
Judiciary Committee

HB 2452

Title: An act relating to a privilege from compelled testimony for members of the news media.

Brief Description: Protecting the news media from being compelled to testify in legal proceedings.

Sponsors: Representatives Kessler, Armstrong, Clibborn, Priest, Nixon, Blake, Hunt, Morrell, Grant, Newhouse, Dickerson, Kagi, Ericksen, Ericks, Wood, Upthegrove, Ormsby, Roberts and O'Brien; by request of Attorney General.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes a privilege from compelled testimony and disclosure of information for members of the news media.

Hearing Date: 1/27/06

Staff: Edie Adams (786-7180).

Background:

The judiciary has inherent power to compel witnesses to appear and testify in judicial proceedings so that the court will receive all relevant evidence. Privileges are generally disfavored in the common law because they impede the court's truth-finding function. However, the common law and statutory law recognize exceptions to compelled testimony in some circumstances, including testimonial or evidentiary privileges.

Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such importance that they should be protected. Four criteria must be satisfied to find a privilege under the common law: (1) the communication must be made in confidence; (2) the element of confidentiality must be essential to the relationship; (3) the relationship is one that should be sedulously fostered; and (4) the injury of disclosing the communication must be greater than the benefit of disclosure.

Washington has not enacted a statutory reporter privilege, but the Washington Supreme Court has recognized a common law qualified privilege for reporters against compelled disclosure of confidential source information in both civil and criminal cases. To overcome the privilege, a party must show that: (1) the claim is meritorious; (2) the information sought is necessary or critical to the cause of action or defense pleaded; and (3) the party made a reasonable effort to obtain the information by other means.

Thirty one states and the District of Columbia have enacted statutory reporter shield laws. There is wide variation among these laws: some states provide protection only with respect to confidential sources, either by providing a qualified or absolute privilege; some provide qualified protection for both confidential sources and the reporter's work product; and some provide an absolute privilege for both sources and work product. In addition, state laws vary with respect to whether and how they apply the privilege in different types of proceedings (e.g., civil versus criminal) and the showing that must be made to overcome the privilege where it is qualified.

At the federal level, Congress has not adopted a reporter privilege law, although a number of bills have been introduced on the subject. Most federal circuit courts, including the Ninth Circuit, have recognized some form of qualified reporter privilege, either deriving from the common law or the First Amendment.

Summary of Bill:

A privilege from compelled testimony or disclosure of information is established for members of the news media. In addition, a privilege from compelled disclosure of certain information is established for a non-news media party under certain circumstances.

The news media has an absolute privilege from being compelled to testify, produce, or disclose a source of news or information, or any information that would tend to identify the source, if the source has a reasonable expectation of confidentiality.

The news media is given a qualified privilege from being compelled to testify, produce, or disclose any news or information obtained or prepared in the course of gathering, receiving, or processing news or information for potential communication to the public. The qualified privilege may be overcome if the court finds the following factors are present:

- In the case of a criminal proceeding, there are reasonable grounds to believe a crime occurred, and in the case of a civil proceeding, there is a prima facie case;
- The news or information is highly material and relevant;
- The news or information is critical or necessary to maintenance of a claim, defense, or proof of a material issue;
- The party seeking the news or information has used reasonable efforts to obtain the information from another source; and
- There is a compelling public interest in the disclosure. In evaluating public interest, the court may consider whether the information came from a confidential source.

A non-news media party is protected from compelled disclosure of records, information, or other communications relating to business transactions with the news media, where the purpose of seeking the records is to discover the identity of a source or information protected from disclosure under the news media privilege. The news media must be given prior notice and an opportunity to be heard when records relating to a non-news media party's business transactions with the news media are sought. Prior notice is not required where the news media is the target of a criminal investigation and prior notice would pose a clear and substantial threat to the investigation.

The news media privilege is not waived by the publication or dissemination by the news media of the news or information or any portion of the news or information.

A source or any news or information protected by the privilege is not admissible in any judicial, legislative, administrative, or other proceeding.

"News media" is defined to mean any of the following persons or entities:

- Newspaper; magazine or periodical; book publisher; news agency; wire service; radio, television, cable, or satellite station or network; or audio or audiovisual production company;
- Any person or entity in the regular business of disseminating news or information to the public by any means;
- A journalist, higher education researcher or scholar, or other individual who is either: earning a substantial amount of his or her livelihood by obtaining or preparing information for any of the above; or acting as an agent, assistant, employee, or supervisor of any of the above; and
- A parent, subsidiary, or affiliate of any of the above.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.