

# HOUSE BILL 370

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By: **Delegates Rosenberg and Simmons**

Introduced and read first time: January 23, 2014

Assigned to: Judiciary

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## A BILL ENTITLED

AN ACT concerning

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

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

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

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

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

### **Article – Courts and Judicial Proceedings**

9–112.

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- (1) Newspapers;
- (2) Magazines;
- (3) Journals;
- (4) Press associations;
- (5) News agencies;
- (6) Wire services;
- (7) Radio;
- (8) Television; and
- (9) Any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

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

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

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

- (1) The source of any news or information procured by the person while employed by the news media or while enrolled as a student, whether or not the source has been promised confidentiality; or
- (2) Any news or information procured by the person while employed by the news media, in the course of pursuing a professional activity, or any news or information procured by the person while enrolled as a student, in the course of pursuing a scholastic activity or in conjunction with an activity sponsored, funded, managed, or supervised by school staff or faculty, for communication to the public but which is not so communicated, in whole or in part, including:

- (i) Notes;

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

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

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

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

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

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

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

9-302.

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

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

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

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

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

**(II) THE JUDGE FINDS:**

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

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

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

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

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

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