

S.96

An Act relating to a news media privilege

House Committee on Judiciary

April 7, 2017

Testimony of Luke Martland

Current law

- State v. St. Peter (1974)
- Re Inquest Subpoena (WCAX) (2005)
- Take aways:
 - Some protection
 - More limited than S.96
 - At least as to a criminal proceeding, if confidential, moving party must show that there is no other source for information and relevant and material

Structure of bill

Bill creates a new 12 V.S.A. § 1616 within the subchapter concerning privileges

Section 1:

- (a) Definitions
- (b) Sets forth the privilege; two-tiered approach
 - Confidential: Absolute privilege
 - Nonconfidential: Presumption privilege, but disclosure can be ordered upon a showing
 - Third party disclosure also prohibited
- (c) Waiver

Section 2: Effective date

(a) Definitions

Defined terms: “Journalist” & “Journalism”

Take aways:

- Broad definitions
- Includes “old” and “new” media
- Includes paid and unpaid
- Attempt to exclude “Facebook crank”
- Bill prospective, but a case may “reach back” and concern pre-passage journalism

(b)(1) First tier: Absolute privilege for confidential information

(1) No court ... or other body with the power to issue a subpoena shall compel:

- (A) Journalist to disclose news or information obtained or received in confidence, including:
 - Identity of source or information
 - News or information that is not published

Third-party disclosure

(b)(1) No court or other body with subpoena power shall compel:

- (B) “a person other than a journalist to disclose news or information obtained or received from a journalist if a journalist could not be compelled to disclose the news or information pursuant to subdivision (A) of this subdivision (1)”

Third-party disclosure

- Could a journalist be forced to disclose this news or information?
- Is moving party trying to force a third party (a nonjournalist) to disclose this same information?
- Was the information obtained or received from a journalist?
 - Or, was information obtained independently?

(b)(2) Second tier: Qualified privilege for nonconfidential information

(2) No court ... or other body with the power to issue a subpoena shall compel:

- (A) Journalist to disclose news or information NOT obtained or received in confidence, unless moving party can show:
 - Highly material to significant legal issue
 - Could not, with due diligence, be obtained
 - Compelling need
- (B) Indirect disclosure

Waiver & effective date

- (c) No implication of waiver
- Section 2: Effective date