



## 2007 ASSEMBLY BILL 946

March 11, 2008 - Introduced by Representatives PARISI, ZEPNICK, BOYLE, POPE-ROBERTS, MASON, BERCEAU, A. WILLIAMS and SHERIDAN, cosponsored by Senators LEHMAN, RISSER and MILLER. Referred to Committee on Judiciary and Ethics.

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

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### *Analysis by the Legislative Reference Bureau*

Under the Supreme Court's interpretation of article I, section 3, of the Wisconsin Constitution, prohibiting any law that restrains the liberty of the press, a member of a news media, such as a reporter, 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 creates a statutory prohibition against any person, including a judge, from issuing a subpoena to compel a person or business engaged in gathering or disseminating news or information to the public (news media) to testify about or disclose any of the following:

1. The identity of, or information that would tend to identify, a confidential source.
2. Any news or information obtained in confidence by news media in gathering and preparing news or information for the public.

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3. Any news, information, or identity of any source of news or information, other than those listed in items 1. or 2., above, that is obtained in gathering or preparing news or information for the public.

The bill provides exceptions to the prohibition. Under the bill, a person may request a circuit court to compel the news media to provide the news, information, or identity described in item 3., above. The bill requires the circuit court to have a hearing on the request. If there is a criminal investigation or prosecution ongoing, the requester must establish by clear and convincing evidence, based on information from a person other than the news media, that there are reasonable grounds to believe that a crime occurred. In a civil matter, the bill requires the requester to, based on information from a person other than the news media, establish that there is a cause of action.

Under the bill, if the requester meets the burden of proof regarding the criminal or civil action, the circuit court may compel the news media to provide news, information, or an identity described in item 3., above, only if all of the following apply:

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

The bill also prohibits the issuance of a subpoena requested by a third party who is seeking records, information, or other communications relating to a business transaction between the third party and the news media. The prohibition applies if the identity of a source or news or information may be discovered as a result of the subpoena. The court may issue the subpoena after a hearing if the third party establishes that the news, information, or identity is highly material and relevant, critical or necessary for the third party's claim, and not obtainable from other sources.

Under the bill, if there is a criminal investigation of a news media, the court may issue a subpoena compelling the news media to reveal records, information, or other communications without giving the news media notice of the request for the subpoena or an opportunity for a hearing before the subpoena is issued. The court may issue a subpoena in this situation only if the prosecution shows that providing the news media notice and an opportunity to be heard would pose a clear and substantial threat to the integrity of the criminal investigation.

Under the bill, the news, information, or identity of a confidential source that is obtained in violation of the prohibition is inadmissible in any judicial, legislative, or administrative proceeding or hearing.

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

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

2           **885.14 Disclosure of news person or news media sources, news, and**  
3 **information. (1)** In this section:

4           (a) "News media" means any business or organization that, by means of print,  
5 broadcast, photographic, mechanical, electronic, or other medium, disseminates  
6 news or information to the public, including a newspaper, magazine, or other  
7 periodical; book publisher; news agency; wire service; radio or television station or  
8 network; cable or satellite network, service or carrier; or audio or audiovisual  
9 production company; and a parent, subsidiary, division, or affiliate of any of these  
10 businesses or organizations.

11           (b) "News person" means any person who is or has been engaged in gathering,  
12 receiving, preparing, or disseminating news or information to the public for a news  
13 media, including any person supervising or assisting the person in gathering,  
14 receiving, preparing, or disseminating news or information to the public for a news  
15 media.

16           **(2)** Except as provided in sub. (3), no person having the power to issue a  
17 subpoena may issue a subpoena compelling a news person or news media to testify  
18 about or produce or disclose any of the following:

19           (a) The identity of a confidential source of any news or information.

20           (b) Any information that would tend to identify the confidential source of any  
21 news or information.

22           (c) Any news or information obtained or prepared in confidence by a news  
23 person or news media in gathering, receiving, or preparing news or information for  
24 potential dissemination to the public.

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1 (d) The news, information, or identity of any source of any news or information  
2 that is not described in par. (a), (b), or (c) and that is obtained or prepared by a news  
3 person or news media in its capacity in gathering, receiving, or preparing news or  
4 information for potential dissemination to the public.

5 (3) (a) Subject to par. (b), a circuit court may issue a subpoena compelling a  
6 news person or news media to disclose news, information, or identity of a source of  
7 any news or information, described in sub. (2) (d), if the court finds, after notice to  
8 and an opportunity to be heard by the news person or news media, that the person  
9 requesting the subpoena established one of the following by clear and convincing  
10 evidence:

11 1. In a criminal investigation or prosecution, except as provided under sub. (4)  
12 (c), based on information obtained from a person other than from that news person  
13 or news media that there are reasonable grounds to believe that a crime has occurred.

14 2. In a civil action or proceeding, based on information obtained from a person  
15 other than from that news person or news media that there appears, on the face of  
16 the complaint, to be a cause of action.

17 (b) A circuit court may issue a subpoena compelling a news person or news  
18 media to disclose the news, information, or identity of a source of any news or  
19 information, under par. (a), only if all of the following apply:

20 1. The news, information, or identity of the source of any news or information  
21 is highly material and relevant to the investigation, prosecution, action, or  
22 proceeding.

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

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

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

6           (4) (a) The prohibition under sub. (2) applies to a subpoena requested by a 3rd  
7 party that seeks records, information, or other communications relating to a  
8 business transaction between the 3rd party and the news person or news media if  
9 that subpoena may discover the identity of a source or obtain news or information  
10 from the news person or news media.

11           (b) Whenever a 3rd party requests a subpoena that seeks records, information,  
12 or other communications relating to a business transaction between the 3rd party  
13 and the news person or news media, the news person or news media shall be given  
14 reasonable and timely advance notice of the request and an opportunity to be heard  
15 before a circuit court before the subpoena is issued. The circuit court may allow  
16 issuance of a subpoena under this subsection only if the 3rd party establishes that  
17 all of the conditions specified in sub. (3) (b) 1. to 3. are met.

18           (c) If the subpoena requested by a 3rd party is in connection with a criminal  
19 investigation in which the news person or news media is the subject, and advance  
20 notice under this paragraph would pose a clear and substantial threat to the  
21 integrity of the investigation, the government agency in charge of the investigation  
22 shall certify that threat to the circuit court when requesting the issuance of the  
23 subpoena. The circuit court may order that a subpoena requested under this  
24 paragraph be issued without giving the news person or news media advance notice  
25 of the request for a subpoena and the opportunity to be heard if the court determines

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1 that providing that notice and opportunity would pose a clear and substantial threat  
2 to the integrity of the criminal investigation. The governmental agency shall notify  
3 the news person or news media of the subpoena as soon as possible after the  
4 governmental agency determines that the notification no longer poses a clear and  
5 substantial threat to the integrity of the investigation.

6 (5) The news person's or news media's publication or dissemination of news or  
7 information described in sub. (2) (a) to (d) does not constitute a waiver of the  
8 protection from compelled disclosure under sub. (2).

9 (6) The news, information, or identity of a source of any news or information  
10 obtained in violation of this section is inadmissible for any purpose in any judicial,  
11 legislative, or administrative action, proceeding, or hearing.

12 (END)