

SHB 2452 - S COMM AMD  
By Committee on Judiciary

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

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

16 (2) A court may compel disclosure of the news or information  
17 described in subsection (1)(b) of this section if the court finds that  
18 the party seeking such news or information established by clear and  
19 convincing evidence:

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

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

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

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

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

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

4 (iv) There is a compelling public interest in the disclosure. A  
5 court may consider whether or not the news or information was obtained  
6 from a confidential source in evaluating the public interest in  
7 disclosure.

8 (3) The protection from compelled disclosure contained in  
9 subsection (1) of this section also applies to any subpoena issued to,  
10 or other compulsory process against, a nonnews media party where such  
11 subpoena or process seeks records, information, or other communications  
12 relating to business transactions between such nonnews media party and  
13 the news media for the purpose of discovering the identity of a source  
14 or obtaining news or information described in subsection (1) of this  
15 section. Whenever a subpoena is issued to, or other compulsory process  
16 is initiated against, a nonnews media party where such subpoena or  
17 process seeks information or communications on business transactions  
18 with the news media, the affected news media shall be given reasonable  
19 and timely notice of the subpoena or compulsory process before it is  
20 executed or initiated, as the case may be, and an opportunity to be  
21 heard. In the event that the subpoena to, or other compulsory process  
22 against, the nonnews media party is in connection with a criminal  
23 investigation in which the news media is the express target, and  
24 advance notice as provided in this section would pose a clear and  
25 substantial threat to the integrity of the investigation, the  
26 governmental authority shall so certify to such a threat in court and  
27 notification of the subpoena or compulsory process shall be given to  
28 the affected news media as soon thereafter as it is determined that  
29 such notification will no longer pose a clear and substantial threat to  
30 the integrity of the investigation.

31 (4) Publication or dissemination by the news media of news or  
32 information described in subsection (1) of this section, or a portion  
33 thereof, shall not constitute a waiver of the protection from compelled  
34 disclosure that is contained in subsection (1) of this section. In the  
35 event that the fact of publication of news or information must be  
36 proved in any proceeding, that fact and the contents of the publication  
37 may be established by judicial notice.

38 (5)(a) The term "news media" means:

1 (i) Any newspaper, magazine or other periodical, book publisher,  
2 news agency, wire service, radio or television station or network,  
3 cable or satellite station or network, or audio or audiovisual  
4 production company, or any person or entity that is in the regular  
5 business of disseminating news or information to the public by any  
6 means, including, but not limited to, print, broadcast, photographic,  
7 mechanical, internet, or electronic distribution;

8 (ii) Any person who is or has been a journalist, a scholar or  
9 researcher employed by any institution of higher education, or other  
10 individual who either: (A) At the time he or she obtained or prepared  
11 the information that is sought was earning or about to earn a  
12 substantial portion of his or her livelihood by obtaining or preparing  
13 information for dissemination by any person or entity listed in (a)(i)  
14 of this subsection, or (B) obtained or prepared the information that is  
15 sought while serving in the capacity of an agent, assistant, employee,  
16 or supervisor of any person or entity listed in (a)(i) or (ii)(A) of  
17 this subsection; or

18 (iii) Any parent, subsidiary, or affiliate of the entities listed  
19 in (a)(i) of this subsection.

20 (b) The term "news media" does not include a governmental entity or  
21 an official or employee of a governmental entity while engaged in  
22 official duties.

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

27 NEW SECTION. **Sec. 2.** Section 1 of this act constitutes a new  
28 chapter in Title 5 RCW."

**SHB 2452** - S COMM AMD  
By Committee on Judiciary

29 On page 1, line 2 of the title, after "media;" strike the remainder

1 of the title and insert "and adding a new chapter to Title 5 RCW."

--- END ---