

Honolulu, Hawaii

APR 05 2013

RE: H.B. No. 622  
H.D. 1  
S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
H.B. No. 622, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO EVIDENCE,"

begs leave to report as follows:

The purpose and intent of this measure is to amend Act 210,  
Session Laws of Hawaii 2008 (Act 210), as amended, more commonly  
known as the shield law, to:

- (1) Expand the exception to the privilege to include cases where there is substantial evidence that the information sought is material to an investigation, prosecution, or defense of a potential felony or serious crime involving the unlawful injury to individuals or animals or to any civil action;
- (2) Clarify that only those individuals who validly invoke the privilege will be shielded from fine or imprisonment; and
- (3) Repeal the sunset date of Act 210, as amended, to make the privilege permanent.

Your Committee received testimony in support of this measure from the Hawaii Shield Law Coalition, Community Alliance on Prisons, Society of Professional Journalists, Hawaii Chapter of the Society of Professional Journalists, All Hawaii News, Big



Island Press Club, Honolulu Star-Advertiser, Hawaii Publishers Association, Hawaii Reporter, American Civil Liberties Union of Hawaii, and twenty-eight individuals. Testimony in opposition to this measure was submitted by one individual. The Department of the Attorney General submitted comments on this measure.

Your Committee finds that the shield law provides a limited privilege to journalists and those acting in a similar capacity against compulsory disclosure of confidential sources and unpublished information. The Hawaii Shield Coalition testified that thirty-nine states and the District of Columbia have shield laws, but Hawaii's shield law has been cited as a model for a national shield law due to its clarity and breadth of coverage.

Your Committee notes that a majority of the testimony received in support of this measure suggested adopting the language of this measure as introduced, which only repeals the sunset date of Act 210, as amended, to make the privilege permanent. Act 120, as amended by Act 113, Session Laws of Hawaii 2011 (Act 113), will sunset on June 30, 2013. The Hawaii Shield Coalition testified that pursuant to Act 113, the Judiciary Standing Committee on the Rules of Evidence recommended that the sunset date be eliminated and that Act 210 be integrated in chapter 621, Hawaii Revised Statutes. Accordingly, this measure repeals the sunset date of Act 210, as amended, to make the shield law permanent.

Your Committee further notes the concerns raised in the testimony submitted by the Department of the Attorney General. The Department testified that it does not object to making the shield law permanent only to the extent that the privilege applies to professional journalists and their sources. Beyond that, however, the Department testified that parts of Act 210 are unduly expansive and suggested four specific amendments:

- (1) Omit the provision that extends protections beyond professional journalists to non-traditional journalists and bloggers;
- (2) Add an exception for defendants in criminal cases who have a constitutional right to the information;
- (3) Omit the provision extending the privilege to unpublished information that is not reasonably likely to lead to the identification of the sources; and



- (4) Add definitions for a number of terms describing the scope of the privilege, including "news agency" and "press association".

The Department testified that these suggested amendments would remove potentially problematic aspects of the shield law and further protect confidential sources, which is the primary purpose of the privilege. After the hearing on this measure, your Committee sought input and assistance from the Department of the Attorney General, Judiciary Standing Committee on the Rules of Evidence, and American Civil Liberties Union of Hawaii to develop language to further clarify and strengthen the shield law.

The Hawaii Shield Law Coalition testified that there have been no reported problems with the shield law since its enactment five years ago and that the shield law was tested in court once in a case involving a filmmaker working on a documentary about Native Hawaiian burial sites. However, your Committee believes that the privilege could still be potentially problematic and that the shield law merits further amendments to enable a judge to determine whether a journalist meets the standards for invoking the privilege.

Accordingly, your Committee has amended this measure by adopting the language developed with the assistance of the Department of the Attorney General and remarks from the Judiciary Standing Committee on the Rules of Evidence and American Civil Liberties Union of Hawaii that:

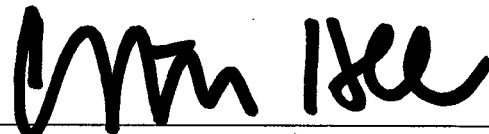
- (1) Amends section 1 to include language that refers to a United States Supreme Court case that held that the First Amendment of the United State Constitution does not provide members of the press with the right to withhold from a grand jury the names of confidential sources and to reflect the inclusion of additional amendments to Act 210, as amended;
- (2) Clarifies that a journalist or newscaster may invoke the privilege based on previous employment only to the extent that the information was obtained during the period of the journalist's or newscaster's previous employment;



- (3) Deletes language that extends the privilege to unpublished information that is not reasonably likely to lead to the identification of the sources;
- (4) Deletes language that extends protections beyond professional journalists to non-traditional journalists and bloggers;
- (5) Adds an exception for defendants in criminal cases who have a constitutional right to the information;
- (6) Adds definitions of "journalist", "magazine", "news agency", "newscaster", "newspaper", "press association", and "wire service"; and
- (7) Makes technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 622, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 622, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



CLAYTON HEE, Chair



