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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, temporarily established a limited news  
3 media privilege against the compelled disclosure of sources and  
4 unpublished information to a legislative, executive, or judicial  
5 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, Session Laws of Hawaii  
8 2008, from June 30, 2011, to June 30, 2013, and required the  
9 judiciary, through its standing committee on the rules of  
10 evidence, to report to the legislature and recommend whether to:

- 11           (1) Codify Act 210, Session Laws of Hawaii 2008, under  
12           chapter 621, Hawaii Revised Statutes, relating to  
13           evidence and witnesses, generally;
- 14           (2) Codify Act 210, Session Laws of Hawaii 2008, under  
15           chapter 626, Hawaii Revised Statutes, the Hawaii rules  
16           of evidence; or
- 17           (3) Allow Act 210, Session Laws of Hawaii 2008, to be  
18           repealed.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, Session  
4 Laws of Hawaii 2008, be repealed and the news media privilege be  
5 codified under chapter 621, Hawaii Revised Statutes, with  
6 suggestions for amendments.

7           The purpose of this Act is to enact the recommendation made  
8 by the supreme court standing committee on the rules of evidence  
9 by repealing the sunset date of Act 210, Session Laws of Hawaii  
10 2008, as amended by Act 113, Session Laws of Hawaii 2011, which  
11 makes permanent the news media privilege, and incorporating some  
12 of the suggestions made by the standing committee.

13           SECTION 2. Act 210, Session Laws of Hawaii 2008, as  
14 amended by Act 113, Session Laws of Hawaii 2011, is amended as  
15 follows:

16           1. By amending section 1 to read:

17           "SECTION 1. Chapter 621, Hawaii Revised Statutes, is  
18 amended by adding a new section to be appropriately designated  
19 and to read as follows:

20           "**§621- Limitation on compellable testimony from**  
21 **journalists and newscasters; exceptions.** (a) A journalist or  
22 newscaster presently or previously employed by or otherwise



1 professionally associated with any newspaper or magazine or any  
2 digital version thereof operated by the same organization, news  
3 agency, press association, wire service, or radio or television  
4 transmission station or network, shall not be required by a  
5 legislative, executive, or judicial officer or body, or any  
6 other authority having the power to compel testimony or the  
7 production of evidence, to disclose, by subpoena or otherwise:

8 (1) The source, or information that could reasonably be  
9 expected to lead to the discovery of the identity of  
10 the source, of any published or unpublished  
11 information obtained by the person while so employed  
12 or professionally associated in the course of  
13 gathering, receiving, or processing information for  
14 communication to the public; or

15 (2) Any unpublished information obtained or prepared by  
16 the person while so employed or professionally  
17 associated in the course of gathering, receiving, or  
18 processing information for communication to the  
19 public.

20 (b) The limitation on compellable testimony established by  
21 this section may also be claimed by and afforded to any



1 individual who can demonstrate by clear and convincing evidence  
2 that:

- 3 (1) The individual has regularly and materially  
4 participated in the reporting or publishing of news or  
5 information of substantial public interest for the  
6 purpose of dissemination to the general public by  
7 means of tangible or electronic media;
- 8 (2) The position of the individual is materially similar  
9 or identical to that of a journalist or newscaster,  
10 taking into account the method of dissemination;
- 11 (3) The interest of the individual in protecting the  
12 sources and unpublished information under subsection  
13 (a) is materially similar to the interest of the  
14 individuals referenced under subsection (a); and
- 15 (4) The public interest is served by affording the  
16 protections of this section in a specific circumstance  
17 under consideration.
- 18 (c) This section shall not apply if:
- 19 (1) Probable cause exists to believe that the person  
20 claiming the privilege has committed, is committing,  
21 or is about to commit a crime;



- 1           (2) The person claiming the privilege has observed the  
2           alleged commission of a crime, but if:
- 3           (A) The interest in maintaining the privilege granted  
4           by this section outweighs the public interest in  
5           disclosure; and
- 6           (B) The commission of the crime is the act of  
7           communicating or providing the information or  
8           documents at issue,  
9           then the privilege granted by this section may be  
10          asserted;
- 11          (3) There is substantial evidence that the source or  
12          information sought to be disclosed is material to the  
13          investigation, prosecution, or defense of a felony,  
14          potential felony, or serious crime involving unlawful  
15          injury to persons or animals, or to a civil action  
16          [~~for defamation~~], and the source or information sought  
17          is:
- 18          (A) Unavailable, despite exhaustion of reasonable  
19          alternative sources;
- 20          (B) Noncumulative; and
- 21          (C) Necessary and relevant to the charge, claim, or  
22          defense asserted;



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

3 (5) The source consents to the disclosure of unpublished  
4 documents or other tangible materials provided by the  
5 source.

6 (d) No fine or imprisonment shall be imposed against a  
7 person validly claiming [~~the~~] a privilege pursuant to this  
8 section [~~for refusal to disclose information privileged pursuant~~  
9 ~~to this section~~]."

10 2. By amending section 3 to read:

11 "SECTION 3. This Act shall take effect upon its approval  
12 [~~and shall be repealed on June 30, 2013~~]."

13 SECTION 3. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on June 29, 2013.



**Report Title:**

Evidence; News Media Privilege

**Description:**

Makes permanent the limited news media privilege against the compelled disclosure of sources and unpublished sources. Expands the exceptions to claiming the privilege. Clarifies that only persons who validly invoke the privilege will be shielded from fines or imprisonment. Effective June 29, 2013. (HB622 HD1)

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

