are eventually an insufficient number of new investors to pay the existing ones. These scams inevitably collapsed because they require exponential growth in the number of participants at each step, which is impossible. The Native Corporation was left holding an empty bag in the end, and out (7) million dollars.

During this time period there was not one negative flag raised by the Native Corporation accounting firm. In the end, the scheme was smoothly reported in the annual report as investment losses. Clearly there was no accountability and liability of the accountant's role.

This Bill sets the high standards of accountability that is needed by businesses in Alaska that manage very challenging businesses, even on a good day. In most cases we do not have the education to implement and monitor the fine detail of accounting, so, we operate on faith. Faith that the accountants who work on our behalf are who they say they are in terms of experience and qualifications. It speaks well of the accounting profession, that in this Bill they set high standards for themselves, and I encourage the Committee to support this Bill and move it forward for approval.

Sincerely,



Don Bremner

(c) House Labor & Commerce Committee Members

Talking Points: Proposed House Bill 274 Amendment

The amendment does two things:

1. Keeps the existing "safe harbor" language in statute. Ensures that non-licensees (independent accountants) who are operating legally under current statute will be able to continue. This statutory language was adopted by House Bill 13 in 1991.
2. Adds, as an alternative, the preferred "safe harbor" language recommended by the Uniform Accounting Act.

It is important to note that independent accountants are not licensed and therefore not subject to regulation or bound by this chapter. Their concern is that adopting changes will make what they are currently doing unlawful. By keeping the language they agreed upon in statute, this legislation will not have any effect on their current practice.

However, by adding the accepted Uniform Accountancy Act language, we have an example of a disclaimer that is accepted by all jurisdictions adopting the UAA in our statutes. Therefore, if an independent accountant wanted to be sure that their disclaimer would pass muster in other jurisdictions (even those that don't let unlicensed accountants "compile"), they would have an example of acceptable language. The second example doesn't use the work "prepare" or "compile," so it would be safe under any circumstances.

Another point is that this disclaimer is in the definition of "report" as an exception to the definition. It does not outlaw any acts nor require any particular language to be used.

A list of ACTS that are not prohibited is found under AS 08.04.570.

Sec. 08.04.570. Acts not prohibited.

AS 08.04.560 does not prohibit

- (1) an officer, employee, partner, member, or principal of any organization from affixing that person's signature to any statement or report in reference to the financial affairs of the organization together with any wording designating the position, title, or office which that person holds;
- (2) an act of a public official or public employee in the performance of that person's duties;
- (3) a person maintaining a bookkeeping or tax service from affixing that person's signature to any record, statement, or report maintained or prepared by the person.

Don Bremner
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Feb 1, 2006

RE: Supportive Comment on SSHB 274

Dear Representative Anderson and members of the Committee;

My name is Don Bremner, I'm a Board of Director of the Yak-Tat Kwaan, Inc.(YKI) Native village corporation in Yakutat Alaska. YKI is formed under ANCSA of 1971 and State corporation laws.

I'm here to speak in favor of SSHB 274.

There are a couple of reasons that make clear the need for this Bill;

1. This Bill draws a clear line between qualified and unqualified accountants and accounting services.
2. This Bill addresses accountability and liability.

In my past experience as President of Yak-Tat Kwaan, Inc, and serving as an officer of other Profit-making and Non-Profit-making Native Corporations we encountered all levels of accounting services. I can say from experience, that when accounting services are bad, it is really bad for small companies that count on every dollar to succeed.

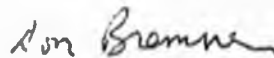
As Native Corporations we are exposed to every scheme and scam that folks can dream up, and they have cost us millions of dollars. I know of one Native corporation that was exposed to a Ponzi scheme that cost them over (7) million dollars.

These illegal investment schemes promised the Native Corporation investors impossibly high returns on their investments. These are scams in which money from later investors is used to pay earlier investors. The creators of the scheme get most of the profits while those who come later are left with nothing because there are eventually an insufficient number of new investors to pay the existing ones. These scams inevitably collapsed because they require exponential growth in the number of participants at each step, which is impossible. The Native Corporation was left holding an empty bag in the end, and out (7) million dollars.

During this time period there was not one negative flag raised by the Native Corporation accounting firm. In the end, the scheme was smoothly reported in the annual report as investment losses. Clearly there was no accountability and liability of the accountant's role.

This Bill sets the high standards of accountability that is needed by businesses in Alaska that manage very challenging businesses, even on a good day. In most cases we do not have the education to implement and monitor the fine detail of accounting, so, we operate on faith. Faith that the accountants who work on our behalf are who they say they are in terms of experience and qualifications. It speaks well of the accounting profession, that in this Bill they set high standards for themselves, and I encourage the Committee to support this Bill and move it forward for approval.

Sincerely,



Don Bremner

Cc/ House Labor & Commerce Committee Members

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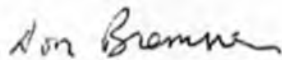
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Sincerely,



Don Bremner

Cc/ House Labor & Commerce Committee Members

Representative Mike Hawker

Alaska State Legislature



House Bill 274 Sponsor Statement

"An Act relating to the practice of accounting; and providing for an effective date."

HB 274 updates Alaska's statutory framework regulating the professional practice of accounting. This bill moves our statutes toward the standardized structure recommended in the model National Uniform Accountancy Act developed by the American Institute of Certified Public Accountants.

Adopting these changes will facilitate the practice of Alaska public accountants in other jurisdictions, ensure the qualifications of non-resident public accountants practicing in Alaska and aid the conduct of interstate commerce. These more contemporary statutes are important to keep Alaska competitive in today's dynamic international business environment and provide the greatest possible consumer protection for the public relying upon the work performed by Certified Public Accountants.

HB 274 increases the supervision and regulation of public accountants who provide auditing services; establishes a mechanism to grant temporary practice privileges to public accountants and public accounting firms licensed in other states; expands peer quality review requirements; and ensures that public accountants meet appropriate education and experience standards.

The Alaska Society of Certified Public Accountants supports House Bill 274.

Session

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Hope

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Sponsor Substitute for House Bill 274

Sectional Analysis

Prepared by Representative Mike Hawker's Office
Updated January 16, 2006

Note: Throughout this document "conforming language" changes generally refer to adopting contemporary legislative drafting conventions or incorporating newly defined terms without making substantive changes in existing statutes.

- Section 1:** Conforms language in existing statutes regarding exemptions to the Revised Alaska Trust Company Act.
- Section 2:** Updates terminology in the "purpose" section of the public accounting statutes replacing the word "accountancy" with "accounting" when referring to the public "accounting" profession.
- Section 3:** Conforms language in the section setting qualifications for members of the Board of Public Accountants.
- Section 4:** Conforms language in the section regarding removal of board members.
- Section 5:** Operates in conjunction with bill section 22 to allow a practice privilege to be granted to an applicant whose qualifications are "substantially equivalent" to standards established by the board. This section requires the board to determine if the qualifications of another state or an applicant are substantially equivalent to either the national standard or another standard established by the board.
- Section 6:** Requires the board to notify permit/license holders of proposed changes by mail, but eliminates requirement for the mail to be certified, return receipt. This is a cost containment initiative requested by the board.
- Section 7:** Requires the board to adopt specific regulations defining attest functions. Allows the board to use criteria established by a nationally recognized professional organization for accountants. This section operates in conjunction with bill sections 23 and 25 increasing supervision and regulation of licensees performing attest function.
- Section 8:** Replaces code section AS 08.04.390, which is repealed by section 49 of this bill. Specifies requirements for an individual to receive a license to engage in the practice of public accounting and adds requirements for renewal of a license.
- Section 9:** Conforms language in the section regarding personal requirements.
- Section 10:** Requires CPA applicants to have a baccalaureate degree with an accounting concentration and two years experience. The alternate provision in current law allowing an applicant to have a baccalaureate degree in any subject and three years of experience is eliminated.
- Section 11:** Conforms language in the section regarding examinations.

- Section 12:** Conforms language in the section regarding prior applicants.
- Section 13:** 1) Makes conforming changes in the section regarding reciprocity with other jurisdictions.
- 2) Changes the reciprocity requirement for experience outside Alaska from five to four years. This change conforms Alaska statute to provisions of the "Uniform Accountancy Act" published by the American Institute of Certified Public Accountants.
- Section 14:** Conforms language in the section regarding an individual's use of the title "Certified Public Accountant."
- Section 15:** Conforms language in the section grandfathering certificates held on April 26, 1960.
- Section 16:** Adds "or other legal entity" to the section regarding registration of partnerships, limited liability companies, and corporations. This is a "catch-all" clause anticipating continued evolution and emergence of business organizational structures. Updates and conforms related language in this section.
- Section 17:** New subsection replaces section AS 08.04.400, which is repealed by section 49 of this bill. Specifies how long a permit is valid and provides a renewal procedure. Allows a partnership that was registered on June 29, 1980 to qualify for a permit if each partner holds a license or permit to engage in public accounting. Adds registration requirements for an "other legal entity" recognized in bill section 16 consistent with existing requirements for partnerships, limited liability companies, and corporations.
- Section 18:** Conforms language in the section requiring all practice offices to be supervised by a licensed individual.
- Section 19:** Prohibits use of the title "Certified Public Accountant" in connection with an accounting office unless the supervision requirement of AS 08.04.360 is satisfied. This is mostly conforming language.
- Section 20:** Conforms language in the section allowing the board to waive office and supervision requirements for offices in communities with 2,000 or less residents if the accounting firm maintains another office in the state that meets the supervision requirements.
- Section 21:** Conforms language in the section allowing former licensees who are not practicing to inactivate and maintain their license in good standing by notifying the board and paying a fee.
- Section 22:** Repeals and reenacts the section providing specific criteria under which individuals and firms whose principal place of business is in another state may be permitted to practice in Alaska.
- Section 23:** New section requiring a licensee to meet competency requirements established by the board before performing attest functions.

- Section 24:** Conforms language in the section regarding continuing education.
- Section 25:** Repeals and reenacts the section to make quality reviews a mandatory, rather than permissive, condition for renewal of a license and providing a statutory framework for the performance of those reviews. Also adopts conforming language.
- Section 26:** Conforms language in the section regarding failure to obtain a permit.
- Section 27:** Conforming changes to the section regarding revocation of a license, practice privilege or permits. Adds authority to revoke if the permittee/licensee has committed an act in another state for which they would be disciplined if the act had been committed here.
- Section 28:** Conforms language in the section regarding revocation or suspension of permits.
- Section 29:** Conforms language in the section regarding grounds for revocation of suspension of permits.
- Section 30:** Conforms language in the section regarding reinstatement.
- Section 31:** Conforms language in the section regarding fees.
- Section 32:** Conforms language in the section regarding individuals posing as certified public accountants.
- Section 33:** Conforms language in the section regarding issuance of reports.
- Section 34:** Conforms language in the section regarding companies posing as certified public accountants.
- Section 35:** Conforms language in the section regarding individuals posing as public accountants.
- Section 36:** Conforms language in the section regarding companies posing as public accountants.
- Section 37:** Conforms language in the section regarding use of deceptive titles or abbreviations.
- Section 38:** Conforms language in the section regarding individuals assuming titles of public accounts.
- Section 39:** Conforms language in the section regarding partnerships posing as accountants or auditors.
- Section 40:** Conforms language in the section regarding the use of title with corporate name.
- Section 41:** Conforms language in the section regarding the use of title with limited liability company name.

- Section 42:** New section to conform prohibition for use of title to the name of other entity. Required by inclusion of "other entity" in bill section 16.
- Section 43:** Conforms language in the section regarding disclosure of lack of a permit.
- Section 44:** Conforms language in the section regarding deceptive use of title by a partnership, limited liability company, corporation or other entity.
- Section 45:** Conforms language in the section regarding exceptions to the statute.
- Section 46:** Conforms language in the section regarding previous licensure.
- Section 47:** Conforming language in the section regarding prohibited disclosures.
- Section 48:** Definitions section. Specifies that the definitions in this section do not apply if context dictates otherwise. Adds definitions for the following terms: attest function, legal entity, partnership, permit, practice of public accounting, practice privilege, and principal place of business. Amends the definition of "report" to clarify exception for preparation of financial statements accompanied with a disclaimer that the preparer does not express or imply assurance or special knowledge or competence."
- Section 49:** Repeals sections of law regarding permits that are made obsolete by the bill. The sections are embodied in various sections of the bill.
- Section 50:** Allows the board to adopt regulations to implement the bill.
- Section 51:** Provides transitional provisions for current permittees.
- Section 52:** Provides transitional provisions for current board members.
- Section 53:** Immediate effective date for section 49.
- Section 54:** Provides a January 1, 2008 effective date for the remaining sections.