

JAN 23 2015

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 news media
3 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4 unpublished information to a legislative, executive, or judicial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 the rules of
10 evidence, to report to the legislature and recommend whether to:

11 (1) Codify Act 210, Session Laws of Hawaii 2008, under
12 chapter 621, Hawaii Revised Statutes, relating to
13 evidence and witnesses, generally;

14 (2) Codify Act 210, Session Laws of Hawaii 2008, under
15 chapter 626, Hawaii Revised Statutes, the Hawaii rules
16 of evidence; or



1 (3) Allow Act 210, Session Laws of Hawaii 2008, to be
2 repealed.

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6 Laws of Hawaii 2008, be repealed and the news media privilege be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

9 In 2013, the legislature considered H.B. No. 622, C.D. 1
10 (2013), which would have:

11 (1) Enacted the recommendation made by the supreme court
12 standing committee on the rules of evidence by
13 repealing the sunset date of Act 210, Session Laws of
14 Hawaii 2008, as amended by Act 113, Session Laws of
15 Hawaii 2011, to make permanent the news media
16 privilege; and

17 (2) Clarified and defined the applicability of Act 210,
18 Session Laws of Hawaii 2008, as amended by Act 113,
19 Session Laws of Hawaii 2011.



1 However, that measure did not pass and as a result Act 210,
2 Session Laws of Hawaii 2008, as amended by Act 113, Session Laws
3 of Hawaii 2011, was repealed on June 30, 2013.

4 The purpose of this Act is to:

5 (1) Re-enact Act 210, Session Laws of Hawaii 2008, as
6 amended by Act 113, Session Laws of Hawaii 2011; and

7 (2) Incorporate amendments to Act 210, Session Laws of
8 Hawaii 2008, as amended by Act 113, Session Laws of
9 Hawaii 2011, that were included in H.B. No. 622,
10 C.D. 1 (2013).

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, or
19 any news agency, press association, wire service, or radio or
20 television transmission station or network, shall not be
21 required by a legislative, executive, or judicial officer or



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

4 (1) The source, or information that could reasonably be
5 expected to lead to the discovery of the identity of
6 the source, of any published or unpublished
7 information obtained by the person while so employed
8 or professionally associated in the course of
9 gathering, receiving, or processing information for
10 communication to the public; provided that the
11 assertion of the privilege based on previous
12 employment as a journalist or newscaster shall extend
13 only to the information obtained during the previous
14 period of employment; or

15 (2) Any unpublished information obtained or prepared by
16 the person while so employed or professionally
17 associated in the course of gathering, receiving, or
18 processing information for communication to the
19 public.

20 (b) This section shall not apply if:



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

4 (2) The person claiming the privilege has observed the
5 alleged commission of a crime, but if:

6 (A) The interest in maintaining the privilege granted
7 by this section outweighs the public interest in
8 disclosure; and

9 (B) The commission of the crime is the act of
10 communicating or providing the information or
11 documents at issue,

12 then the privilege granted by this section may be
13 asserted;

14 (3) There is substantial evidence that the source or
15 information sought to be disclosed is material to the
16 investigation, prosecution, or defense of a felony,
17 potential felony, or serious crime involving unlawful
18 injury to persons or animals, or to a civil action,
19 and the source or information sought is:

20 (A) Unavailable, despite exhaustion of reasonable
21 alternative sources;



1 (B) Noncumulative; and

2 (C) Necessary and relevant to the charge, claim, or
3 defense asserted;

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

6 (5) The source consents to the disclosure of unpublished
7 documents or other tangible materials provided by the
8 source.

9 (c) No fine or imprisonment shall be imposed against a
10 person validly claiming a privilege pursuant to this section.

11 (d) For purposes of this section:

12 "Journalist" or "newscaster" means an individual who, for
13 financial gain or livelihood, engages in the gathering,
14 preparing, collecting, writing, editing, filming, taping, or
15 photographing of news intended for a newspaper, magazine, news
16 agency, press association, wire service, or radio or television
17 station or network.

18 "Magazine" means a publication containing news that is
19 published and distributed not less than four times a year either
20 through print or digital means for at least one year with a paid
21 circulation.



1 "News agency" means a commercial organization that collects
2 and supplies news to subscribing newspapers, magazines, or radio
3 or television broadcasters.

4 "Newspaper" means a paper with a paid circulation that is
5 printed and distributed not less than once a week for at least
6 one year and contains news; articles of opinion, such as
7 editorials, features, and advertising; or other matters of
8 current interest.

9 "Press association" means an association of newspapers or
10 magazines formed to gather and distribute news to its members.

11 "Wire service" means a news agency that distributes
12 syndicated news copy by wire to subscribing newspapers,
13 magazines, or radio or television broadcasters."

14 SECTION 3. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval
16 and shall be repealed on January 1, 2018.

17

INTRODUCED BY:

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S.B. NO. 510

Report Title:

Media Shield Law; Privilege Against Disclosure

Description:

Provides a conditional exception to journalists and newscasters from being compelled to disclose a source of information or unpublished information. Repeals on 1/1/2018.

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

