
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4 unpublished information to a legislative, executive, or judicial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



1 (3) Allow Act 210, Session Laws of Hawaii 2008, to be
2 repealed.

3 In December 2011, the supreme court standing committee on
4 the rules of evidence submitted a report to the legislature
5 recommending that the sunset provision under Act 210, Session
6 Laws of Hawaii 2008, be repealed and the news media privilege be
7 codified under chapter 621, Hawaii Revised Statutes, with
8 suggestions for amendments.

9 Act 210, Session Laws of Hawaii 2008, expired on June 30,
10 2013, pursuant to the extended sunset date included in Act 113,
11 Session Laws of Hawaii 2011. There is currently no operative
12 news media privilege in Hawaii state law. The purpose of this
13 Act is to enact the recommendation made by the supreme court
14 standing committee on the rules of evidence by permanently
15 codifying the news media privilege originally enacted through
16 Act 210, Session Laws of Hawaii 2008, as amended by Act 113,
17 Session Laws of Hawaii 2011, and incorporating some of the
18 suggestions made by the standing committee.

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



1 "§621- Limitation on compellable testimony from
2 journalists and newscasters; exceptions. (a) A journalist or
3 newscaster presently or previously employed by or otherwise
4 professionally associated with any newspaper or magazine or any
5 digital version thereof operated by the same organization, news
6 agency, press association, wire service, or radio or television
7 transmission station or network, shall not be required by a
8 legislative, executive, or judicial officer or body, or any
9 other authority having the power to compel testimony or the
10 production of evidence, to disclose, by subpoena or otherwise:

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13 the source, of any published or unpublished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

18 (2) Any unpublished information obtained or prepared by
19 the person while so employed or professionally
20 associated in the course of gathering, receiving, or



1 processing information for communication to the
2 public.

3 (b) The limitation on compellable testimony established by
4 this section may also be claimed by and afforded to any
5 individual who can demonstrate by clear and convincing evidence
6 that:

7 (1) The individual has regularly and materially
8 participated in the reporting or publishing of news or
9 information of substantial public interest for the
10 purpose of dissemination to the general public by
11 means of tangible or electronic media;

12 (2) The position of the individual is materially similar
13 or identical to that of a journalist or newscaster,
14 taking into account the method of dissemination;

15 (3) The interest of the individual in protecting the
16 sources and unpublished information under subsection

17 (a) is materially similar to the interest of the
18 individuals referenced under subsection (a); and

19 (4) The public interest is served by affording the
20 protections of this section in a specific circumstance
21 under consideration.



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- 1 (c) This section shall not apply if:
- 2 (1) Probable cause exists to believe that the person
3 claiming the privilege has committed, is committing,
4 or is about to commit a crime;
- 5 (2) The person claiming the privilege has observed the
6 alleged commission of a crime, but if:
- 7 (A) The interest in maintaining the privilege granted
8 by this section outweighs the public interest in
9 disclosure; and
- 10 (B) The commission of the crime is the act of
11 communicating or providing the information or
12 documents at issue,
- 13 then the privilege granted by this section may be
14 asserted;
- 15 (3) There is substantial evidence that the source or
16 information sought to be disclosed is material to the
17 investigation, prosecution, or defense of a felony,
18 potential felony, or serious crime involving unlawful
19 injury to persons or animals, or to a civil action,
20 and the source or information sought is:



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- 1 (A) Unavailable, despite exhaustion of reasonable
- 2 alternative sources;
- 3 (B) Noncumulative; and
- 4 (C) Necessary and relevant to the charge, claim, or
- 5 defense asserted;
- 6 (4) The information sought to be disclosed is critical to
- 7 prevent serious harm to life or public safety; or
- 8 (5) The source consents to the disclosure of unpublished
- 9 documents or other tangible materials provided by the
- 10 source.
- 11 (d) No fine or imprisonment shall be imposed against a
- 12 person validly claiming a privilege pursuant to this section."

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. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *St. Clair, Mike*

JAN 21 2015



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Report Title:

Evidence; News Media Privilege

Description:

Creates a news media privilege against the compelled disclosure of sources and unpublished sources, with limited exceptions.

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

