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An Act To Shield Journalists' Confidential Sources

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

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

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

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

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

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 clear and convincing evidence:

- A. In a criminal investigation or prosecution, based on information obtained from a source other than the journalist, that there are reasonable grounds to believe that a crime has occurred;
- B. In a civil action or proceeding, based on information obtained from a source other than the journalist, that there is a prima facie cause of action; or

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

- (1) The identity of the source or the information is highly material and relevant;
- (2) The identity of the source or the information is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material to the claim or defense;
- (3) The identity of the source or the information is not obtainable from any alternative source; and
- (4) There is an overriding public interest in the disclosure.

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

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

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

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

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

SUMMARY

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

This bill takes effect when approved.