

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 385
Judiciary

(Delegate Rosenberg)

Judicial Proceedings

Privileged Communications - Dissemination of News or Information by Certain
Persons

This bill expands eligibility for the privilege against compelled disclosure of (1) the source of news or information, regardless of whether the source has been promised confidentiality or (2) news or information not communicated to the public that was procured by a person while employed by the news media or enrolled as a student during the course of the person's professional or scholastic activities.

Under the bill, the privilege is extended to a person who is, or has been, an independent contractor of the news media acting within the scope of a contract in any news gathering or news disseminating capacity.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: The bill's requirements can be handled with existing budgeted resources.

Small Business Effect: Potential meaningful decrease in litigation expenditures for independent contractors or agents and their affiliated publications that are covered by the privilege as a result of the bill.

Analysis

Current Law: State statute prohibits the compelled disclosure of specified information from individuals employed by news media or engaged in specified news-related activity while enrolled as a postsecondary student.

Eligibility for the Privilege: This testimonial privilege applies to a person (1) employed by the news media in any news gathering or news disseminating capacity or (2) a postsecondary student engaged in any news gathering or news disseminating capacity recognized by his/her school as a scholastic activity or in conjunction with an activity sponsored, funded, managed, or supervised by school staff or faculty (“scholastic/school-related activity”).

“News media” means:

- newspapers;
- magazines;
- journals;
- press associations;
- news agencies;
- wire services;
- radio;
- television; and
- any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

Prohibition Against Compelled Disclosure: A judicial, legislative, or administrative body, or anybody that has the power to issue subpoenas, may not compel a person eligible for the privilege to disclose:

- 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
- any news or information procured for communication to the public but which is not so communicated, in whole or in part by a person who, at the time, was (1) employed by the news media and was in the course of pursuing a professional activity or (2) a student in the course of pursuing a scholastic/school-related activity.

Exceptions to Prohibition: A court may compel disclosure of news or information, if the court finds that the party seeking protected news or information has established by clear and convincing evidence that:

- 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;
- the news or information cannot, with due diligence, be obtained by any alternate

- means; and
- there is an overriding public interest in disclosure.

Compelled Disclosure of a Source by a Court: A court may not compel disclosure of the source of any news or information procured by a person eligible for the privilege.

Waiver of Privilege: If a person eligible for the privilege disseminates a source of any news or information, or any portion of the news or information procured while pursuing a professional or scholastic/school-related activity, the protection from compelled disclosure is not waived by the person.

Background: In 2004, the Court of Special Appeals determined that a person can assert the news media privilege although employed by a financial newsletter about publicly traded companies that was distributed to subscribers via the Internet. *Forensic Advisors Inc. v. Matrixx Initiatives, Inc.*, 170 Md. App. 520, 907 A.2d 855 (2006).

In 2008, a Worcester County District Court judge concluded that the news media privilege did not apply to a blogger who was being sued for defamation because the blogger was not *employed* by the news media. However, based on arguments made by the blogger citing other legal provisions, the court did not compel the blogger to reveal his source.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Public Television, *The Daily Record*, Citizen Media Law Project, *blogspot.com*, Department of Legislative Services

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