

HOUSE BILL 370

E2

4lr1439

By: **Delegates Rosenberg and Simmons**

Introduced and read first time: January 23, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Uniform Act to Secure the Attendance of Witnesses From Without the State**
3 **in Criminal Proceedings – News Media Privilege**

4 FOR the purpose of prohibiting a judge from issuing a certain summons directing a
5 witness to attend and testify in court outside the State if the witness is a certain
6 member of the news media and the judge makes certain findings related to the
7 privileged communications laws of the other state and the likelihood that the
8 witness will be directed to disclose the name of a confidential source or be held
9 in contempt of court; and generally relating to summoning news media
10 witnesses to testify in another state.

11 BY repealing and reenacting, without amendments,
12 Article – Courts and Judicial Proceedings
13 Section 9–112
14 Annotated Code of Maryland
15 (2013 Replacement Volume and 2013 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Courts and Judicial Proceedings
18 Section 9–302
19 Annotated Code of Maryland
20 (2013 Replacement Volume and 2013 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Courts and Judicial Proceedings**

24 9–112.

25 (a) In this section, “news media” means:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) Newspapers;

2 (2) Magazines;

3 (3) Journals;

4 (4) Press associations;

5 (5) News agencies;

6 (6) Wire services;

7 (7) Radio;

8 (8) Television; and

9 (9) Any printed, photographic, mechanical, or electronic means of
10 disseminating news and information to the public.

11 (b) The provisions of this section apply to any person who is, or has been:

12 (1) Employed by the news media in any news gathering or news
13 disseminating capacity; or

14 (2) Enrolled as a student in an institution of postsecondary education
15 and engaged in any news gathering or news disseminating capacity recognized by the
16 institution as a scholastic activity or in conjunction with an activity sponsored, funded,
17 managed, or supervised by school staff or faculty.

18 (c) Except as provided in subsection (d) of this section, any judicial,
19 legislative, or administrative body, or anybody that has the power to issue subpoenas
20 may not compel any person described in subsection (b) of this section to disclose:

21 (1) The source of any news or information procured by the person
22 while employed by the news media or while enrolled as a student, whether or not the
23 source has been promised confidentiality; or

24 (2) Any news or information procured by the person while employed by
25 the news media, in the course of pursuing a professional activity, or any news or
26 information procured by the person while enrolled as a student, in the course of
27 pursuing a scholastic activity or in conjunction with an activity sponsored, funded,
28 managed, or supervised by school staff or faculty, for communication to the public but
29 which is not so communicated, in whole or in part, including:

30 (i) Notes;

- 1 (ii) Outtakes;
- 2 (iii) Photographs or photographic negatives;
- 3 (iv) Video and sound tapes;
- 4 (v) Film; and
- 5 (vi) Other data, irrespective of its nature, not itself disseminated
6 in any manner to the public.

7 (d) (1) A court may compel disclosure of news or information, if the court
8 finds that the party seeking news or information protected under subsection (c)(2) of
9 this section has established by clear and convincing evidence that:

10 (i) The news or information is relevant to a significant legal
11 issue before any judicial, legislative, or administrative body, or anybody that has the
12 power to issue subpoenas;

13 (ii) The news or information could not, with due diligence, be
14 obtained by any alternate means; and

15 (iii) There is an overriding public interest in disclosure.

16 (2) A court may not compel disclosure under this subsection of the
17 source of any news or information protected under subsection (c)(1) of this section.

18 (e) If any person described in subsection (b) of this section disseminates a
19 source of any news or information, or any portion of the news or information procured
20 while pursuing an activity described in subsection (b) of this section, the protection
21 from compelled disclosure under this section is not waived by the person.

22 9-302.

23 (a) If a judge of a court of record in any state which by its laws has made
24 provision for commanding persons within that state to attend and testify in the State
25 certifies under the seal of the court that there is a criminal prosecution pending in the
26 court, or that a grand jury investigation has commenced or is about to commence, that
27 a person being within the State is a material witness in the prosecution, or grand jury
28 investigation, and that his presence will be required for a specified number of days,
29 upon presentation of the certificate to any judge of a court of record, in the county in
30 which the person is, the judge shall fix a time and place for a hearing, and shall make
31 an order directing the witness to appear at a time and place certain for the hearing.

32 (b) (1) **[If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
33 **SUBSECTION, IF** at the hearing the judge determines that the witness is material and
34 necessary, that it will not cause undue hardship to the witness to be compelled to

1 attend and testify in the prosecution or a grand jury investigation in the other state,
2 and that the laws of the state in which the prosecution is pending, or grand jury
3 investigation has commenced or is about to commence, and of any other state through
4 which the witness may be required to pass by ordinary course of travel, will give to
5 him protection from arrest and the service of civil and criminal process, he shall issue
6 a summons, with a copy of the certificate attached, directing the witness to attend and
7 testify in the court where the prosecution is pending, or where a grand jury
8 investigation has commenced or is about to commence at a time and place specified in
9 the summons. In the hearing the certificate shall be prima facie evidence of all the
10 facts stated therein.

11 **(2) A JUDGE MAY NOT ISSUE A SUMMONS UNDER THIS**
12 **SUBSECTION IF:**

13 **(I) THE WITNESS BEING SUMMONED IS A PERSON**
14 **DESCRIBED IN § 9-112(B) OF THIS TITLE; AND**

15 **(II) THE JUDGE FINDS:**

16 **1. THE LAWS OF THE STATE IN WHICH THE**
17 **PROSECUTION IS PENDING REGARDING PRIVILEGED COMMUNICATIONS WITH**
18 **MEMBERS OF THE NEWS MEDIA DO NOT PROVIDE PROTECTIONS FOR THE**
19 **WITNESS SUBSTANTIALLY SIMILAR TO THOSE PROVIDED UNDER § 9-112 OF**
20 **THIS TITLE; AND**

21 **2. THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE**
22 **WITNESS WILL BE DIRECTED TO DISCLOSE THE NAME OF A CONFIDENTIAL**
23 **SOURCE OR BE HELD IN CONTEMPT OF COURT.**

24 (c) If a certificate recommends that the witness be taken into immediate
25 custody and delivered to an officer of the requesting state to assure his attendance in
26 the requesting state, the judge may, in lieu of notification of the hearing, direct that
27 the witness be forthwith brought before him for a hearing; and the judge at the
28 hearing being satisfied of the desirability of the custody and delivery, for which
29 determination the certificate shall be prima facie proof of a desirability may, in lieu of
30 issuing a subpoena or summons, order that a witness be forthwith taken into custody
31 and delivered to an officer of the requesting state, provided, however, that the witness
32 may be admitted to bail in the amount as may be fixed by the judge upon condition
33 that the witness will appear at the time and place specified in the subpoena or
34 summons served upon him.

35 (d) If the witness, who is summoned as above provided, after being paid or
36 tendered by some properly authorized person the sum of 10 cents a mile for each mile
37 by the ordinary traveled route to and from the court where the prosecution is pending
38 and \$5 for each day, that he is required to travel and attend as a witness, fails without
39 good cause to attend and testify as directed in the summons, he shall be punished in

1 the manner provided for the punishment of any witness who disobeys a summons
2 issued from a court of record in this State.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2014.