
A BILL FOR AN ACT

RELATING TO EVIDENCE.

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

1 SECTION 1. Act 210, Session Laws of Hawaii 2008, as
2 amended by Act 113, Session Laws of Hawaii 2011, is amended by
3 amending section 1 to read as follows:

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

7 "§621- ~~[Limitation on compellable testimony from~~
8 ~~journalists and newscasters;]~~ News media and broadcast
9 privilege; exceptions. (a) A [~~journalist or newscaster]~~
10 person presently or previously employed by or otherwise
11 professionally associated with any newspaper, periodical, or
12 magazine or any digital version thereof operated by the same
13 organization, news agency, press association, wire service, or
14 radio or television transmission station or network[~~;~~] as a
15 journalist, newscaster, bona fide owner, or editor who receives
16 or has received income from legitimate gathering, writing,
17 editing, processing, interpreting, announcing, or broadcasting
18 of news or information for communication to the public shall not



1 be required by a legislative, executive, or judicial officer or
2 body, or any other authority having the power to compel
3 testimony or the production of evidence, to disclose, by
4 subpoena or otherwise:

5 (1) The source, or information that could reasonably be
6 expected to lead to the discovery of the identity of
7 the source, of any published or unpublished,
8 broadcasted or unbroadcasted, information obtained by
9 the person while so employed or professionally
10 associated in the course of [~~gathering, receiving, or~~
11 ~~processing information for communication to the~~
12 ~~public; or~~] the person's employment or professional
13 association; or

14 (2) Any unpublished or unbroadcasted information obtained
15 or prepared by the person while so employed or
16 professionally associated in the course of [~~gathering,~~
17 ~~receiving, or processing information for communication~~
18 ~~to the public.~~] the person's employment or
19 professional association.

20 (b) The limitation on compellable testimony established by
21 this section may also be claimed by and afforded to any



1 individual who can demonstrate by clear and convincing evidence
2 that:

3 (1) The individual has regularly and materially
4 participated in the reporting or publishing of news or
5 information of substantial public interest for the
6 purpose of dissemination to the general public by
7 means of tangible or electronic media;

8 (2) The position of the individual is materially similar
9 or identical to that of a journalist or newscaster,
10 taking into account the method of dissemination;

11 (3) The interest of the individual in protecting the
12 sources and unpublished information under subsection
13 (a) is materially similar to the interest of the
14 individuals referenced under subsection (a); and

15 (4) The public interest is served by affording the
16 protections of this section in a specific circumstance
17 under consideration.

18 (c) This section shall not apply if:

19 (1) Probable cause exists to believe that the person
20 claiming the privilege has committed, is committing,
21 or is about to commit a crime;



- 1 (2) The person claiming the privilege has observed the
2 alleged commission of a crime, but if:
- 3 (A) The interest in maintaining the privilege granted
4 by this section outweighs the public interest in
5 disclosure; and
- 6 (B) The commission of the crime is the act of
7 communicating or providing the information or
8 documents at issue,
- 9 then the privilege granted by this section may be
10 asserted;
- 11 (3) There is substantial evidence that the source or
12 information sought to be disclosed is material to the
13 investigation, prosecution, or defense of a felony, or
14 to a civil action for defamation, and the source or
15 information sought is:
- 16 (A) Unavailable, despite exhaustion of reasonable
17 alternative sources;
- 18 (B) Noncumulative; and
- 19 (C) Necessary and relevant to the charge, claim, or
20 defense asserted;
- 21 (4) The information sought to be disclosed is critical to
22 prevent serious harm to life or public safety; or



1 (5) The source consents to the disclosure of unpublished
2 documents or other tangible materials provided by the
3 source.

4 (d) No fine or imprisonment shall be imposed against a
5 person claiming the privilege pursuant to this section for
6 refusal to disclose information privileged pursuant to this
7 section." "

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.
14

INTRODUCED BY: _____

Acuna. Bm

JAN 18 2012



H.B. NO. 2016

Report Title:

Evidence; News and Broadcast Media Privilege

Description:

Amends the title of Act 210, Session Laws of Hawaii 2008, to read news and broadcast media privilege. Expands the application of the Act to expressly include bona fide owners or editors of news or broadcast media entities. Clarifies that, where applicable, the news and broadcast media privilege will shield a journalist, newscaster, owner, or editor of a news or broadcast media entity from being compelled to testify or produce the source of information whether or not it has been published or broadcasted, or any unpublished or unbroadcasted information.

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

