

MAINE STATE LEGISLATURE

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Date: 4/14/18

L.D. 2047
(Filing No. H-1010)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1431, L.D. 2047, Bill, "An Act To Shield Journalists' Confidential Sources"

Amend the bill by striking out all of the emergency preamble.
Amend the bill by striking out all of section 1 and inserting the following:

'Sec. 1. 16 MRSA §61 is enacted to read:

§61. Shielding journalist's confidential sources

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

- A. The identity of a confidential source of any information;
- B. Any information that could be used to identify a confidential source; or
- C. Any information obtained or received in confidence by the journalist acting in the journalistic capacity of gathering, receiving, transcribing or processing news or information for potential dissemination to the public.

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

- A. In all matters, whether criminal or civil, that:
 - (1) The identity of the source or the information is material and relevant;

COMMITTEE AMENDMENT

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

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

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

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

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

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

12 **3. Compelled disclosure from 3rd parties.** The protection from compelled
13 disclosure contained in subsection 1 also applies with respect to any subpoena issued to,
14 or other compulsory process against, a 3rd party that seeks records, information or other
15 communications relating to business transactions between the 3rd party and the journalist
16 for the purpose of discovering the identity of the source or obtaining information
17 described in subsection 1. Whenever a subpoena is issued to, or other compulsory
18 process is issued against, a 3rd party that seeks records, information or other
19 communications on business transactions with the journalist, the affected journalist must
20 be given reasonable and timely notice of the subpoena or compulsory process before it is
21 executed or initiated and an opportunity to be heard. In the event that the subpoena
22 issued to, or other compulsory process against, the 3rd party is in connection with a
23 criminal investigation in which the journalist is the express target and advance notice as
24 provided in this section would pose a clear and substantial threat to the integrity of the
25 investigation, the governmental authority shall so certify to such a threat in court and
26 notification of the subpoena or compulsory process must be given to the affected
27 journalist as soon as it is determined that the notification will no longer pose a clear and
28 substantial threat to the integrity of the investigation.

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

32 Amend the bill by striking out all of the emergency clause.

33 SUMMARY

34 This amendment revises the bill to delete the protection for nonconfidential
35 information.

36 This amendment revises the bill to clarify that disclosure of information may be
37 compelled in both civil and criminal cases only when the party seeking the identity of the
38 confidential source or the information establishes by a preponderance of the evidence
39 that:

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to H.P. 1431, L.D. 2047

1 1. The identity of the source or the information is material and relevant; the bill
2 requires that it be highly material and relevant;

3 2. The identity of the source or the information is critical or necessary to the
4 maintenance of the party's claim, defense or proof of an issue material to the claim or
5 defense;

6 3. The identity of the source or the information is not obtainable from any alternative
7 source or cannot be obtained by alternative means or remedies less destructive of First
8 Amendment rights; and

9 4. There is an overriding public interest in disclosure.

10 This amendment clarifies that the journalist waives the protection from compelled
11 disclosure by voluntarily disclosing or consenting to the disclosure of the confidential
12 information about the confidential source. This waiver is consistent with the Maine Rules
13 of Evidence, Rule 510.

14 This amendment deletes the provision providing that the source of any information
15 obtained in violation of the new law is inadmissible.

16 This amendment revises the bill by deleting the definition of "journalist" to allow the
17 court to determine on a case-by-case basis whether a person claiming the protection from
18 compelled disclosure is eligible for such protection.

19 This amendment deletes the emergency preamble and emergency clause.