



2009 SENATE BILL 235

June 22, 2009 – Introduced by Senators KREITLOW, HOLPERIN, HANSEN, SCHULTZ, LEHMAN, COWLES and RISSER, cosponsored by Representatives PARISI, PASCH, BERCEAU, HIXSON, ZIGMUNT, JORGENSEN, TURNER, MOLEPSKE JR., BENEDICT, SINICKI, POCAN and GRIGSBY. Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

- 1 **AN ACT to create** 885.14 of the statutes; **relating to:** limiting disclosure of
2 information gathered by news persons.

Analysis by the Legislative Reference Bureau

Under the Supreme Court's interpretation of article I, section 3, of the Wisconsin Constitution, which prohibits any law that restrains the liberty of the press, a member of a news media has a qualified privilege to refuse to disclose sources of information received in confidence. The privilege is qualified because the reporter may be required to reveal the source if proof is presented showing that the source may have information that is competent, relevant, material, and favorable to the requester and that there are no other reasonable and adequate alternative sources for the information. The Supreme Court has held that the value of freedom of the press must be balanced against the societal values favoring disclosure, which requires a review of the facts in each case to determine whether to allow a reporter to refuse to disclose a confidential source.

This bill prohibits a person, other than a court, from issuing a subpoena compelling a news person to testify or produce information about any of the following:

1. The identity of a confidential news source.
2. Any information that would tend to identify a confidential news source.
3. Any information obtained in confidence by a news person in gathering or preparing information for potential dissemination to the public.
4. Any other information or identity of a source of information that is obtained by a news person in gathering or preparing information for potential dissemination to the public.

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The bill gives the court authority, after a hearing, to issue a subpoena to compel a news person to testify or produce information but only the evidence listed in item 4., above. The court may issue the subpoena if the person who requests the subpoena establishes by clear and convincing evidence, in a criminal investigation, that a crime has occurred, or in a civil action, that the complaint states a claim upon which relief may be granted, and if all of the following conditions apply:

1. The information or identity of the source is highly relevant to the criminal investigation or civil action.

2. The information or identity of the source is critical or necessary to the maintenance of the party's claim, defense, or to the proof of an issue material to the criminal investigation or civil action.

3. The information or identity of the source of the information is not obtainable from any alternative source.

4. There is an overriding public interest in the disclosure of the information or identity of the source of the information.

The bill also restricts the issuance of a subpoena to order a person who is not a news person to testify or produce information related to a business transaction between that person and a news person if the intent is to obtain information that cannot be obtained from the news person. There are exceptions to this restriction under the bill if the information is highly relevant, necessary for the party's claim or defense, and not obtainable from other sources.

The bill allows the court, in a criminal investigation in which a news person is the subject of the investigation, to order the issuance of a subpoena at the request of the prosecutor without giving the news person advance notice of the request and a hearing if the court determines that giving advance notice would pose a substantial threat to the integrity of the investigation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 885.14 of the statutes is created to read:

2 **885.14 Disclosure of information and sources by news person. (1)**

3 DEFINITION. In this section, "news person" means any of the following:

4 (a) Any business or organization that, by means of print, broadcast,
5 photographic, mechanical, electronic, or other medium, disseminates news or
6 information to the public, including a newspaper, magazine, or other periodical; book
7 publisher; news agency; wire service; radio or television station or network; cable or
8 satellite network, service, or carrier; or audio or audiovisual production company;

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1 and a parent, subsidiary, division, or affiliate of any of these businesses or
2 organizations.

3 (b) Any person who is or has been engaged in gathering, receiving, preparing,
4 or disseminating news or information to the public for an entity described in par. (a),
5 including any person supervising or assisting the person in gathering, receiving,
6 preparing, or disseminating such news or information.

7 **(2) SUBPOENAS ISSUED TO NEWS PERSON.** (a) *Prohibition.* Except as provided in
8 par. (b), no person having the power to issue a subpoena may issue a subpoena
9 compelling a news person to testify about or produce or disclose any of the following:

10 1. The identity of a confidential source of any news or information.

11 2. Any information that would tend to identify the confidential source of any
12 news or information.

13 3. Any news or information obtained or prepared in confidence by a news
14 person in gathering, receiving, or preparing news or information for potential
15 dissemination to the public.

16 4. Any news, information, or identity of any source of any news or information
17 that is not described in subd. 1., 2., or 3. and that is obtained or prepared by a news
18 person in the news person's capacity in gathering, receiving, or preparing news or
19 information for potential dissemination to the public.

20 (b) *Procedure before courts.* Subject to par. (c), a circuit court may issue a
21 subpoena to compel a news person to testify about or disclose or produce any news,
22 information, or identity of any source as specified in par. (a) 4. if the court finds, after
23 notice to and an opportunity to be heard by the news person that the person
24 requesting the subpoena established, based on information obtain from a person
25 other than the news person, one of the following by clear and convincing evidence:

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1 1. In a criminal prosecution or investigation that there are reasonable grounds
2 to believe that a crime has occurred.

3 2. In a civil action or proceeding that the complaint states a claim upon which
4 relief may be granted.

5 (c) A circuit court may issue a subpoena under par. (b) only if all of the following
6 conditions are met:

7 1. The news, information, or identity of the source is highly relevant to the
8 investigation, prosecution, action, or proceeding.

9 2. The news, information, or identity of the source is critical or necessary to the
10 maintenance of a party's claim, defense, or to the proof of an issue material to the
11 investigation, prosecution, action, or proceeding.

12 3. The news, information, or identity of the source is not obtainable from any
13 alternative source for the investigation, prosecution, action, or proceeding.

14 4. There is an overriding public interest in the disclosure of the news,
15 information, or identity of the source.

16 **(3) SUBPOENAS ISSUED TO PERSONS OTHER THAN NEWS PERSONS.** (a) *Prohibition.*
17 Except as provided in par. (b), no person having the power to issue a subpoena may
18 issue a subpoena to compel a party other than a news person to testify about or
19 produce or disclose, information, records, or communications relating to a business
20 transaction between that person and the news person if the purpose of the subpoena
21 is to discover any of the items listed in sub. (2) (a) 1. to 4.

22 (b) *Procedure before courts.* A circuit court may issue a subpoena requested by
23 a district attorney or attorney general in a criminal investigation or prosecution or
24 a civil action or proceeding to compel a person other than a news person to testify

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1 about or produce or disclose information, records, or communications as specified in
2 par. (a), only if all of the following apply:

3 1. The court gives reasonable and timely notice to the person and the news
4 person and holds a hearing on the issue, except as provided in par. (c).

5 2. The court finds that all of the following conditions are met:

6 a. The information, records, or communications are highly relevant to the
7 investigation, prosecution, action, or proceeding.

8 b. The information, records, or communications are necessary to the
9 maintenance of a party's claim, defense, or proof of an issue material to the
10 investigation, prosecution, action, or proceeding.

11 c. The information, records, or communications are not obtainable from any
12 alternative source available to the investigation, prosecution, action, or proceeding.

13 (c) *Procedure; news person as subject.* In a criminal investigation in which the
14 news person is the subject of the investigation, if the district attorney or attorney
15 general requesting a subpoena under par. (b) believes that advance notice to the news
16 person would pose a clear and substantial threat to the integrity of the investigation,
17 the district attorney or attorney general shall certify that threat to the circuit court
18 when requesting the subpoena. The circuit court may order that the subpoena be
19 issued without giving the news person advance notice of the request or an
20 opportunity to be heard if the court determines that the threat exists. The district
21 attorney or attorney general shall notify the news person of the existence of the
22 subpoena as soon as possible after the district attorney or attorney general
23 determines that notification to the news person no longer poses such a threat.

24 (4) DISTRIBUTION. A disclosure to another person or dissemination to the public
25 of news, information, or the identity of a source as described in sub. (2) (a) 1. to 4. by

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1 a news person does not constitute a waiver of the protection from compelled
2 disclosure under sub. (2) or (3).

3 **(5) INADMISSIBILITY.** Any news, information, records, communications, or the
4 identity of a source of any news or information obtained in violation of this section
5 are inadmissible for any purpose in any judicial, legislative, or administrative action,
6 proceeding, or hearing.

7 **(END)**