

JAN 23 2014

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# A BILL FOR AN ACT

RELATING TO EVIDENCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Act 210, Session  
2 Laws of Hawaii 2008, temporarily established a limited news  
3 media privilege against the compelled disclosure of sources and  
4 unpublished information to a legislative, executive, or judicial  
5 officer or body, or to any other person who may compel  
6 testimony. Subsequently, Act 113, Session Laws of Hawaii 2011,  
7 extended the repeal date of Act 210, Session Laws of Hawaii  
8 2008, from June 30, 2011, to June 30, 2013, and required the  
9 judiciary, through its standing committee on rules of evidence,  
10 to report to the legislature and recommend whether to:

- 11           (1) Retain the current statutory enactment of Act 210,  
12                 Session Laws of Hawaii 2008, under chapter 621, Hawaii  
13                 Revised Statutes;
- 14           (2) Codify Act 210, Session Laws of Hawaii 2008, under  
15                 chapter 626, Hawaii Revised Statutes; or
- 16           (3) Allow Act 210, Session Laws of Hawaii 2008, to be  
17                 repealed.



1 In December 2011, the supreme court standing committee on  
2 the rules of evidence submitted a report to the legislature  
3 recommending that the sunset provision under Act 210, Session  
4 Laws of Hawaii 2008, be repealed and the news media privilege be  
5 codified under chapter 621, Hawaii Revised Statutes.

6 The purpose of this Act is to implement the recommendation  
7 made by the supreme court standing committee on the rules of  
8 evidence by permanently enacting the news media privilege  
9 previously enacted by Act 210, Session Laws of Hawaii 2008, as  
10 amended by Act 113, Session Laws of Hawaii 2011.

11 SECTION 2. Chapter 621, Hawaii Revised Statutes, is  
12 amended by adding a new section to be appropriately designated  
13 and to read as follows:

14 **"§621- Limitation on compellable testimony from**  
15 **journalists and newscasters; exceptions.** (a) A journalist or  
16 newscaster presently or previously employed by or otherwise  
17 professionally associated with any newspaper or magazine or any  
18 digital version thereof operated by the same organization, news  
19 agency, press association, wire service, or radio or television  
20 transmission station or network, shall not be required by a  
21 legislative, executive, or judicial officer or body, or any



1 other authority having the power to compel testimony or the  
2 production of evidence, to disclose, by subpoena or otherwise:

3 (1) The source, or information that could reasonably be  
4 expected to lead to the discovery of the identity of  
5 the source, of any published or unpublished  
6 information obtained by the person while so employed  
7 or professionally associated in the course of  
8 gathering, receiving, or processing information for  
9 communication to the public; or

10 (2) Any unpublished information obtained or prepared by  
11 the person while so employed or professionally  
12 associated in the course of gathering, receiving, or  
13 processing information for communication to the  
14 public.

15 (b) The limitation on compellable testimony established by  
16 this section may also be claimed by and afforded to any  
17 individual who can demonstrate by clear and convincing evidence  
18 that:

19 (1) The individual has regularly and materially  
20 participated in the reporting or publishing of news or  
21 information of substantial public interest for the



- 1           purpose of dissemination to the general public by  
2           means of tangible or electronic media;
- 3       (2) The position of the individual is materially similar  
4           or identical to that of a journalist or newscaster,  
5           taking into account the method of dissemination;
- 6       (3) The interest of the individual in protecting the  
7           sources and unpublished information under subsection  
8           (a) is materially similar to the interest of the  
9           individuals referenced under subsection (a); and
- 10      (4) The public interest is served by affording the  
11           protections of this section in a specific circumstance  
12           under consideration.
- 13      (c) This section shall not apply if:
- 14      (1) Probable cause exists to believe that the person  
15           claiming the privilege has committed, is committing,  
16           or is about to commit a crime;
- 17      (2) The person claiming the privilege has observed the  
18           alleged commission of a crime, but if:
- 19           (A) The interest in maintaining the privilege granted  
20               by this section outweighs the public interest in  
21               disclosure; and



1           (B) The commission of the crime is the act of  
2           communicating or providing the information or  
3           documents at issue,  
4           then the privilege granted by this section may be  
5           asserted;

6           (3) There is substantial evidence that the source or  
7           information sought to be disclosed is material to the  
8           investigation, prosecution, or defense of a felony, or  
9           to a civil action for defamation, and the source or  
10          information sought is:

11          (A) Unavailable, despite exhaustion of reasonable  
12          alternative sources;

13          (B) Noncumulative; and

14          (C) Necessary and relevant to the charge, claim, or  
15          defense asserted;

16          (4) The information sought to be disclosed is critical to  
17          prevent serious harm to life or public safety; or

18          (5) The source consents to the disclosure of unpublished  
19          documents or other tangible materials provided by the  
20          source.

21          (d) No fine or imprisonment shall be imposed against a  
22          person claiming the privilege pursuant to this section for



# S.B. NO. 2974

1 refusal to disclose information privileged pursuant to this  
2 section."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

*[Signature]*

*[Signature]*

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*[Signature]*

*[Signature]*

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*[Signature]*

*[Signature]*



# S.B. NO. 2974

**Report Title:**

Evidence; News Media Privilege

**Description:**

Makes permanent the limited news media privilege against the compelled disclosure of sources and unpublished sources.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

