
HOUSE BILL 2452

State of Washington

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By Representatives Kessler, Armstrong, Clibborn, Priest, Nixon, Blake, Hunt, Morrell, Grant, Newhouse, Dickerson, Kagi, Ericksen, Ericks, Wood, Upthegrove, Ormsby, Roberts and O'Brien; by request of Attorney General

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1 AN ACT Relating to a privilege from compelled testimony for members
2 of the news media; and adding a new chapter to Title 5 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) Except as provided in subsection (2) of
5 this section, no judicial, legislative, administrative, or other body
6 with the power to issue a subpoena or other compulsory process may
7 compel the news media to testify, produce, or otherwise disclose:

8 (a) The source of any news or information or any information that
9 would tend to identify the source where such source has a reasonable
10 expectation of confidentiality; or

11 (b) Any news or information obtained or prepared by the news media
12 in its capacity in gathering, receiving, or processing news or
13 information for potential communication to the public, including, but
14 not limited to, any notes, outtakes, photographs, video or sound tapes,
15 film, or other data of whatever sort in any medium now known or
16 hereafter devised.

17 (2) A court may compel disclosure of the news or information
18 described in subsection (1)(b) of this section if the court finds that

1 the party seeking such news or information established by clear and
2 convincing evidence:

3 (a)(i) In a criminal investigation or prosecution, based on
4 information other than that information being sought, that there are
5 reasonable grounds to believe that a crime has occurred; or

6 (ii) In a civil action or proceeding, based on information other
7 than that information being sought, that there is a prima facie cause
8 of action; and

9 (b) In all matters, whether criminal or civil, that:

10 (i) The news or information is highly material and relevant;

11 (ii) The news or information is critical or necessary to the
12 maintenance of a party's claim, defense, or proof of an issue material
13 thereto;

14 (iii) The party seeking such news or information has used
15 reasonable efforts to obtain it from alternative sources; and

16 (iv) There is a compelling public interest in the disclosure. A
17 court may consider whether or not the news or information was obtained
18 from a confidential source in evaluating the public interest in
19 disclosure.

20 (3) The protection from compelled disclosure contained in
21 subsection (1) of this section also applies to any subpoena issued to,
22 or other compulsory process against, a nonnews media party where such
23 subpoena or process seeks records, information, or other communications
24 relating to business transactions between such nonnews media party and
25 the news media for the purpose of discovering the identity of a source
26 or obtaining news or information described in subsection (1) of this
27 section. Whenever a subpoena is issued to, or other compulsory process
28 is initiated against, a nonnews media party where such subpoena or
29 process seeks information or communications on business transactions
30 with the news media, the affected news media shall be given reasonable
31 and timely notice of the subpoena or compulsory process before it is
32 executed or initiated, as the case may be, and an opportunity to be
33 heard. In the event that the subpoena to, or other compulsory process
34 against, the nonnews media party is in connection with a criminal
35 investigation in which the news media is the express target, and
36 advance notice as provided in this section would pose a clear and
37 substantial threat to the integrity of the investigation, the
38 governmental authority shall so certify to such a threat in court and

1 notification of the subpoena or compulsory process shall be given to
2 the affected news media as soon thereafter as it is determined that
3 such notification will no longer pose a clear and substantial threat to
4 the integrity of the investigation.

5 (4) Publication or dissemination by the news media of news or
6 information described in subsection (1) of this section, or a portion
7 thereof, shall not constitute a waiver of the protection from compelled
8 disclosure that is contained in subsection (1) of this section.

9 (5) The source of any news or information or any news or
10 information that is protected from disclosure hereunder shall be
11 inadmissible in any action, proceeding, or hearing before any judicial,
12 legislative, administrative, or other body.

13 (6) The term "news media" means:

14 (a) Any newspaper, magazine or other periodical, book publisher,
15 news agency, wire service, radio or television station or network,
16 cable or satellite station or network, or audio or audiovisual
17 production company, or any person or entity that is in the regular
18 business of disseminating news or information to the public by any
19 means, including, but not limited to, print, broadcast, photographic,
20 mechanical, or electronic distribution;

21 (b) Any person who is or has been a journalist, a researcher or
22 scholar employed by any institution of higher education, or other
23 individual who either: (i) At the time he or she obtained or prepared
24 the information that is sought was earning a substantial portion of his
25 or her livelihood by obtaining or preparing information for
26 dissemination by any person or entity listed in (a) of this subsection,
27 or (ii) obtained or prepared the information that is sought while
28 serving in the capacity of an agent, assistant, employee, or supervisor
29 of any person or entity listed in (a) or (b)(i) of this subsection; or

30 (c) Any parent, subsidiary, or affiliate of the entities listed in
31 (a) or (b) of this subsection to the extent that the subpoena or other
32 compulsory process seeks news or information described in subsection
33 (1) of this section.

34 NEW SECTION. **Sec. 2.** Section 1 of this act constitutes a new
35 chapter in Title 5 RCW.

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