

ACT 126

H.B. NO. 1502

A Bill for an Act Relating to Evidence.

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

SECTION 1. The legislature finds that Act 210, Session Laws of Hawaii 2008 (Act 210), temporarily established a limited news media privilege against the compelled disclosure of sources and unpublished information to a legislative, executive, or judicial officer or body, or to any other person who may compel testimony. Subsequently, Act 113, Session Laws of Hawaii 2011, extended the repeal date of Act 210 from June 30, 2011, to June 30, 2013, and required the judiciary, through its standing committee on the rules of evidence, to report to the legislature and recommend whether to:

- (1) Codify Act 210 under chapter 621, Hawaii Revised Statutes, relating to evidence and witnesses, generally;
- (2) Codify Act 210 under chapter 626, Hawaii Revised Statutes, the Hawaii rules of evidence; or
- (3) Allow Act 210 to be repealed.

In December 2011, the supreme court standing committee on the rules of evidence submitted a report to the legislature recommending that the sunset provision under Act 210 be repealed and the news media privilege be codified under chapter 621, Hawaii Revised Statutes.

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

SECTION 2. 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, magazine, news agency, press association, wire service, radio or television transmission station or network, or digital news website 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that could reasonably be expected to lead to the discovery of the identity of the source, of any published or unpublished information obtained by the person while so employed or professionally associated in the course of gathering, receiving, or processing information for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- (2) Any unpublished information obtained or prepared by the person while so employed or professionally associated in the course of gathering, receiving, or processing information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; provided that the privilege granted by this section may be asserted 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;
- (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.
- (e) The privilege described in this section may be claimed by journalists and newscasters as described in subsection (a) and individuals as described in subsection (b). The privilege shall not be claimed by persons who were the source of information.”

SECTION 3. New statutory material is underscored.¹

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

(Approved June 23, 2023.)

Note

1. Edited pursuant to HRS §23G-16.5.