

A Bill for an Act Relating to Evidence.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 621, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§621- Limitation on compellable testimony from journalists and newscasters; exceptions. (a) A journalist or newscaster presently or previously employed by or otherwise professionally associated with any newspaper or magazine or any digital version thereof operated by the same organization, news agency, press association, wire service, or radio or television transmission station or network, shall not be required by a legislative, executive, or judicial officer or body, or any other authority having the power to compel testimony or the production of evidence, to disclose, by subpoena or otherwise:

- (1) The source, or information that could reasonably be expected to lead to the discovery of the identity of the source, of any published or unpublished information obtained by the person while so employed or professionally associated in the course of gathering, receiving, or processing information for communication to the public; or
- (2) Any unpublished information obtained or prepared by the person while so employed or professionally associated in the course of gathering, receiving, or processing information for communication to the public.

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

- (1) The individual has regularly and materially participated in the reporting or publishing of news or information of substantial public interest for the purpose of dissemination to the general public by means of tangible or electronic media;
- (2) The position of the individual is materially similar or identical to that of a journalist or newscaster, taking into account the method of dissemination;
- (3) The interest of the individual in protecting the sources and unpublished information under subsection (a) is materially similar to the interest of the individuals referenced under subsection (a); and
- (4) The public interest is served by affording the protections of this section in a specific circumstance under consideration.

(c) This section shall not apply if:

- (1) Probable cause exists to believe that the person claiming the privilege has committed, is committing, or is about to commit a crime;
- (2) The person claiming the privilege has observed the alleged commission of a crime, but if:
 - (A) The interest in maintaining the privilege granted by this section outweighs the public interest in disclosure; and
 - (B) The commission of the crime is the act of communicating or providing the information or documents at issue,
 then the privilege granted by this section may be asserted;
- (3) There is substantial evidence that the source or information sought to be disclosed is material to the investigation, prosecution, or defense of a felony, or to a civil action for defamation, and the source or information sought is:

- (A) Unavailable, despite exhaustion of reasonable alternative sources;
 - (B) Noncumulative; and
 - (C) Necessary and relevant to the charge, claim, or defense asserted;
- (4) The information sought to be disclosed is critical to prevent serious harm to life or public safety; or
- (5) The source consents to the disclosure of unpublished documents or other tangible materials provided by the source.
- (d) No fine or imprisonment shall be imposed against a person claiming the privilege pursuant to this section for refusal to disclose information privileged pursuant to this section.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval, and shall be repealed on June 30, 2011.

(Approved July 2, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5