
SUBSTITUTE SENATE BILL 5358

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline, Kohl-Welles, Fairley, McCaslin and Marr)

READ FIRST TIME 02/08/07.

1 AN ACT Relating to a privilege from compelled testimony for members
2 of the news media; and adding a new chapter to Title 5 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) Except as provided in subsection (2) of
5 this section, no judicial, legislative, administrative, or other body
6 with the power to issue a subpoena or other compulsory process may
7 compel the news media to testify, produce, or otherwise disclose:

8 (a) The identity of a source of any news or information or any
9 information that would tend to identify the source where such source
10 has a reasonable expectation of confidentiality; or

11 (b) Any news or information obtained or prepared by the news media
12 in its capacity in gathering, receiving, or processing news or
13 information for potential communication to the public, including, but
14 not limited to, any notes, outtakes, photographs, video or sound tapes,
15 film, or other data of whatever sort in any medium now known or
16 hereafter devised. This does not include physical evidence of a crime.

17 (2) A court may compel disclosure of the news or information
18 described in subsection (1)(b) of this section if the court finds that

1 the party seeking such news or information established by clear and
2 convincing evidence:

3 (a)(i) In a criminal investigation or prosecution, based on
4 information other than that information being sought, that there are
5 reasonable grounds to believe that a crime has occurred; or

6 (ii) In a civil action or proceeding, based on information other
7 than that information being sought, that there is a prima facie cause
8 of action; and

9 (b) In all matters, whether criminal or civil, that:

10 (i) The news or information is highly material and relevant;

11 (ii) The news or information is critical or necessary to the
12 maintenance of a party's claim, defense, or proof of an issue material
13 thereto;

14 (iii) The party seeking such news or information has exhausted all
15 reasonable and available means to obtain it from alternative sources;
16 and

17 (iv) There is a compelling public interest in the disclosure. A
18 court may consider whether or not the news or information was obtained
19 from a confidential source in evaluating the public interest in
20 disclosure.

21 (3) The protection from compelled disclosure contained in
22 subsection (1) of this section also applies to any subpoena issued to,
23 or other compulsory process against, a nonnews media party where such
24 subpoena or process seeks records, information, or other communications
25 relating to business transactions between such nonnews media party and
26 the news media for the purpose of discovering the identity of a source
27 or obtaining news or information described in subsection (1) of this
28 section. Whenever a subpoena is issued to, or other compulsory process
29 is initiated against, a nonnews media party where such subpoena or
30 process seeks information or communications on business transactions
31 with the news media, the affected news media shall be given reasonable
32 and timely notice of the subpoena or compulsory process before it is
33 executed or initiated, as the case may be, and an opportunity to be
34 heard. In the event that the subpoena to, or other compulsory process
35 against, the nonnews media party is in connection with a criminal
36 investigation in which the news media is the express target, and
37 advance notice as provided in this section would pose a clear and
38 substantial threat to the integrity of the investigation, the

1 governmental authority shall so certify to such a threat in court and
2 notification of the subpoena or compulsory process shall be given to
3 the affected news media as soon thereafter as it is determined that
4 such notification will no longer pose a clear and substantial threat to
5 the integrity of the investigation.

6 (4) Publication or dissemination by the news media of news or
7 information described in subsection (1) of this section, or a portion
8 thereof, shall not constitute a waiver of the protection from compelled
9 disclosure that is contained in subsection (1) of this section. In the
10 event that the fact of publication of news or information must be
11 proved in any proceeding, that fact and the contents of the publication
12 may be established by judicial notice.

13 (5) The term "news media" means:

14 (a) Any newspaper, magazine or other periodical, book publisher,
15 news agency, wire service, radio or television station or network,
16 cable or satellite station or network, or audio or audiovisual
17 production company, or any entity that is in the regular business of
18 news gathering and disseminating news or information to the public by
19 any means, including, but not limited to, print, broadcast,
20 photographic, mechanical, internet, or electronic distribution;

21 (b) Any person who is or has been an employee, agent, or
22 independent contractor of any entity listed in (a) of this subsection,
23 who is or has been engaged in bona fide news gathering for such entity,
24 and who obtained or prepared the news or information that is sought
25 while serving in that capacity; or

26 (c) Any parent, subsidiary, or affiliate of the entities listed in
27 (a) or (b) of this subsection to the extent that the subpoena or other
28 compulsory process seeks news or information described in subsection
29 (1) of this section.

30 (6) In all matters adjudicated pursuant to this section, a court of
31 competent jurisdiction may exercise its inherent powers to conduct all
32 appropriate proceedings required in order to make necessary findings of
33 fact and enter conclusions of law.

34 NEW SECTION. **Sec. 2.** Section 1 of this act constitutes a new
35 chapter in Title 5 RCW.

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