

1 S.96

2 Introduced by Senators Sears and White

3 Referred to Committee on Judiciary

4 Date: February 24, 2017

5 Subject: Court procedure; news media privilege

6 Statement of purpose of bill as introduced: This bill proposes to prohibit any
7 governmental body from compelling the news media to divulge a source, and
8 to protect the media under certain circumstances from disclosing news and
9 information obtained in the course of official news gathering.

10 An act relating to a news media privilege

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 ~~Sec. 1. 12 V.S.A. chapter 219 is added to read:~~

13 CHAPTER 219. NEWS MEDIA PRIVILEGE

14 § 7201. DEFINITION

15 As used in this chapter, “news media” means newspapers, magazines,
16 journals, press associations, news agencies, wire services, radio, television, and
17 any printed, photographic, mechanical, or electronic means of disseminating
18 news and information to the public.

19 ~~§ 7202. COMPELLED DISCLOSURE PROHIBITED~~

1 ~~Except as provided in section 7203 of this title, no judicial, legislative,~~
2 ~~administrative, or other body with the power to issue a subpoena shall compel~~
3 ~~a person who is or has been employed by the news media in a news gathering~~
4 ~~or news disseminating capacity to disclose:~~

5 ~~(1) the source of any news or information provided by the person while~~
6 ~~employed by the news media and acting in an official news gathering capacity,~~
7 ~~whether or not the source has been promised confidentiality; or~~

8 ~~(2) any news or information procured by the person while employed by~~
9 ~~the news media in the course of pursuing professional activities that is not~~
10 ~~itself communicated in the news media, including any notes, outtakes,~~
11 ~~photographs, photographic negatives, video or audio recordings, film, or other~~
12 ~~data.~~

13 § 7203. EXCEPTIONS

14 (a) A court may compel disclosure of news or information otherwise
15 protected from disclosure under subdivision 7202(2) of this title if it finds that
16 the party seeking the news or information establishes by clear and convincing
17 evidence that:

18 (1) the news or information is relevant to a significant legal issue before
19 a judicial, legislative, administrative, or other body that has the power to
20 subpoena;

21 ~~(2) the news or information could not, with due diligence, be obtained~~

1 ~~by alternative means; and~~

2 ~~(3) there is an overriding public interest in the disclosure.~~

3 ~~(b) A court shall not compel disclosure of the source of any information~~
4 ~~protected under section 7202 of this title.~~

5 § 7204. NO IMPLICATION OF WAIVER

6 The publication by the news media or the dissemination by a person
7 employed by the news media of a source of news or information, or a portion
8 of the news or information, procured while pursuing professional activities
9 shall not constitute a waiver of the protection from compelled disclosure as
10 provided in section 7202 of this title.

11 Sec. 2. EFFECTIVE DATE

12 ~~This act shall take effect on passage.~~

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

§ 1616. JOURNALIST'S PRIVILEGE

(a) Definitions. As used in this section:

(1) "Journalist" means:

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

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

(2) "Journalism" means:

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

public, whether or not the news or information is ultimately published or distributed; or

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

(b) Compelled disclosure.

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

(A) a journalist to disclose news or information obtained or received in confidence, including:

(i) the identity of the source of that news or information; or

(ii) news or information that is not published or disseminated, including notes, outtakes, photographs, photographic negatives, video or audio recordings, film, or other data.

(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).

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

(A) a journalist to disclose news or information that was not obtained or received in confidence unless it finds that the party seeking the news or information establishes by clear and convincing evidence that:

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

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

(iii) there is a compelling need for disclosure.

(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 (2).

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.