

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1924

H. P. 1810

House of Representatives, February 7, 1980

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Simon of Lewiston.

Cosponsor: Mr. Silsby of Ellsworth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT Establishing a News Media Privilege.

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

Sec. 1. 15 MRSA § 56 is enacted to read:

§ 56. Search warrants for newsrooms

1. Definitions. As used in this section, the following words have the following meanings.

A. "News medium" means a person, organization or business that gathers and disseminates news, including a newspaper, magazine, press association, news agency, wire service or radio or television station.

B. "Newsroom" means space owned, leased or used by a news medium for storing or processing news or information intended to become news.

2. Search warrants. A judge or complaint justice may not issue a search warrant for a newsroom unless there is reasonable cause to believe that:

A. The news medium will refuse to deliver that news or information if it is subpoenaed, and that it would remove or destroy that news or information; or

B. The news or information relates to criminal acts which involve the news medium or its agents or employees.

Sec. 2. 16 MRSA c. 1, sub-c. V-A is enacted to read:

SUBCHAPTER V-A

PRIVILEGES

§ 231. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Gathering and disseminating.** “Gathering and disseminating” means any of these activities: Gathering, procuring, obtaining, investigating, transmitting, compiling, editing, delivering or disseminating by mechanical or electronic means.

2. **Legal proceeding.** “Legal proceeding” means any legal, quasi-legal or official investigative proceeding, including proceedings before a court, grand jury, petit jury, administrative agency or department, the Legislature or legislative committee.

3. **News.** “News” means any printed, pictorial or oral information gathered and disseminated by a reporter or news medium.

4. **New medium.** “News medium” means a person, organization or business that gathers and disseminates news, including a newspaper, magazine, press association, news agency, wire service or radio or television station.

5. **Professional activities.** “Professional activities” means the gathering or procuring of information by a reporter for the purpose of disseminating it as news to the public. It includes these activities in any situation, including a social gathering.

6. **Reporter.** “Reporter” means a person employed by or connected with a news medium for the purpose of gathering and disseminating news.

7. **Source.** “Source” means the source, author, agency or person from or through whom information is gathered or procured by a reporter in the course of his professional activities.

§ 232. Privilege

1. **Privilege.** A reporter has a privilege to refuse to disclose in a legal proceeding:

A. The source of news; or

B. News or information obtained in the course of his professional activities.

§ 233. Exceptions

1. **Exceptions.** The privilege may not be claimed if:

A. The reporter has intentionally concealed from his source that he is a reporter;

- B. While gathering the information, the reporter has been a participant in or eyewitness to physical violence or property damage;**
- C. The reporter or news medium has contracted not to claim the privilege; or**
- D. The reporter has knowingly disclosed a material part of the information or consented to its disclosure, knowing that the information was privileged. A disclosure that is privileged or confidential under the common law, other statutes, the Maine Rules of Evidence or contract shall not be a waiver under this paragraph.**

§ 234. Asserting the defense

The failure to assert the privilege in response to one question shall not waive the privilege for any other question.

§ 235. Defamation action

If there is a civil action for damages for defamation and the privilege has been or is asserted for news or information that is part of the cause of action, then the reporter or news medium shall bear the burden of proof in showing their good faith.

STATEMENT OF FACT

This bill would protect the free flow of ideas and information to the public by providing certain privileges to the news media. First, it would protect newsrooms against searches and seizures when there is no reason to believe that the news medium is involved in criminal activity or that the evidence sought will be destroyed. Second, it would place limits on the compulsion of testimony from journalists when this compelled testimony would jeopardize confidential sources.

In five-to-three and five-to-four decisions, respectively, the U.S. Supreme Court has declined to hold that the First Amendment obliges the states to provide these protections. The Supreme Court's decisions leave to other agencies of government the power to afford these protections.

Similar privileges have been established for other professions and occupations. Enactment of this bill would assure to the news media a portion of the "breathing space" necessary to its function in an open and self-governing society.