

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE LAW LIBRARY  
AUGUSTA, MAINE



# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

---

Legislative Document

No. 828

H.P. 564

House of Representatives, March 3, 2009

### **An Act To Enhance the Shielding of Journalists' Sources**

---

Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative HINCK of Portland.  
Cosponsored by Senator BLISS of Cumberland and  
Representatives: ADAMS of Portland, DUCHESNE of Hudson, O'BRIEN of Lincolnville,  
Speaker PINGREE of North Haven, ROTUNDO of Lewiston, STRANG BURGESS of  
Cumberland, Senator: HOBBS of York.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 16 MRSA §61, as enacted by PL 2007, c. 654, §1, is amended to read:

3 **§61. Shielding journalist's sources**

4 **1. Compelled disclosure prohibited.** A judicial, legislative, administrative or other  
5 body with the power to issue a subpoena may not compel a journalist to testify about,  
6 produce or otherwise disclose or adjudge the journalist in contempt for refusal to testify  
7 about, produce or disclose:

8 A. The identity of a ~~confidential~~ source of any information;

9 B. Any information that could be used to identify a ~~confidential~~ source; or

10 C. Any information obtained or received ~~in confidence~~ by the journalist acting in the  
11 journalistic capacity of gathering, receiving, transcribing or processing news or  
12 information for potential dissemination to the public, including but not limited to any  
13 notes, drafts, photographs, video or sound tapes or film or other data in any medium.

14 **2. Exceptions allowing compelled disclosure.** A court may compel disclosure of  
15 the identity of a source or information described in subsection 1 if the court finds, after  
16 the journalist has been provided notice and the opportunity to be heard, that the party  
17 seeking the identity of the source or the information has established by a preponderance  
18 of the evidence:

19 A. In all matters, whether criminal or civil, that:

20 (1) The identity of the source or the information is material and relevant;

21 (2) The identity of the source or the information is critical or necessary to the  
22 maintenance of a party's claim, defense or proof of an issue material to the claim  
23 or defense;

24 (3) The identity of the source or the information is not obtainable from any  
25 alternative source or cannot be obtained by alternative means or remedies less  
26 destructive of First Amendment rights; and

27 (4) There is an overriding public interest in the disclosure; and

28 B. Based on information obtained from a source other than the journalist that:

29 (1) In a criminal investigation or prosecution, there are reasonable grounds to  
30 believe that a crime has occurred; or

31 (2) In a civil action or proceeding, there is a prima facie cause of action.

32 **3. Compelled disclosure from 3rd parties.** The protection from compelled  
33 disclosure contained in subsection 1 also applies with respect to any subpoena issued to,  
34 or other compulsory process against, a 3rd party that seeks records, information or other  
35 communications relating to business transactions between the 3rd party and the journalist  
36 for the purpose of discovering the identity of the source or obtaining information  
37 described in subsection 1. Whenever a subpoena is issued to, or other compulsory  
38 process is issued against, a 3rd party that seeks records, information or other

1 communications on business transactions with the journalist, the affected journalist must  
2 be given reasonable and timely notice of the subpoena or compulsory process before it is  
3 executed or initiated and an opportunity to be heard. In the event that the subpoena  
4 issued to, or other compulsory process against, the 3rd party is in connection with a  
5 criminal investigation in which the journalist is the express target and advance notice as  
6 provided in this section would pose a clear and substantial threat to the integrity of the  
7 investigation, the governmental authority shall so certify to such a threat in court and  
8 notification of the subpoena or compulsory process must be given to the affected  
9 journalist as soon as it is determined that the notification will no longer pose a clear and  
10 substantial threat to the integrity of the investigation.

11 **4. Waiver.** A journalist waives the protection provided by this section if the  
12 journalist voluntarily discloses or consents to disclosure of the protected information  
13 described in subsection 1, paragraphs A and B.

14 **5. Inadmissibility.** Any information obtained in violation of this section and the  
15 source of that information is inadmissible in any action, proceeding or hearing before any  
16 judicial, legislative, administrative or other body.

17 **SUMMARY**

18 This bill expands the protections of the journalist shield law to include all  
19 information, both confidential and nonconfidential, received by a journalist acting in a  
20 journalistic capacity as well as the source of that information.