
Judiciary Committee

HB 3187

Title: An act relating to a privilege for persons in communications media.

Brief Description: Creating a privilege for persons in communications media.

Sponsors: Representatives Williams, Chase and Wood.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes a privilege with respect to information or sources of information obtained by a person associated with a medium of communication.

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 or sources of information is established for persons associated with a medium of communication that disseminates information to the public.

"Medium of communication" includes a newspaper, magazine or periodical, book, news service, wire service, news or feature syndicate, broadcast station or network, cable television system, or internet news organization.

A person who gathers, receives, or processes information for a medium of communication that disseminates information to the public has a privilege from compelled disclosure of:

- The source of any published or unpublished information obtained in the course of gathering, receiving, or processing information for the medium of communication; or
- Unpublished information obtained in the course of gathering, receiving, or processing information for the medium of communication.

The privilege applies even if a person has disclosed elsewhere any information, or the source of any information, protected by the privilege, or any related information. The privilege does not apply to the content or source of allegedly defamatory information in a defamation action where a defense to the action is based on the content or source of the information. In addition, the privilege does not apply with respect to physical evidence of a crime.

The papers, effects, or work premises of a person associated with a medium of communication that disseminates information to the public is not subject to search unless there is probable cause the person has committed or is about to commit a crime.

Records of a third party that could be used to obtain the information or source of information protected by the privilege, such as credit card records, telephone billing records, and airline records, are also not subject to search unless there is probable cause to believe the person has committed or is about to commit a crime.

Appropriation: None.

Fiscal Note: Not requested.

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