

HB 1366 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/09/2007

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

16 (2) A court may compel disclosure of the news or information
17 described in subsection (1)(b) of this section if the court finds that
18 the party seeking such news or information established by clear and
19 convincing evidence:

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

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

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

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

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

1 (iii) The party seeking such news or information has exhausted all
2 reasonable and available means to obtain it from alternative sources;
3 and

4 (iv) There is a compelling public interest in the disclosure. A
5 court may consider whether or not the news or information was obtained
6 from a confidential source in evaluating the public interest in
7 disclosure.

8 (3) The protection from compelled disclosure contained in
9 subsection (1) of this section also applies to any subpoena issued to,
10 or other compulsory process against, a nonnews media party where such
11 subpoena or process seeks records, information, or other communications
12 relating to business transactions between such nonnews media party and
13 the news media for the purpose of discovering the identity of a source
14 or obtaining news or information described in subsection (1) of this
15 section. Whenever a subpoena is issued to, or other compulsory process
16 is initiated against, a nonnews media party where such subpoena or
17 process seeks information or communications on business transactions
18 with the news media, the affected news media shall be given reasonable
19 and timely notice of the subpoena or compulsory process before it is
20 executed or initiated, as the case may be, and an opportunity to be
21 heard. In the event that the subpoena to, or other compulsory process
22 against, the nonnews media party is in connection with a criminal
23 investigation in which the news media is the express target, and
24 advance notice as provided in this section would pose a clear and
25 substantial threat to the integrity of the investigation, the
26 governmental authority shall so certify to such a threat in court and
27 notification of the subpoena or compulsory process shall be given to
28 the affected news media as soon thereafter as it is determined that
29 such notification will no longer pose a clear and substantial threat to
30 the integrity of the investigation.

31 (4) Publication or dissemination by the news media of news or
32 information described in subsection (1) of this section, or a portion
33 thereof, shall not constitute a waiver of the protection from compelled
34 disclosure that is contained in subsection (1) of this section. In the
35 event that the fact of publication of news or information must be
36 proved in any proceeding, that fact and the contents of the publication
37 may be established by judicial notice.

38 (5) The term "news media" means:

1 (a) Any newspaper, magazine or other periodical, book publisher,
2 news agency, wire service, radio or television station or network,
3 cable or satellite station or network, or audio or audiovisual
4 production company, or any entity that is in the regular business of
5 news gathering and disseminating news or information to the public by
6 any means, including, but not limited to, print, broadcast,
7 photographic, mechanical, internet, or electronic distribution;

8 (b) Any person who is or has been an employee, agent, or
9 independent contractor of any entity listed in (a) of this subsection,
10 who is or has been engaged in bona fide news gathering for such entity,
11 and who obtained or prepared the news or information that is sought
12 while serving in that capacity; or

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

17 (6) In all matters adjudicated pursuant to this section, a court of
18 competent jurisdiction may exercise its inherent powers to conduct all
19 appropriate proceedings required in order to make necessary findings of
20 fact and enter conclusions of law.

21 NEW SECTION. **Sec. 2.** Section 1 of this act constitutes a new
22 chapter in Title 5 RCW."

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23 On page 1, line 2 of the title, after "media;" strike the remainder
24 of the title and insert "and adding a new chapter to Title 5 RCW."

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