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**SUBSTITUTE HOUSE BILL 2452**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Kessler, Armstrong, Clibborn, Priest, Nixon, Blake, Hunt, Morrell, Grant, Newhouse, Dickerson, Kagi, Erickson, Ericks, Wood, Upthegrove, Ormsby, Roberts and O'Brien; by request of Attorney General)

READ FIRST TIME 02/03/06.

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

14 (i) 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 person or entity that is in the regular  
18 business of disseminating news or information to the public by any  
19 means, including, but not limited to, print, broadcast, photographic,  
20 mechanical, internet, or electronic distribution;

21 (ii) Any person who is or has been a journalist, a scholar or  
22 researcher employed by any institution of higher education, or other  
23 individual who either: (A) At the time he or she obtained or prepared  
24 the information that is sought was earning or about to earn a  
25 substantial portion of his or her livelihood by obtaining or preparing  
26 information for dissemination by any person or entity listed in (a)(i)  
27 of this subsection, or (B) obtained or prepared the information that is  
28 sought while serving in the capacity of an agent, assistant, employee,  
29 or supervisor of any person or entity listed in (a)(i) or (ii)(A) of  
30 this subsection; or

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

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

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

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