

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2047

H.P. 1431

House of Representatives, December 21, 2007

An Act To Shield Journalists' Confidential Sources

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 19, 2007. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HINCK of Portland.

Cosponsored by Representatives: BRAUTIGAM of Falmouth, CONOVER of Oakland, DILL of Cape Elizabeth, HARLOW of Portland, WATSON of Bath, Senators: DAMON of Hancock, HOBBS of York.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** recent events involving the jailing of journalists in other jurisdictions
4 creates doubts that journalists can legally protect their confidential sources, giving rise to
5 a chilling effect in the ability of journalists to conduct their jobs; and

6 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
7 the meaning of the Constitution of Maine and require the following legislation as
8 immediately necessary for the preservation of the public peace, health and safety; now,
9 therefore,

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

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

12 **§61. Shielding journalist's confidential sources**

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

17 A. The identity of a confidential source of any information;

18 B. Any information that could be used to identify a confidential source;

19 C. Any information obtained or received in confidence by the journalist acting in the
20 journalistic capacity of gathering, receiving, transcribing or processing news or
21 information for potential dissemination to the public; or

22 D. Data, including, but not limited to, notes, drafts, outtakes, photographs, video or
23 sound tapes, film or other data of any sort in any medium.

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

29 A. In a criminal investigation or prosecution, based on information obtained from a
30 source other than the journalist, that there are reasonable grounds to believe that a
31 crime has occurred;

32 B. In a civil action or proceeding, based on information obtained from a source other
33 than the journalist, that there is a prima facie cause of action; or

34 C. In all matters, whether criminal or civil, that:

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

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; and

6 (4) There is an overriding public interest in the disclosure.

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

24 **4. Waiver.** Publication or dissemination by the journalist of information described
25 in subsection 1, or a portion thereof, does not constitute a waiver of the protection from
26 compelled disclosure that is contained in subsection 1. Notwithstanding the provisions of
27 this section, a person entitled to claim the exemption provided under subsection 1 waives
28 the exemption by voluntarily disclosing or consenting to disclosure of the specific
29 information sought to be disclosed to any person not otherwise entitled to claim the
30 exemption.

31 **5. Inadmissibility.** The source of any information obtained in violation of this
32 section is inadmissible in any action, proceeding or hearing before any judicial,
33 legislative, administrative or other body.

34 **6. Definition.** For the purposes of this section, "journalist" means any person or
35 entity professionally or regularly engaged in gathering, preparing, collecting, writing,
36 editing, filming, taping, photographing or disseminating written, oral, pictorial,
37 photographic or electronically recorded information or data concerning events or matters
38 of public concern or interest or affecting the public welfare or a person supervising or
39 assisting that person or entity.

40 **Emergency clause.** In view of the emergency cited in the preamble, this
41 legislation takes effect when approved.

1 **SUMMARY**

2 This bill provides protection against compelled disclosure of confidential sources of
3 information, information that identifies confidential sources, confidential information and
4 certain data by journalists. The bill provides exceptions for a court to compel disclosure
5 in specific situations. It also provides for a waiver of the protection in specific
6 circumstances. The source of information obtained in violation of this bill is inadmissible
7 in any judicial, legislative, administrative or other proceeding.

8 This bill takes effect when approved.