

Original sponsors: Brown and Rogers

Offered: 4/9/81
Referred: Judiciary

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 36 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege not to disclose
7 sources of information; and providing for an effective
8 date."

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

10 * Section 1. AS 09.25.150 is repealed and reenacted to read:

11 Sec. 09.25.150. CLAIMING OF PRIVILEGE BY PUBLIC OFFICIAL OR RE-
12 PORTER. Except as provided in AS 09.25.160 - 09.25.220,

13 (1) a public official may not be compelled to disclose the
14 source of information obtained while performing duties as a public
15 official; and

16 (2) a reporter may not be compelled to disclose the source
17 of information obtained while acting as a reporter, nor may a reporter
18 be required to produce photographs, photographic negatives, audio or
19 video tapes, notes, or any other documents prepared or obtained while
20 acting as a reporter.

21 * Sec. 2. AS 09.25.160(a) is amended to read:

22 (a) When a public official or reporter claims the privilege in a
23 cause being heard before the supreme court or a superior court of this
24 state, a person who has the right to question the public official or
25 reporter [HIM] in that proceeding, or the court on its own motion, may
26 challenge the claim of privilege. The court shall make or cause to be
27 made whatever inquiry the court thinks necessary to a determination of
28 the issue. The inquiry may be made immediately [INSTANTER] by way of
29 questions put to the witness claiming the privilege and a decision then

1 rendered, or the court may require the presence of other witnesses or
2 documentary showing or may order a special hearing for the determination
3 of the issue of privilege.

4 * Sec. 3. AS 09.25.160(b) is amended to read:

5 (b) The court may deny the privilege and may order the public
6 official or the reporter to testify, or may order a reporter to produce
7 photographs, photographic negatives, audio or video tapes, notes, or
8 any other documents prepared or obtained while acting as a reporter,
9 imposing whatever limits upon the testimony and upon the right of
10 cross-examination of the witness as may be in the public interest or in
11 the interest of a fair trial or a fair hearing, if it finds the with-
12 holding of the testimony would

13 [(1)] result in a miscarriage of justice or the denial of a
14 fair trial or a fair hearing to those who challenge the privilege [; OR

15 (2) BE CONTRARY TO THE PUBLIC INTEREST].

16 * Sec. 4. AS 09.25.170(b) is amended to read:

17 (b) If, in a hearing, a public official or a reporter should re-
18 fuse to divulge the source of [HIS] information, or a reporter should
19 refuse to produce photographs, photographic negatives, audio or video
20 tapes, notes, or any other documents prepared or obtained while acting
21 as a reporter, the agency, [BODY,] person, official, or party seeking
22 the information may apply to the superior court for an order divesting
23 the official or reporter of the privilege. When the issue is raised
24 before the supreme or a superior court, the application must be made to
25 that court.

26 * Sec. 5. AS 09.25.170(c) is amended to read:

27 (c) Application for an order shall be made by verified petition
28 setting out the reasons why the disclosure is essential to the adminis-
29 tration of justice, or why the disclosure is essential to a fair trial

1 in the instant proceeding [, OR THE PROTECTION OF THE PUBLIC INTEREST].
2 Upon application, the court shall determine the notice to be given to
3 the public official or reporter and fix the time and place of hearing.
4 The court shall make or cause to be made whatever inquiry the court
5 thinks necessary, and make a determination of the issue as provided in
6 AS 09.25.160.

7 * Sec. 6. AS 09.25.190 is amended to read:

8 Sec. 09.25.190. EXTENT OF PRIVILEGE. When a public official or
9 reporter claims the privilege conferred by AS 09.25.150 - 09.25.220,
10 and the public official or reporter has not been divested of the pri-
11 vilege by order of the supreme or superior court, the public offi-
12 cial, the reporter or [NEITHER HE NOR] the news organization with which
13 the reporter [HE] was associated may not thereafter be permitted to
14 plead or prove the sources of information withheld, and a reporter may
15 not be required to produce photographs, photographic negatives, audio
16 or video tapes, notes, or other documents prepared or obtained while
17 acting as a reporter, unless the informant consents in writing or in
18 open court.

19 * Sec. 7. AS 09.25.220(3) is amended to read:

20 (3) "reporter" means a person regularly engaged in the
21 business of collecting or writing news for publication, or presentation
22 to the public, through a news organization; the term [IT] includes

23 (A) persons who were reporters at the time of the
24 communication, though not at the time of the claim of privilege;

25 (B) a photographer or technician who handles cameras
26 and photographic or audio equipment; and

27 (C) an editor or publisher associated with or employed
28 by a news organization;

29 * Sec. 8. AS 09.25.220(4)(A)(ii) is amended to read:

1 (ii) providing newsreels, audio or video tapes, or
2 other motion picture news for public showing; or

3 * Sec. 9. This Act takes effect immediately in accordance with AS 01.10.-
4 070(c).

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