

Introduced: 3/23/77
Referred: Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 393

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to immunity and protection of wit-
7 nesses; and providing for an effective date."

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

9 * Section 1. AS 12.50 is amended by adding new sections to read:

10 ARTICLE 3. IMMUNITY OF WITNESSES.

11 Sec. 12.50.110. DECLARATION OF PURPOSE. The purpose of secs.
12 110 - 140 of this chapter is to provide a means to solve serious
13 felony offenses committed with a high degree of secrecy, through the
14 mechanism of witness immunity and, where necessary, the issuance of a
15 court order compelling testimony or the production of other evidence
16 or information in a criminal proceeding or investigation under specified
17 standards consistent with an individual's guarantee under the Constitu-
18 tion of the United States and the Constitution of the State of Alaska
19 not to be compelled to incriminate himself. Immunity should not be
20 extended to a witness under an order compelling testimony or the pro-
21 duction of other evidence or information unless a compelling state
22 interest has been demonstrated within the context of a criminal proceed-
23 ing or investigation in which the public interest in prosecuting the
24 offense which is the subject of a criminal proceeding or investigation
25 is of a nature sufficient to outweigh the individual privacy interests
26 of the witness as specified in sec. 130(a) of this chapter.

27 Sec. 12.50.120. PROSECUTORIAL IMMUNITY. (a) Whenever a person
28 has been or may be called to testify in a criminal proceeding or in-
29 vestigation before or ancillary to a court or a grand jury of the

1 State of Alaska, a state prosecuting attorney may, with the written
2 concurrence of the attorney general, execute in writing a grant of
3 immunity from prosecution to him upon terms that may be agreed upon
4 between the prosecution and the prospective witness.

5 (b) Whenever a person is called to testify in a proceeding under
6 a grant of immunity under (a) of this section, the grant of immunity
7 shall be made a part of the record of the proceeding.

8 Sec. 12.50.130. ORDER COMPELLING TESTIMONY OR OTHER EVIDENCE;
9 IMMUNITY OF WITNESS FROM PROSECUTION. (a) In the case of a person
10 who has been or may be called to testify or provide other evidence or
11 information in a criminal proceeding or investigation before or ancillary
12 to a court or a grand jury of the State of Alaska, the superior court
13 for the judicial district in which the proceeding is or may be held
14 shall issue, upon the in camera, ex parte application of a state
15 prosecuting attorney with the written concurrence of the attorney
16 general, an order requiring the person to testify or provide other
17 evidence or information as requested whenever the court finds that it
18 has first been demonstrated by affidavit or otherwise through clear
19 and convincing evidence that:

20 (1) the testimony or other evidence or information sought
21 to be compelled relates to and is likely to be material to an inquiry
22 into criminal activity which constitutes a felony offense or offenses,
23 the commission or attempted commission of which involves

24 (A) violence, threats of violence or a high potential
25 for violence;

26 (B) property loss or illegally obtained property of an
27 aggregate value in excess of \$10,000;

28 (C) blackmail under AS 11.15.300;

29 (D) extortion under AS 11.20.345;

1 (E) obtaining money or property by false pretenses
2 under AS 11.20.360;

3 (F) perjury or subordination of perjury under AS
4 11.30.010;

5 (G) bribery under AS 11.30.040 or accepting a bribe
6 under AS 11.30.050; or

7 (H) influencing witnesses, judges or jurors or ob-
8 structing the administration of justice under AS 11.30.320;

9 (2) the person who is the subject of the application has
10 refused or is likely to refuse to testify or provide other evidence or
11 information on the basis of his privilege against self-incrimination;
12 and

13 (3) all evidence, except as may be allowed under (c) of
14 this section, which may be sought by the state to be admitted in any
15 criminal proceeding brought against the person who is the subject of
16 the application for, or on account of, any transaction, matter,
17 occurrence, or thing concerning which he is compelled, after having
18 claimed his privilege against self-incrimination, to testify or provide
19 other evidence or information, has been filed in sealed form in camera
20 with the superior court.

21 (b) Whenever a witness refuses, on the basis of his privilege
22 against self-incrimination, to testify or provide other evidence or
23 information in a criminal proceeding or investigation before or
24 ancillary to a court or a grand jury of the State of Alaska and the
25 person presiding over the proceeding communicates to the witness an
26 order issued under (a) of this section, the witness may not refuse to
27 comply with the order and may not be excused from testifying or from
28 providing other evidence or information on the grounds that the testi-
29 mony or other evidence or information required of him may tend to

1 incriminate him or subject him to any penalty or forfeiture.

2 (c) No testimony or other evidence or information compelled
3 under (b) of this section which is responsive to an order issued under
4 (a) of this section, nor any evidence directly or indirectly derived
5 from the testimony or other evidence or information compelled, may be
6 used in any criminal proceeding brought against the witness nor may he
7 be subjected to any penalty or forfeiture for, or on account of,
8 testimony or other evidence of information compelled and responsive to
9 the order, or any evidence directly or indirectly derived from it;
10 except that no witness is immune or exempt under this subsection from
11 prosecution, penalty, or forfeiture for perjury, false swearing,
12 giving a false statement, or contempt committed while testifying or
13 providing other evidence or information, or failing or refusing to do
14 so, under compulsion as provided in this section.

15 (d) Except in a prosecution authorized under (c) of this section,
16 only evidence provided for under (a)(3) of this section may be admitted
17 into evidence in any proceeding brought against a witness who has been
18 compelled to testify or provide other evidence or information.

19 (e) Before issuance of an order under (a) of this section, the
20 court may require an assurance that steps have been, or will be
21 taken, if necessary, to provide the person who is the subject of the
22 application and members of his immediate family and household with
23 adequate protection from retribution, under sec. 150 of this chapter.

24 (f) No person other than the witness himself may question the
25 validity or otherwise challenge an order issued under (a) of this
26 section.

27 (g) For purposes of this section, "other evidence or information"
28 means any physical object, book, paper, document, record, recording,
29 or other material.

1 Sec. 12.50.140. WILFUL FAILURE OR REFUSAL TO COMPLY WITH AN
2 ORDER COMPELLING TESTIMONY OR OTHER EVIDENCE. (a) During the time it
3 remains within the power of a witness to comply with an order issued
4 under sec. 130(a) of this chapter, a wilful failure or refusal to
5 comply, without some lawful excuse for not complying, constitutes
6 civil contempt. After notice and a hearing before the court sitting
7 without a jury at which the witness is afforded an opportunity to show
8 cause why he should not be found in contempt, a witness who fails to
9 establish some lawful excuse for not complying and who persists in his
10 failure or refusal to comply shall be imprisoned until he complies or
11 until it no longer remains within his power to comply.

12 (b) A person who has wilfully failed or refused to comply with
13 an order issued under sec. 130(a) of this chapter without some lawful
14 excuse for not complying, who has been found in contempt under (a) of
15 this section, who has been afforded a further opportunity to comply,
16 and who no longer has it within his power to comply, is guilty of
17 criminal contempt and upon conviction is punishable by imprisonment
18 for a period not to exceed three years or by a fine of not more than
19 \$10,000 or by both.

20 ARTICLE 4. PROTECTION OF WITNESSES.

21 Sec. 12.50.150. AUTHORITY TO PROVIDE FOR PROTECTION OF WITNESSES.

22 (a) The attorney general, in cooperation with the commissioner of
23 public safety, is authorized to provide for the general safety and
24 security of a witness in a criminal proceeding or investigation and
25 members of the witness' immediate family and household whenever, in
26 the attorney general's judgment, testimony from, or a willingness to
27 testify by, such a witness would place the witness' life or person, or
28 the life or person of a member of his family or household, in jeopardy.

29 (b) The authority under (a) of this section includes, but is not

1 limited to, the authority to rent, purchase, modify, or remodel
2 protected housing facilities and to otherwise offer to provide for the
3 health, safety and welfare of witnesses and persons intended to be
4 called as witnesses, and members of their immediate families and
5 households.

6 (c) Any person availing himself of an offer of protection under
7 this section may do so for as long as the attorney general determines
8 the jeopardy to the witness' life or person or that of his family or
9 household continues, subject to the conditions and restrictions that
10 may from time to time be required.

11 (d) In this section, "witness" includes a potential witness.

12 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).