

SHB 2452 - S AMD 364

By Senator Poulsen

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

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4 **NEW SECTION.** Sec. 1. The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Information" includes, but is not limited to, any written, oral,
7 pictorial, or electronically recorded news or other data.

8 (2) "Medium of communication" includes, but is not limited to, any
9 newspaper, magazine or other periodical, book, pamphlet, news service,
10 wire service, news or feature syndicate, broadcast station or network, or
11 cable television system. Any information that is a portion of a
12 governmental utterance made by an official or employee of government
13 within the scope of the official's or employee's governmental function is
14 not included within the meaning of "medium of communication."

15 (3) "Processing" includes, but is not limited to, the compiling,
16 storing, and editing of information.

17 (4) "Published information" means information disseminated to the
18 public.

19 (5) "Unpublished information" means information not disseminated to
20 the public, whether or not related information has been disseminated.
21 "Unpublished information" includes, but is not limited to, all notes,
22 outtakes, photographs, tapes, or other data of whatever sort not
23 themselves disseminated to the public through a medium of communication,

1 whether or not published information based upon or related to such
2 material has been disseminated.

3 NEW SECTION. **Sec. 2.** (1) A legislative, executive, or judicial
4 officer or body, or any other authority having power to compel testimony
5 or the production of evidence, may not compel a person connected with,
6 employed by, or engaged in any medium of communication to the public to
7 disclose, by subpoena or otherwise:

8 (a) The source of any published or unpublished information obtained
9 by the person in the course of gathering, receiving, or processing
10 information for any medium of communication to the public; or

11 (b) Any unpublished information obtained or prepared by the person in
12 the course of gathering, receiving, or processing information for any
13 medium of communication to the public.

14 (2) No papers, effects, or work premises of a person connected with,
15 employed by, or engaged in any medium of communication to the public are
16 subject to a search by a legislative, executive, or judicial officer or
17 body, or any other authority having power to compel the production of
18 evidence, by search warrant or otherwise. However, the provisions of this
19 subsection do not apply where probable cause exists to believe that the
20 person has committed, is committing, or is about to commit a crime.

21 NEW SECTION. **Sec. 3.** (1) Section 2 of this act applies regardless
22 of whether a person has disclosed elsewhere any of the information or
23 source thereof, or any of the related information.

24 (2) Section 2 of this act continues to apply in relation to any of the

1 information, or source thereof, or any related information, even in the
2 event of subsequent termination of a person's connection with, employment
3 by, or engagement in any medium of communication to the public.

4 (3) Section 2(1) of this act does not apply with respect to the
5 content or source of allegedly defamatory information, in civil action for
6 defamation wherein the defendant asserts a defense based on the content
7 or source of such information.

8 NEW SECTION. **Sec.** 4. If the informant offers the informant as a
9 witness, it is deemed a consent to the examination also of a person
10 described in section 2 of this act on the same subject.

11 NEW SECTION. **Sec.** 5. (1) The protection from compelled disclosure
12 contained in section 2(1) of this act also applies to any subpoena issued
13 to, or other compulsory process against, a party that is not a medium of
14 communication where the subpoena or process seeks records, information,
15 or other communications relating to business transactions between such a
16 party and the medium of communication for the purpose of discovering the
17 identity of a source or obtaining news or information described in section
18 2(1) of this act.

19 (2) When a subpoena is issued to, or other compulsory process is
20 initiated against, a party that is not a medium of communication where
21 such a subpoena or process seeks information or communications on business
22 transactions with the medium of communication, the affected medium of
23 communication must be given reasonable and timely notice of the subpoena
24 or compulsory process before it is executed or initiated, as the case may

1 be, and an opportunity to be heard.

2 (3) In the event that the subpoena to, or other compulsory process
3 against, the party that is not a medium of communication is in connection
4 with a criminal investigation in which the medium of communication is the
5 express target, and advance notice as provided in this section would pose
6 a clear and substantial threat to the integrity of the investigation, the
7 governmental authority shall so certify to such a threat in court and
8 notification of the subpoena or compulsory process shall be given to the
9 affected medium of communication as soon thereafter as it is determined
10 that such a notification will no longer pose a clear and substantial
11 threat to the integrity of the investigation.

12 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute a
13 new chapter in Title 5 RCW."

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EFFECT: Replaces the contents of the bill with Oregon's law on the same subject, providing for absolute privileges for sources and work product for certain news media, while retaining subsection (3) of the bill protecting non-news media third parties from compelled disclosure.