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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 (Act 210), temporarily established a limited  
3 news media privilege against the compelled disclosure of sources  
4 and unpublished information to a legislative, executive, or  
5 judicial 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 from June 30, 2011, to  
8 June 30, 2013, and required the judiciary, through its standing  
9 committee on the rules of evidence, to report to the legislature  
10 and recommend whether to:

- 11           (1) Codify Act 210 under chapter 621, Hawaii Revised  
12                 Statutes, relating to evidence and witnesses,  
13                 generally;
- 14           (2) Codify Act 210 under chapter 626, Hawaii Revised  
15                 Statutes, the Hawaii rules of evidence; or
- 16           (3) Allow Act 210 to be repealed.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3 recommending that the sunset provision under Act 210 be repealed  
4 and the news media privilege be codified under chapter 621,  
5 Hawaii Revised Statutes.

6 The purpose of this Act is to enact the recommendation made  
7 by the supreme court standing committee on the rules of evidence  
8 by enacting a permanent news media privilege.

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

12 "§621- Limitation on compellable testimony from  
13 journalists and newscasters; exceptions. (a) A journalist or  
14 newscaster presently or previously employed by or otherwise  
15 professionally associated with any newspaper or magazine, news  
16 agency, press association, wire service, or radio or television  
17 transmission station or network, or digital news website shall  
18 not be required by a legislative, executive, or judicial officer  
19 or body, or any other authority having the power to compel  
20 testimony or the production of evidence, to disclose, by  
21 subpoena or otherwise:



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3       the source, of any published or unpublished  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

8       (2) Any unpublished information obtained or prepared 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.

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

17       (1) The individual has regularly and materially  
18       participated in the reporting or publishing of news or  
19       information of substantial public interest for the  
20       purpose of dissemination to the general public by  
21       means of tangible or electronic media;



- 1        (2) The position of the individual is materially similar  
2        or identical to that of a journalist or newscaster,  
3        taking into account the method of dissemination;
- 4        (3) The interest of the individual in protecting the  
5        sources and unpublished information under subsection  
6        (a) is materially similar to the interest of the  
7        individuals referenced under subsection (a); and
- 8        (4) The public interest is served by affording the  
9        protections of this section in a specific circumstance  
10       under consideration.
- 11       (c) This section shall not apply if:
- 12       (1) Probable cause exists to believe that the person  
13       claiming the privilege has committed, is committing,  
14       or is about to commit a crime;
- 15       (2) The person claiming the privilege has observed the  
16       alleged commission of a crime; provided that the  
17       privilege granted by this section may be asserted if:
- 18       (A) The interest in maintaining the privilege granted  
19       by this section outweighs the public interest in  
20       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           (3) There is substantial evidence that the source or  
5                           information sought to be disclosed is material to the  
6                           investigation, prosecution, or defense of a felony, or  
7                           to a civil action for defamation, and the source or  
8                           information sought is:

9           (A) Unavailable, despite exhaustion of reasonable  
10                           alternative sources;

11           (B) Noncumulative; and

12           (C) Necessary and relevant to the charge, claim, or  
13                           defense asserted;

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

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

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



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

3 (e) The privilege described in this section may be claimed  
4 by journalists and newscasters as described in subsection (a)  
5 and individuals as described in subsection (b). The privilege  
6 shall not be claimed by persons who were the source of  
7 information."

8 SECTION 3. New statutory material is underscored.

9 SECTION 4. This Act shall take effect on June 30, 3000.



**Report Title:**

Journalists and Newscasters; Disclosure

**Description:**

Limits compelled disclosure of sources or unpublished information for journalists, newscasters, and persons participating in collection or dissemination of news or information of substantial public interest. Establishes exceptions. Effective 6/30/3000. (Proposed SD1)

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

