

S B

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(7)

Date Referred: March 30, 1993

FURTHER REFERRALS:

Date of Committee Action: 4-12-93

The JUDICIARY Committee considered:

SB 122 am

SB 122 AM

EMPLOYER'S LIABILITY FOR REFERENCE INFO

"An Act relating to the disclosure of information by an employer about the job performance of an employee or former employee."

RECOMMENDATIONS:

be replaced with HCS SB 122 (JUD)

the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) Court 3-5-93  
Admin 3-5-93  
Law 3-5-93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Joseph D. Green</i>	<input checked="" type="checkbox"/>	<i>Don Non O'Connell</i>			<input checked="" type="checkbox"/>
<i>Janette James</i>	<input checked="" type="checkbox"/>				
<i>Brian D. Porter</i>	<input checked="" type="checkbox"/>				
<i>L. Paul Phillips</i>	<input checked="" type="checkbox"/>				
<i>Eric [unclear]</i>	<input checked="" type="checkbox"/>				

*Brian Porter*  
CHAIRMAN'S SIGNATURE



Anchorage Star of the North  
Chamber of Commerce

**Anchorage Chamber of Commerce  
Employee Reference Bill SB 122  
Resolution 2-92/93**

Whereas the Anchorage Chamber of Commerce represents the interests of businesses and;

Whereas businesses are faced with the threat of defamation suits when reference information is given and;

Whereas SB 122 shifts the burden of proof to the employee requesting the reference information to show malice and;

Whereas shifting the burden will make defamation suits less likely;

Therefore be it resolved that the Anchorage Chamber of Commerce joins the Alaska State Chamber of Commerce in support of the passage of SB 122 known as the Employee Reference Bill.

April 2, 1993

Judith Brady  
Chairman of the Board

Carol Heyman  
President

8-LS0563K  
Cramer  
4/9/93

**HOUSE CS FOR SENATE BILL NO. 122(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

Offered:  
Referred:

Sponsor(s): **SENATORS SHARP, Frank, Taylor, Kelly, Rieger, Miller, Pearce, Donley**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the disclosure of information by an employer about the job  
2 performance of an employee or former employee."

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

4 \* Section 1. AS 09.65 is amended by adding a new section to read:

5           Sec. 09.65.160. JOB REFERENCES. An employer who discloses information  
6 about the job performance of an employee or former employee to a prospective  
7 employer of the employee or former employee at the request of the prospective  
8 employer or the employee or former employee is presumed to be acting in good faith  
9 and, unless lack of good faith is shown by a preponderance of the evidence, may not  
10 be held liable for the disclosure or its consequences. For purposes of this section, the  
11 presumption of good faith is rebutted upon a showing that the employer or former  
12 employer

13                           (1) recklessly, knowingly, or with a malicious purpose disclosed false  
14 or deliberately misleading information; or

1  
2

(2) disclosed information in violation of a civil right of the employee or former employee that is protected under AS 18.80 or under comparable federal law.

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SB 122 am

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to the disclosure of information by an employer...." BRU: Personnel/OEEO  
 Component: Personnel/OEEO  
 Sponsor: Senator Sharp  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 56

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE FUND SOURCE:</b>	0	0	0	0	0	0
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**FUNDING:**

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ none

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Kevin Ritchie, Director Phone: 465-4430  
 Division: Personnel/OEEO Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usara *NBU* Date: 4/7/93  
 Agency: Department of Administration

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# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SB 122 am

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to the disclosure of information by an employer..." BRU: Personnel/OEEO  
 Component: Personnel/OEEO  
 Sponsor: Senator Sharp  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 56

**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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**FUNDING:**

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ none

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Kevin Ritchie, Director Phone: 465-4430  
 Division: Personnel/OEEO Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usara *NBUCA* Date: 4/7/93  
 Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SB 122

Revision Date: February 23, 1993  
Title: "...disclosure of information by an employar  
about the job performance..."  
Sponsor: Senator Sharp  
Requestor: Senator Sharp

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations  
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division

Phone: 465-3672

Date: February 23, 1993

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law

Date: February 23, 1993

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SB 122

ANALYSIS (Continued):

This bill protects an employer, who acts in good faith, from liability for disclosing the job performance of an employee or former employee to a prospective employer. This protection would not shield an employer who provided information the employer knew was false or misleading, was given with a malicious purpose, or violated a civil right of the employee or former employee that is protected by Alaska's antidiscrimination laws under AS 18.80, or federal law. This bill will apply to all employers in the state and will not have a fiscal impact on the Department of Law.

## FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. SB 122

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to the disclosure of information by an employer . . ." BRU: Personnel/OEEO  
 Component: Personnel/OEEO  
 Sponsor: Senator Sharp  
 Requestor: (S)L&C COMPONENT SERIAL NO. 56

**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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**FUNDING:**

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ none

ANALYSIS: (attach a separate page if necessary.)

  
  
  

Prepared By: Kevin Ritchie, Director Phone: \_\_\_\_\_  
 Division: Personnel/OEEO Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usera Date: 2/24/93  
 Agency: Department of Administration

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**FISCAL NOTE**

**STATE OF ALASKA**  
**1993 LEGISLATIVE SESSION**

**Bill No. SB 122**

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to the disclosure of BRU: Trial Courts  
Information by an employer Components: \_\_\_\_\_  
 Sponsor: Sharp  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 34	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						
FUND SOURCE:						

**FUNDING: (Thousands of Dollars)**

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

**ANALYSIS: (Attach a separate page if necessary)**  
 No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228  
 Division: Alaska Court System Date: 03/01/93

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 03/01/93  
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

# Alaska State Legislature

SENATOR  
**BERT SHARP**

DISTRICT P

CHAIRMAN  
TRANSPORTATION COMMITTEE

MEMBER  
FINANCE COMMITTEE  
LEGISLATIVE BUDGET & AUDIT COMMITTEE  
HEALTH & SOCIAL SERVICES



Senate

## FAIRBANKS

DENALI BANK BUILDING  
119 N. CUSHMAN, SUITE 201  
FAIRBANKS, ALASKA 99701  
(907) 452-7885/7886

## SESSION ADDRESS

STATE CAPITOL, ROOM 514  
JUNEAU, ALASKA 99801-1182  
(907) 465-3004/4921

## M E M O R A N D U M

TO: REPRESENTATIVE PORTER, CHAIRMAN  
HOUSE JUDICIARY COMMITTEE

FROM: SENATOR BERT SHARP *BWS*

RE: REQUEST FOR HEARING

DATE: MARCH 31, 1993

I am requesting that Senate Bill No. 122, "An Act relating to the disclosure of information by an employer about the job performance of an employee of former employee," be heard before the House Judiciary Committee.

Thank you for your consideration.



REPRESENTING  
GOLDEN HEART  
OF ALASKA

# Alaska State Legislature

SENATOR  
BERT SHARP

DISTRICT P

CHAIRMAN  
TRANSPORTATION COMMITTEE

MEMBER  
FINANCE COMMITTEE  
LEGISLATIVE BUDGET & AUDIT COMMITTEE  
HEALTH & SOCIAL SERVICES



Senate

FAIRBANKS

DENALI BANK BUILDING  
119 N. CUSHMAN, SUITE 201  
FAIRBANKS, ALASKA 99701  
(907) 452-7885/7886

SESSION ADDRESS

STATE CAPITOL, ROOM 514  
JUNEAU, ALASKA 99801-1182  
(907) 465-3004/4921

## S P O N S O R   S T A T E M E N T

SB122 - "An act relating to the disclosure of information by an employer about the job performance of an employee or former employee."

SB122 protects employers from liability for the disclosure of job performance information regarding a former employee to a prospective employer.

The number of defamation suits filed in response to unfavorable references by former employers has increased substantially in the last few years. Out of fear of such lawsuits and on the recommendation of legal professionals, many employers are refusing to give honest, meaningful job performance information to prospective employers. This is a loss for all concerned. The free flow of information in the workplace is vitally important to sound decision making. Employers, employees, and, in the end, consumers benefit when hiring, firing and promotion decisions are based on complete and accurate information. SB122 will free up the exchange of information in the workplace by assuring reasonable protection to employers in their job performance disclosures.

SB122 is intended to protect only employers who give honest, well-intentioned references. It does not protect employers from liability in cases where the information disclosed was knowingly or deliberately false, was given with a malicious purpose or violated a civil right of the employee.

In the interest of allowing the freer exchange of information in the workplace, I urge you to support SB122.



REPRESENTING  
GOLDEN HEART  
OF ALASKA

SB122

"An act relating to the disclosure of information by an employer about the job performance of an employee or former employee."

SECTIONAL ANALYSIS

Section 1 amends AS 09.65 by adding a new section, AS 09.65.160, which provides that an employer who discloses information regarding a former employee's job performance at the request of a prospective employer or the former employee shall be immune from civil liability for such disclosures and their consequences.

The employer will not be protected from liability if it can be shown by a preponderance of the evidence that the information disclosed was knowingly false, deliberately misleading, given with a malicious purpose, or violated a civil right of the employee.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

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

**MEMORANDUM**

March 24, 1993

**SUBJECT:** Amendment A.1 to SB 122 (Job references)  
**TO:** Senator Al Adams  
**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested a short explanation of the changes to SB 122 made by the amendment prepared for you today.

The first change, inserting "employer or" in line 12, corrects a drafting oversight. I believe it is consistent with the intent of the bill to treat current employers the same as former employers on the question of rebutting the presumption of good faith. Without this amendment, the bill would permit a job applicant to rebut the presumption of good faith in the case of information disclosed by a former employer but not in the case of information disclosed by a current employer.

The second change, inserting "comparable" in line 14, clarifies the bill. Under a literal reading of the language in SB 122, if an employee established that a former employer violated any federal law in making a job reference, the presumption of good faith would be rebutted. The amendment limits the application of the rebuttal to federal laws that are comparable to the state anti-discrimination laws (AS 18.80).

TC:pl  
93-232.plm

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: SB 122

Page 1, line 12, after "the":

Insert "employer or"

Page 1, line 14, after "or under":

Insert "comparable"

217 Second Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323  
FAX (907) 463-5515



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ASCC Position Paper

SB 122  
March 4, 1993

The Alaska State Chamber of Commerce supports SB 122 - An act of relating to the disclosure of information by an employer about the job performance of an employee or former employee. This legislation adds new language to AS 09.65, relating to the disclosure of information by an employer about the job performance of an employee or former employee.

Under SB 122, an employer who provides job performance information to a prospective employer, will be presumed to be acting in good faith and, unless evidence shows a significant lack of good faith, the employer cannot be held liable for the disclosure or the consequences of the disclosure of information regarding an employee or former employee.

ASCC supports SB 122 because of the protection it provides employers. In Alaska there is a relatively small applicant base and it is imperative that employers are able to act in good faith sharing information with one another. Although statistics vary on the number of defamation cases that have been tried and won, or settled out of court, the fact remains that sharing objective information currently comes with a risk many employers cannot afford to take.

While ASCC fully recognizes the value of good employees, it is important that employers be able to share all pertinent information without fear of repercussion, providing they are acting in good faith. Therefore, ASCC strongly supports SB 122 and urges the Alaska House of Representatives to pass this legislation in an expeditious fashion.

# **NFIB** Alaska

National Federation of  
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS  
(NFIB/ALASKA)

IN SUPPORT

OF

SB 122 DISCLOSURE OF INFORMATION ABOUT AN  
EMPLOYEE'S JOB PERFORMANCE

9159 Skywood Lane  
Juneau, AK 99801



The Guardian of  
Small Business

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I AM THE STATE DIRECTOR FOR NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I AM HAPPY TO BE HERE TODAY TO TESTIFY IN FAVOR OF SB 122.

NFIB/ALASKA IS COMPRISED OF 3,000 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES. WE THEN SHARE THE RESULTS OF OUR POLL WITH THE LEGISLATURE AND ADMINISTRATION.

ON THE 1993 STATE BALLOT WE ASKED OUR MEMBERS THE FOLLOWING QUESTION:

SHOULD THE LEGISLATURE ADOPT LEGISLATION THAT WOULD PROVIDE IMMUNITY FOR EMPLOYERS FOR DISCLOSING INFORMATION ABOUT FORMER EMPLOYEES TO POTENTIAL EMPLOYERS?

EIGHTY-SIX PERCENT OF NFIB/ALASKA MEMBERS VOTED TO SUPPORT THIS LEGISLATION. AT THE PRESENT TIME, MANY EMPLOYERS LIMIT THE AMOUNT AND TYPE OF INFORMATION THAT THEY RELEASE ABOUT EMPLOYEES. THIS BILL PROVIDES A MECHANISM FOR PROSPECTIVE EMPLOYERS AND EMPLOYEES TO REQUEST INFORMATION FROM A CURRENT OR FORMER EMPLOYER ABOUT THEIR JOB PERFORMANCE IN A FAIR AND RATIONAL MANNER.

NFIB/ALASKA THANKS YOU FOR THE OPPORTUNITY TO COMMENT ON THIS LEGISLATION. IF YOU HAVE ANY QUESTIONS I WOULD BE HAPPY TO TRY AND ANSWER THEM.