

JAN 18 2008

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

4           "§621-        Protections for journalists against compelled  
5 disclosure; exceptions. (a) As used in this section, unless  
6 the context otherwise requires:

7           "News" or "information" means written, oral, pictorial,  
8 photographic, or electronically recorded information or  
9 communication concerning local, national or worldwide events or  
10 other matters of public concern or public interest or affecting  
11 the public welfare.

12           "Journalist" means any person, company, or entity, or the  
13 employees, independent contractors, or agents of that person,  
14 company, or entity, regularly engaged in the gathering,  
15 preparing, compiling, photographing, recording, writing,  
16 editing, reporting, or publishing of news or information for  
17 dissemination or communication to the public via news media and



1 that possesses the intent at the inception of the news-gathering  
2 process to disseminate the news or information to the public;

3 "News media" means newspapers, magazines, journals, press  
4 associations, news agencies, wire services, radio, television or  
5 any other printed, photographic, mechanical, or electronic means  
6 of disseminating or communicating news or information to the  
7 public.

8 "Compelling authority" means:

- 9 (1) Any court, grand jury, coroner's inquest, jury, or any  
10 officer thereof;  
11 (2) The legislature or any committee or officer thereof;  
12 (3) Any department, agency, or commission of the state;  
13 (4) Any county governing body or committee thereof or any  
14 officer of a county government; or  
15 (5) Any other authority having the power to compel  
16 testimony or the production of evidence by subpoena or  
17 other means.

18 (b) Except as provided in subsections (c) and (d) of this  
19 section, a journalist shall not be required by any compelling  
20 authority to disclose:

- 21 (1) The source of any published or unpublished, broadcast  
22 or nonbroadcast, disseminated or undissemintated news



1           or information obtained or created by the journalist  
2           in a newsgathering capacity, whether or not the source  
3           has been promised confidentiality;

4           (2) Any news or information obtained or created by the  
5           journalist in a newsgathering capacity that has not  
6           been published, broadcast, or otherwise disseminated  
7           to the public, in whole or in part, including:

8           (A) Notes;

9           (B) Outakes;

10          (C) Photographs or photographic negatives;

11          (D) Video and sound tapes;

12          (E) Film;

13          (F) Any other form of original work product, document  
14          or data; and

15          (G) Other data, irrespective of its nature, not  
16          itself disseminated in any manner to the public.

17          (c) A court may compel disclosure of news or information,  
18          if the court finds that the party seeking news or information  
19          protected under subsection (b) (2) has established by clear and  
20          convincing evidence that:

21          (1) The news or information is relevant to a significant  
22          legal issue before a compelling authority;



1       (2) The news or information cannot be obtained from  
2       alternative sources; and

3       (3) There is a compelling and overriding interest  
4       requiring disclosure of the news or information where  
5       the disclosure is necessary to prevent injustice.

6       A court may not compel disclosure under this subsection of the  
7       source of any news or information protected under subsection  
8       (b) (1).

9       (d) Notwithstanding any provisions of this section, a  
10       court may compel disclosure of the source of news or information  
11       if the court finds that the party seeking the source of news or  
12       information protected under subsection (b) (1) has established by  
13       clear and convincing evidence that disclosure is necessary to  
14       prevent imminent death or significant bodily harm.

15       (e) This section shall not apply where probable cause  
16       exists to believe that the journalist has committed, is  
17       committing, or is about to commit criminal or tortious conduct.  
18       This subsection shall not apply where the criminal or tortious  
19       conduct committed, being committed or about to be committed by  
20       the journalist is the act of disseminating or communicating the  
21       news or information sought for disclosure.



1        (e) The content of any disclosure compelled under  
2 subsections (c) or (d) shall be narrowly tailored in subject  
3 matter and time covered so as to avoid compelling production of  
4 peripheral, nonessential, or speculative news or information.

5        (f) No fine or imprisonment shall be imposed against a  
6 journalist for refusal to disclose any news or information or  
7 source protected from disclosure under this section.

8        SECTION 2. This Act does not affect the rights or duties  
9 that matured, penalties that were incurred, and proceedings that  
10 were begun, before its effective date.

11        SECTION 3. New statutory material is underscored.

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

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14        INTRODUCED BY:

*[Handwritten signature]*  
*Will Egan*  
*James R. Frongia*  
*Sandra Trimble*

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**Report Title:**

Journalists; Disclosure

**Description:**

Protects journalists from compelled disclosure of news or information and the sources of news or information. Establishes exceptions.

