

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred Senate
3 Bill No. 96 entitled “An act relating to a news media privilege” respectfully
4 reports that it has considered the same and recommends that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

7 Sec. 1. 12 V.S.A. § 1616 is added to read:

8 § 1616. JOURNALIST’S PRIVILEGE

9 (a) Definitions. As used in this section:

10 (1) “Journalist” means:

11 (A) an individual or organization engaging in journalism or assisting
12 an individual or organization engaging in journalism at the time the
13 information sought to be compelled pursuant to subsection (b) of this section
14 was obtained; or

15 (B) any supervisor, employer, parent company, subsidiary, or affiliate
16 of an individual or organization engaging in journalism at the time the
17 information sought to be compelled pursuant to subsection (b) of this section
18 was obtained.

19 (2) “Journalism” means:

20 (A) investigating issues or events of public interest for the purpose of
21 reporting, publishing, or distributing news or information to the public,

1 whether or not the news or information is ultimately published or
2 distributed; or

3 (B) preparing news or information concerning issues or events of
4 public interest for publishing or distributing to the public, whether or not the
5 news or information is ultimately published or distributed.

6 (b) Compelled disclosure by a journalist.

7 (1) No court or legislative, administrative, or other body with the power
8 to issue a subpoena shall compel a journalist to disclose information obtained
9 or received in confidence, including:

10 (A) the identity of the source of that information;

11 (B) information that may indirectly reveal the identity of the source
12 of that information; or

13 (C) information that is not published or disseminated, including
14 notes, outtakes, photographs, photographic negatives, video or audio
15 recordings, film, or other data.

16 (2) No court or legislative, administrative, or other body with the power
17 to issue a subpoena shall compel a journalist to disclose information that was
18 not obtained or received in confidence unless it finds that the party seeking the
19 news or information establishes by clear and convincing evidence that:

20 (A) the news or information is highly material or relevant to a
21 significant legal issue before the court or other body;

1 (B) the news or information could not, with due diligence, be
2 obtained by alternative means; and

3 (C) there is a compelling need for disclosure.

4 (c) Compelled disclosure by a third party.

5 (1) No court or legislative, administrative, or other body with the power
6 to issue a subpoena shall compel a third party to disclose information that is, or
7 would be, otherwise protected from disclosure pursuant to subsection (b).

8 (2) The party seeking disclosure shall give reasonable and timely notice
9 of the subpoena or compulsory process to the journalist who obtained or
10 received the information and the journalist shall be given an opportunity to be
11 heard.

12 (3) In the event that the information sought is in connection with a
13 criminal investigation in which the journalist is the target, and advance notice
14 pursuant to subdivision (2) of this subsection would pose a clear and
15 substantial threat to the integrity of the investigation, the State's Attorney or
16 Attorney General may certify to such a threat in court and the court may waive
17 notification.

18 (d) No implication of waiver. The publication or dissemination of news or
19 information shall not constitute a waiver of the protection from compelled
20 disclosure as provided in subsection (b) of this section.

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on passage.

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5 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE