

BY RULES COMMITTEE  
BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 323

3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIRST LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act to secure the attendance of  
7 material witnesses from within or without  
8 the state in criminal proceedings; pro-  
9 viding for subpoenaing witnesses in this  
10 state to testify in another state; pro-  
11 viding for subpoenaing witnesses from  
12 another state to testify in this state;  
13 providing for immunity to such witnesses;  
14 providing for uniformity of interpretation.

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

16 Section 1. DEFINITIONS. As used in this Act:

17 a. "Witness", shall include a person whose testimony  
18 is desired in any proceeding or investigation by a grand jury or  
19 in a criminal action, prosecution or proceeding.

20 b. "State", shall include any territory of the  
21 United States and the District of Columbia.

22 c. "Subpoena", shall include a summons, in any state  
23 where a summons is used in lieu of a subpoena, order or other  
24 notice requiring the appearance of a witness. The word subpoena  
25 also includes a subpoena duces tecum.

26 Sec. 2. SUBPOENAING WITNESS IN THIS STATE TO TESTIFY IN  
27 ANOTHER STATE WHERE WITNESS MATERIAL TO PROCEEDING IN ANOTHER  
28 STATE IS IN THIS STATE. If a judge of a court of record in any  
29 state which by its laws has made provision for commanding persons

1 within that state to attend and testify in this state certifies  
2 under the seal of such court that there is a criminal prosecution  
3 pending in such court, or that a grand jury investigation has  
4 commenced or is about to commence, that a person being within  
5 this state is a material witness in such prosecution, or grand  
6 jury investigation, and that his presence will be required for a  
7 specified number of days, upon presentation of such certificate  
8 to any judge of a court of record in the judicial district in  
9 which such person is, such judge shall fix a time and place for a  
10 hearing, and shall make an order directing the witness to appear  
11 at a time and place certain for the hearing.

12 If at a hearing the judge determines that the witness is  
13 material and necessary, that it will not cause undue hardship to  
14 the witness to be compelled to attend and testify in the prosecu-  
15 tion or a grand jury investigation in the other state, and that  
16 the laws of the state in which the prosecution is pending, or  
17 grand jury investigation has commenced or is about to commence,  
18 will give to him protection from arrest and the service of civil  
19 and criminal process, he shall issue a subpoena, with a copy of  
20 the certificate attached, directing the witness to attend and  
21 testify in the court where the prosecution is pending, or where  
22 a grand jury investigation has commenced or is about to commence  
23 at a time and place specified in the subpoena. In any such hear-  
24 ing the certificate shall be prima facie evidence of all of the  
25 facts stated therein.

26 If said certificate recommends that the witness be taken into  
27 immediate custody and delivered to an officer of the requesting  
28 state, to assure his attendance in the requesting state, such  
29 judge may, in lieu of notification of the hearing, direct that

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1 such witness be forthwith brought before him for said hearing;  
2 and the judge at the hearing being satisfied of the desirability  
3 of such custody and delivery, for which determination the cer-  
4 tificate shall be prima facie proof of such desirability may,  
5 in lieu of issuing subpoena, order that said witness be forthwith  
6 taken into custody and delivered to an officer of the requesting  
7 state.

8 If the witness, who is subpoenaed, as above provided, after  
9 being paid or tendered by a properly authorized person, a sum  
10 equivalent to the cost of common carrier air fare round trip  
11 passage, or such prepaid passage, and reasonable incidental travel  
12 allowance for going to and from airports, plus thirteen dollars  
13 per day for each day that he is required to travel and attend as  
14 a witness, or the sum of ten cents a mile for each mile by the  
15 ordinary travelled route to and from the court where the action  
16 is pending and five dollars for each day he is required to travel  
17 and attend as a witness, fails without good cause to attend and  
18 testify as directed in the subpoena, he shall be punished in the  
19 manner provided for the punishment of any witness who disobeys a  
20 subpoena issued from a court of record in this state.

21 Sec. 3. WITNESS FROM ANOTHER STATE SUBPOENAED TO TESTIFY IN  
22 THIS STATE. If a person in any state, which by its laws has made  
23 provision for commanding persons within its borders to attend and  
24 testify in criminal prosecutions, or grand jury investigations  
25 commenced or about to commence, in this state, is a material  
26 witness in a criminal action pending in a court of record of this  
27 state, or in a grand jury investigation which has commenced or is  
28 about to commence, a judge of such court may issue a certificate  
29 under the seal of the court stating these facts and specifying

1 the number of days the witness will be required.

2 Said certificate may include a recommendation that the wit-  
3 ness be taken into immediate custody and delivered to an officer  
4 of this state to assure his attendance in this state. This cer-  
5 tificate shall be presented to a judge of a court of record in  
6 the county or judicial district in which the witness is found.  
7 Any order of a court in such other state delivering custody of a  
8 witness to an officer of this state shall be sufficient authority  
9 to an officer of this state to take such witness into custody and  
10 hold him until discharged by a court of this state.

11 If the witness is subpoenaed to attend and testify in this  
12 state he shall be tendered the sum of ten cents a mile for each  
13 mile by the ordinary traveled route to and from the court where  
14 the prosecution is pending and five dollars for each day that he  
15 is required to travel and attend as a witness, or a sum equiva-  
16 lent to the cost of common carrier air fare round trip passage,  
17 or such prepaid passage, and reasonable incidental travel allow-  
18 ance for going to and from airports, plus thirteen dollars per  
19 day for each day that he is required to travel and attend as a  
20 witness. A witness who has appeared in accordance with the pro-  
21 visions of the subpoena shall not be required to remain within the  
22 state a longer period of time than the period mentioned in the  
23 certificate, unless otherwise ordered by the court. If such  
24 witness, after coming into this state, fails without good cause  
25 to attend and testify as directed in the subpoena, he shall be  
26 punished in the manner provided for the punishment of any witness  
27 who disobeys a subpoena issued from a court of record in this  
28 state.

29 Sec. 4. IMMUNITY OF WITNESS FROM ARREST OR SERVICE OF PROCESS

1 If a person comes into this state in obedience to a subpoena  
2 directing him to attend and testify in this state he shall not,  
3 while in this state pursuant to such subpoena, be subject to  
4 arrest or the service of process, civil or criminal, in connection  
5 with matters which arose before his entrance into this state under  
6 the subpoena.

7 If a person passes through this state while going to another  
8 state in obedience to a subpoena to attend and testify in that  
9 state, or while returning therefrom, he shall not while so pass-  
10 ing through this state be subject to arrest or the service of  
11 process, civil or criminal, in connection with matters which  
12 arose before his entrance into this state under the subpoena.

13 Sec. 5. UNIFORMITY OF INTERPRETATION. This Act shall be so  
14 interpreted and construed as to effectuate its general purpose  
15 to make uniform the laws of the states which enact it.

16 Sec. 6. PARTY SEEKING WITNESS, PAYMENT OF FEES. The right  
17 to obtain witnesses under this Act in criminal proceedings shall  
18 extend to the state or a defendant. Witness fees shall be paid  
19 by the party calling the witness except as provided in Rule 17(b),  
20 Rules of Criminal Procedure, State of Alaska.

21 Sec. 7. SHORT TITLE. This Act may be cited as "Uniform Act  
22 to Secure Attendance of Witnesses from Within or Without a State  
23 in Criminal Proceedings."

24 Sec. 8. INCONSISTENT LAWS REPEALED. All acts or parts of  
25 acts inconsistent with this Act are hereby repealed.

26 Sec. 9. CONSTITUTIONALITY. If any provision of this Act  
27 or the application thereof to any person or circumstances is held  
28 invalid, such invalidity shall not affect other provisions or  
29 applications of the Act which can be given effect without the



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invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 10. TIME OF TAKING EFFECT. This Act shall take effect on the day after its passage and approval or on the day it becomes law without approval.