

Introduced: 1/17/73  
Referred: Judiciary

1 IN THE HOUSE

BY MEEKINS, M. MILLER,  
PARKER AND GARDINER

2 HOUSE BILL NO. 84

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating a privilege for reporters as to  
7 sources of information; and changing Rule 43(h) of the  
8 Supreme Court Rules of Civil Procedure."

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

10 \* Section 1. AS 09.25 is amended by adding a new section to read:

11 Sec. 09.25.140. CLAIMING OF PRIVILEGE BY REPORTER. No reporter  
12 may be compelled to disclose the source of information procured or  
13 obtained by him while acting in the course of his duties as a reporter.  
14 No reporter may be compelled to disclose or produce for inspection notes,  
15 recordings, photographs, or other materials procured or obtained by him  
16 while acting in the course of his duties as a reporter.

17 \* Sec. 2. AS 09.25.150 is amended to read:

18 Sec. 09.25.150. CLAIMING OF PRIVILEGE BY PUBLIC OFFICIAL [OR  
19 REPORTER]. Except as provided in secs. 150 - 220 of this chapter, no  
20 public official [OR REPORTER] may be compelled to disclose the source  
21 of information procured or obtained by him while acting in the course  
22 of his duties as a public official [OR REPORTER].

23 \* Sec. 3. AS 09.25.160 is amended to read:

24 Sec. 09.25.160. CHALLENGE OF PRIVILEGE. (a) When a public  
25 official [OR REPORTER] claims the privilege in a cause being heard be-  
26 fore the supreme court or a superior court of this state, a person who  
27 has the right to question him in that proceeding, or the court on its  
28 own motion, may challenge the claim of privilege. The court shall make  
29 or cause to be made whatever inquiry the court thinks necessary to a

1 determination of the issue. The inquiry may be made instanter by way  
2 of questions put to the witness claiming the privilege and a decision  
3 then rendered, or the court may require the presence of other witnesses  
4 or documentary showing or may order a special hearing for the determina-  
5 tion of the issue of privilege.

6 (b) The court may deny the privilege and may order the public  
7 official [OR THE REPORTER] to testify, imposing whatever limits upon the  
8 testimony and upon the right of cross-examination of the witness as  
9 may be in the public interest or in the interest of a fair trial, if  
10 it finds the withholding of the testimony would

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

13 (2) be contrary to the public interest.

14 \* Sec. 4. AS 09.25.170 is amended to read:

15 Sec. 09.25.170. ORDER DIVESTING PUBLIC OFFICIAL [OR REPORTER] OF  
16 THE PRIVILEGE. (a) This section is applicable to a hearing held under  
17 the laws of this state

18 (1) before a court other than the supreme or a superior  
19 court;

20 (2) before a court commissioner, referee, or other court  
21 appointee;

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

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

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

27 (b) If, in a hearing, a public official [OR A REPORTER] should  
28 refuse to divulge the source of his information, the agency body,  
29 person, official, or party seeking the information may apply to the

1 superior court for an order divesting the official [OR REPORTER] of the  
2 privilege. When the issue is raised before the supreme or a superior  
3 court, the application must be made to that court.

4 (c) Application for an order shall be made by verified petition  
5 setting out the reasons why the disclosure is essential to the adminis-  
6 tration of justice, a fair trial in the instant proceeding, or the  
7 protection of the public interest. Upon application, the court shall  
8 determine the notice to be given to the public official [OR REPORTER]  
9 and fix the time and place of hearing. The court shall make or cause  
10 to be made whatever inquiry the court thinks necessary, and make a  
11 determination of the issue as provided for in sec. 160 of this chapter.

12 \* Sec. 5. AS 09.25.190 is amended to read:

13 Sec. 09.25.190. EXTENT OF PRIVILEGE. When a public official [OR  
14 REPORTER] claims the privilege conferred by secs. 150 - 220 of this  
15 chapter and the public official [OR REPORTER] has not been divested  
16 of the privilege by order of the supreme or superior court, [NEITHER]  
17 he [NOR THE NEWS ORGANIZATION WITH WHICH HE WAS ASSOCIATED] may not  
18 thereafter be permitted to plead or prove the sources of information  
19 withheld, unless the informant consents in writing or in open court.

20 \* Sec. 6. AS 09.25.200 is amended to read:

21 Sec. 09.25.200. APPLICATION OF PRIVILEGE IN OTHER COURTS.  
22 Sections 140 - 220 [150 - 220] of this chapter also apply to proceedings  
23 held under the laws of the United States or any other state where the  
24 law of this state is being applied.

25 \* Sec. 7. AS 09.25.210 is amended to read:

26 Sec. 09.25.210. SECTIONS 140 - 220 [150 - 220] OF THIS CHAPTER  
27 DO NOT ABRIDGE OTHER PRIVILEGES. Sections 140 - 220 [150 - 220] of  
28 this chapter may not be construed to abridge any of the privileges  
29 recognized under the laws of this state, whether at common law or by

1 statute.

2 \* Sec. 8. AS 09.25.220(1) is amended to read:

3 (1) "privilege" means the conditional privilege granted to  
4 public officials [AND REPORTERS] to refuse to testify as to a source of  
5 information and the unconditional privilege granted to reporters to  
6 refuse to testify and to refuse to produce notes, recordings, photo-  
7 graphs or other materials regarding a source of information;

8 \* Sec. 9. AS 09.25.220(3) is amended to read:

9 (3) "reporter" means a person regularly engaged in the  
10 business of collecting or writing news or articles for publication,  
11 or presentation to the public, through a news organization or publisher;  
12 it includes persons who were reporters at the time of the communication,  
13 though not at the time of the claim of privilege;

14 \* Sec. 10. This bill changes Rule 43(h) of the Supreme Court Rules of  
15 Civil Procedure by changing the conditional privilege for a reporter as to  
16 sources of information to an unconditional privilege.