

1 IN THE HOUSE

BY JUDICIARY COMMITTEE  
BY REQUEST OF THE GOVERNOR

2 CS FOR 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 material  
7 witnesses from within or without the state  
8 in criminal proceedings; and providing for  
9 an effective date."

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

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

12 a. "Witness", shall include a person whose testimony  
13 is desired in any proceeding or investigation by a grand jury or  
14 in a criminal action, prosecution or proceeding.

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

17 c. "Subpena", shall include a summons, in any state  
18 where a summons is used in lieu of a subpena, order or other  
19 notice requiring the appearance of a witness. The word subpena  
20 also includes a subpena duces tecum.

21 Sec. 2. SUBPENAING WITNESS IN THIS STATE TO TESTIFY IN  
22 ANOTHER STATE WHERE WITNESS MATERIAL TO PROCEEDING IN ANOTHER  
23 STATE IS IN THIS STATE. If a judge of a court of record in any  
24 state which by its laws has made provision for commanding persons  
25 within that state to attend and testify in this state certifies  
26 under the seal of such court that there is a criminal prosecution  
27 pending in such court, or that a grand jury investigation has  
28 commenced or is about to commence, that a person being within  
29 this state is a material witness in such prosecution, or grand

1 jury investigation, and that his presence will be required for a  
2 specified number of days, upon presentation of such certificate  
3 to any judge of a court of record in the judicial district in  
4 which such person is, such judge shall fix a time and place for a  
5 hearing, and shall make an order directing the witness to appear  
6 at a time and place certain for the hearing.

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

21 If said certificate recommends that the witness be taken into  
22 immediate custody and delivered to an officer of the requesting  
23 state, to assure his attendance in the requesting state, such  
24 judge may, in lieu of notification of the hearing, direct that  
25 such witness be forthwith brought before him for said hearing;  
26 and the judge at the hearing being satisfied of the desirability  
27 of such custody and delivery, for which determination the certifi-  
28 cate shall be prima facie proof of such desirability may, in lieu  
29 of issuing subpoena, order that said witness be forthwith taken

1 into custody and delivered to an officer of the requesting state.  
2 If the witness, who is subpoenaed, as above provided, after  
3 being paid or tendered by a properly authorized person, a sum  
4 equivalent to the cost of air fare round trip passage on a certifi-  
5 cated carrier or such prepaid passage, and reasonable incidental  
6 travel allowance for going to and from airports, plus twenty  
7 dollars per day for each day that he is required to travel and  
8 attend as a witness, fails without good cause to attend and testify  
9 as directed in the subpoena, he shall be punished in the manner  
10 provided for the punishment of any witness who disobeys a subpoena  
11 issued from a court of record in this state.

12 Sec. 3. WITNESS FROM ANOTHER STATE SUBPOENAED TO TESTIFY IN  
13 THIS STATE. If a person in any state, which by its laws has made  
14 provision for commanding persons within its borders to attend and  
15 testify in criminal prosecutions, or grand jury investigations  
16 commenced or about to commence, in this state, is a material  
17 witness in a criminal action pending in a court of record of this  
18 state, or in a grand jury investigation which has commenced or is  
19 about to commence, a judge of such court may issue a certificate  
20 under the seal of the court stating these facts and specifying  
21 the number of days the witness will be required.

22 Said certificate may include a recommendation that the witness  
23 be taken into immediate custody and delivered to an officer of  
24 this state to assure his attendance in this state. This certificate  
25 shall be presented to a judge of a court of record in the county  
26 or judicial district in which the witness is found. Any order of  
27 a court in such other state delivering custody of a witness to an  
28 officer of this state shall be sufficient authority to an officer  
29 of this state to take such witness into custody and hold him until

1 discharged by a court of this state.

2 If the witness is subpoenaed to attend and testify in this  
3 state he shall be tendered a sum equivalent to the cost of air  
4 fare round trip passage on a certificated carrier, or such prepaid  
5 passage, and reasonable incidental travel allowance for going to  
6 and from airports, plus twenty dollars per day for each day that  
7 he is required to travel and attend as a witness. A witness who  
8 has appeared in accordance with the provisions of the subpoena shall  
9 not be required to remain within the state a longer period of time  
10 than the period mentioned in the certificate, unless otherwise  
11 ordered by the court. If such witness, after coming into this  
12 state, fails without good cause to attend and testify as directed  
13 in the subpoena, he shall be punished in the manner provided for  
14 the punishment of any witness who disobeys a subpoena issued from  
15 a court of record in this state.

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

17 If a person comes into this state in obedience to a subpoena direct-  
18 ing him to attend and testify in this state he shall not, while in  
19 this state pursuant to such subpoena, be subject to arrest or the  
20 service of process, civil or criminal, in connection with matters  
21 which arose before his entrance into this state under the subpoena.

22 If a person passes through this state while going to another  
23 state in obedience to a subpoena to attend and testify in that  
24 state, or while returning therefrom, he shall not while so passing  
25 through this state be subject to arrest or the service of process,  
26 civil or criminal, in connection with matters which arose before  
27 his entrance into this state under the subpoena.

28 Sec. 5. UNIFORMITY OF INTERPRETATION. This Act shall be so  
29 interpreted and construed as to effectuate its general purpose

1 to make uniform the laws of the states which enact it.

2           Sec. 6. PARTY SEEKING WITNESS, PAYMENT OF FEES. The right  
3 to obtain witnesses under this Act in criminal proceedings shall  
4 extend to the state or a defendant. Witness fees shall be paid  
5 by the party calling the witness except as provided in Rule 17(b),  
6 Rules of Criminal Procedure, State of Alaska. If the time estimate  
7 in the certificate of the requesting court is exceeded, the non-  
8 indigent defendant shall be required to tender additional per diem  
9 or post bond to insure payment of total witness fees.

10           Sec. 7. SHORT TITLE. This Act may be cited as "Uniform Act  
11 to Secure Attendance of Witnesses in Criminal Proceedings."

12           Sec. 8. EFFECTIVE DATE. This Act shall take effect on the  
13 day after its passage and approval or on the day it becomes law  
14 without approval.

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