

Introduced: 2/21/67  
Referred: Judiciary

1 IN THE HOUSE

BY GUESS AND STEVENS

2 HOUSE BILL NO. 211

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating a conditional privilege for public  
7 officers and reporters as to sources of information."

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

9 \* Section 1. AS 09.25 is amended by adding new sections to read:

10 Sec. 09.25.150. CLAIMING OF PRIVILEGE BY PUBLIC OFFICIAL OR  
11 REPORTER. Except as provided in secs. 150 - 220 of this chapter, no  
12 public official or reporter shall be compelled to disclose the source  
13 of information procured or obtained by him while acting in the course  
14 of his duties as a public official or reporter.

15 Sec. 09.25.160. CHALLENGE OF PRIVILEGE. (a) When a public  
16 official or reporter claims the privilege in a cause being heard  
17 before the supreme court or a superior court of this state, a person  
18 who has the right to question him in that proceeding, or the court on  
19 its own motion, may challenge the claim of privilege. The court shall  
20 make or cause to be made whatever inquiry the court thinks necessary  
21 to a determination of the issue. The inquiry may be made in a  
22 way of questions put to the witness claiming the privilege and a deci-  
23 sion then rendered, or the court may require the presence of other  
24 witnesses or documentary showing or may order a special hearing for  
25 the determination of the issue of privilege.

26 (b) The court may deny the privilege and may order the public  
27 official or the reporter to testify, imposing whatever limits upon  
28 the testimony and upon the right of cross examination of the witness  
29 as may be in the public interest or in the interest of a fair trial,

1 if it finds the withholding of the testimony would

2 (1) result in a miscarriage of justice or the denial of  
3 a fair trial to those who challenge the privilege; or

4 (2) be contrary to the public interest.

5 **Sec. 09.25.170. ORDER DIVESTING PUBLIC OFFICIAL OR REPORTER OF**  
6 **THE PRIVILEGE. (a)** This section is applicable to any hearing held  
7 under the laws of this state

8 (1) before a court other than the supreme or a superior  
9 court;

10 (2) before a court commissioner, referee, or other court  
11 appointee;

12 (3) in the course of legislative proceedings or before a  
13 commission, agency or committee created by the legislature;

14 (4) before an agency or representative of an agency of the  
15 state, borough, city or other municipal corporation, or other body; or

16 (5) before any other forum of this state.

17 (b) If, in a hearing, a public official or a reporter should  
18 refuse to divulge the source of his information, the agency body,  
19 person, official, or party seeking the information may apply to the  
20 superior court for an order divesting the official or reporter of the  
21 privilege. When the issue is raised before the supreme or a superior  
22 court, the application must be made to that court.

23 (c) Application for an order shall be made by verified petition  
24 setting out the reasons why the disclosure is essential to the adminis-  
25 tration of justice, a fair trial in the instant proceeding, or the  
26 protection of the public interest. Upon application, the court shall  
27 determine the notice to be given to the public official or reporter  
28 and fix the time and place of hearing. The court shall make or cause  
29 to be made whatever inquiry the court thinks necessary, and make a

1 determination of the issue as provided for in sec. 160 of this chapter.

2       **Sec. 09.25.180. ORDER SUBJECT TO REVIEW.** An order of the superior  
3 court entered under secs. 150 - 220 of this chapter shall be subject to  
4 review by the supreme court, by appeal or by certiorari, as the rules  
5 of that court may provide. During the pendency of the appeal, the  
6 privilege shall remain in full force and effect.

7       **Sec. 09.25.190. EXTENT OF PRIVILEGE.** When a public official or  
8 reporter claims the privilege conferred by secs. 150 - 220 of this  
9 chapter and the public official or reporter has not been divested of  
10 the privilege by order of the supreme or superior court, neither he  
11 nor the news organization with which he was associated shall thereafter  
12 be permitted to plead or prove the sources of information withheld,  
13 unless the informant consents in writing or in open court.

14       **Sec. 09.25.200. APPLICATION OF PRIVILEGE IN OTHER COURTS.** Secs.  
15 150 - 220 of this chapter also apply to proceedings held under the  
16 laws of the United States or any other state where the law of this  
17 state is being applied.

18       **Sec. 09.25.210. SECS. 150 - 220 OF THIS CHAPTER DO NOT ABRIDGE**  
19 **OTHER PRIVILEGES.** Secs. 150 - 220 of this chapter shall not be con-  
20 strued to abridge any of the privileges recognized under the laws of  
21 this state, whether at common law or by statute.

22       **Sec. 09.25.220. DEFINITIONS.** In this chapter, unless the context  
23 otherwise requires

24           (1) "privilege" means the conditional privilege granted to  
25 public officials and reporters to refuse to testify as to a source of  
26 information;

27           (2) "public official" means a person elected to a public  
28 office created by the constitution or laws of this state, whether  
29 executive, legislative or judicial and who was holding that office

1 at the time of the communication for which privilege is claimed;

2 (3) "reporter" means

3 (A) the individual proprietor of a news organization,  
4 or a partner, officer or employee of the proprietor, or

5 (B) a person regularly engaged in the business of  
6 collecting or writing news for publication, or presentation to  
7 the public, through a news organization; it includes persons who  
8 were reporters at the time of the communication, though not at  
9 the time of the claim of privilege;

10 (4) "news organization" means

11 (A) an individual, partnership, corporation or other  
12 association regularly engaged in the business of

13 (i) publishing a newspaper or other periodical  
14 which reports news events, is issued at regular intervals  
15 and has a general circulation;

16 (ii) providing newsreels or other motion picture  
17 news for public showing; or

18 (iii) broadcasting news to the public by wire,  
19 radio, television or facsimile,

20 (B) a press association or other association of indi-  
21 viduals, partnerships, corporations, or other associations des-  
22 cribed in (4) (i), (ii), or (iii) of this section engaged in  
23 gathering news and disseminating it to its members for publication.

24 \* Sec. 2. This bill changes Rule 43(h) of the Supreme Court Rules by  
25 adding to the privileges there listed, the conditional privilege for public  
26 officers and reporters as to sources of information.