

SENATE BILL REPORT

HB 1366

As Reported By Senate Committee On:
Judiciary, March 30, 2007

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, DeBolt, Grant, Ericksen, Lantz, Rodne, Williams, Priest, Morrell, Hunt, Appleton, Blake, Chase, Anderson, Darneille, Dickerson, Linville, Springer, Hurst and Wood.

Brief History: Passed House: 2/16/07, 96-0.

Committee Activity: Judiciary: 3/30/07 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Tom, Vice Chair; Hargrove, Murray, Roach and Weinstein.

Staff: Lidia Mori (786-7755)

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. 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

More than 30 states and the District of Columbia have enacted statutory reporter shield laws. 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: The news media has an absolute privilege from being compelled to testify, produce, or disclose the identity of 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 has 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. This qualified privilege does not apply to physical evidence of a crime. The qualified privilege may be overcome if the court finds the following factors are present: (1) 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; (2) the information is highly material and relevant; (3) the information is critical or necessary to maintenance of a claim or defense, or proof of a material issue; (4) the party seeking the information has exhausted all reasonable and available means of obtaining the information from another source; and (5) 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 or information relating to business transactions with the news media where the purpose of seeking the records is to discover the identity of a source or other information protected from disclosure. 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. The fact and content of a publication may be established by judicial notice. "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; 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 or about to earn a substantial amount of his or her livelihood by obtaining or preparing information for any of the above; acting as an agent, assistant, employee, or supervisor of any of the above; and a parent, subsidiary, or affiliate of the entities listed above.

"News media" does not include a governmental entity, or its officers or employees, while engaged in official duties.

EFFECT OF CHANGES MADE BY RECOMMENDED AMENDMENT(S) AS PASSED COMMITTEE (Judiciary): The definition of "news media" is narrowed such that it includes entities engaged in news gathering and disseminating news or information to the

public. The definition of news media no longer includes any person who is or has been a journalist, a scholar, or researcher employed by any institution of higher education, or other individual who, either at the time he or she obtained or prepared the information that is sought, was earning or on a professional track to earn a significant portion of his or her livelihood by obtaining or preparing information for dissemination by any person or entity listed in the definition of news media. News media does not include any person who obtained or prepared the information that is sought while serving in the capacity of an agent, assistant, employee, or supervisor of any news media person or entity.

In all matters relating to compulsory process under this act, a court may conduct any appropriate proceedings required to make necessary findings of fact and conclusions of law.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: None.

Persons Testifying: No one.