

3660

2009-2010 Regular Sessions

I N S E N A T E

March 27, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and
when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to protecting book
publishers under the shield law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 6 of subdivision (a) of section 79-h of the
2 civil rights law, as amended by chapter 468 of the laws of 1981, is
3 amended to read as follows:

4 (6) "Professional journalist" shall mean one who, for gain or liveli-
5 hood, is engaged in gathering, preparing, collecting, writing, editing,
6 filming, taping or photographing of news intended for a newspaper, maga-
7 zine, BOOK PUBLISHER, news agency, press association or wire service or
8 other professional medium or agency which has as one of its regular
9 functions the processing and researching of news intended for dissem-
10 ination to the public; such person shall be someone performing said
11 function either as a regular employee or as one otherwise professionally
12 affiliated for gain or livelihood with such medium of communication.

13 S 2. Subdivision (a) of section 79-h of the civil rights law is
14 amended by adding a new paragraph 9 to read as follows:

15 (9) "BOOK PUBLISHER" SHALL MEAN A CORPORATION, COMPANY, PARTNERSHIP OR
16 SOLE PROPRIETORSHIP THAT ROUTINELY PREPARES OR ISSUES FOR PUBLIC
17 DISTRIBUTION OR SALE BOOKS, WHETHER WRITTEN OR AUDIO, AND WHETHER IN
18 PRINT, ON TAPE, ON DISK, OR IN ANY ELECTRONIC OR OTHER MEDIUM, CONCERN-
19 ING LOCAL, NATIONAL OR WORLDWIDE EVENTS, OR OTHER MATTERS OF PUBLIC
20 INTEREST OR AFFECTING THE PUBLIC WELFARE.

21 S 3. Subdivision (b) of section 79-h of the civil rights law, as
22 amended by chapter 33 of the laws of 1990, is amended to read as
23 follows:

24 (b) Exemption of professional journalists and newscasters from
25 contempt: Absolute protection for confidential news. Notwithstanding the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 provisions of any general or specific law to the contrary, no profes-
2 sional journalist or newscaster presently or having previously been
3 employed or otherwise associated with any newspaper, magazine, BOOK
4 PUBLISHER, news agency, press association, wire service, radio or tele-
5 vision transmission station or network or other professional medium of
6 communicating news or information to the public shall be adjudged in
7 contempt by any court in connection with any civil or criminal proceed-
8 ing, or by the legislature or other body having contempt powers, nor
9 shall a grand jury seek to have a journalist or newscaster held in
10 contempt by any court, legislature or other body having contempt powers
11 for refusing or failing to disclose any news obtained or received in
12 confidence or the identity of the source of any such news coming into
13 such person's possession in the course of gathering or obtaining news
14 for publication or to be published in a newspaper, magazine, or for
15 broadcast by a radio or television transmission station or network or
16 for public dissemination by any other professional medium or agency
17 which has as one of its main functions the dissemination of news to the
18 public, by which such person is professionally employed or otherwise
19 associated in a news gathering capacity notwithstanding that the materi-
20 al or identity of a source of such material or related material gathered
21 by a person described above performing a function described above is or
22 is not highly relevant to a particular inquiry of government and
23 notwithstanding that the information was not solicited by the journalist
24 or newscaster prior to disclosure to such person.

25 S 4. Subdivision (c) of section 79-h of the civil rights law, as added
26 by chapter 33 of the laws of 1990, is amended to read as follows:

27 (c) Exemption of professional journalists and newscasters from
28 contempt: Qualified protection for nonconfidential news. Notwithstanding
29 the provisions of any general or specific law to the contrary, no
30 professional journalist or newscaster presently or having previously
31 been employed or otherwise associated with any newspaper, magazine, BOOK
32 PUBLISHER, news agency, press association, wire service, radio or tele-
33 vision transmission station or network or other professional medium of
34 communicating news to the public shall be adjudged in contempt by any
35 court in connection with any civil or criminal proceeding, or by the
36 legislature or other body having contempt powers, nor shall a grand jury
37 seek to have a journalist or newscaster held in contempt by any court,
38 legislature, or other body having contempt powers for refusing or fail-
39 ing to disclose any unpublished news obtained or prepared by a journal-
40 ist or newscaster in the course of gathering or obtaining news as
41 provided in subdivision (b) of this section, or the source of any such
42 news, where such news was not obtained or received in confidence, unless
43 the party seeking such news has made a clear and specific showing that
44 the news: (i) is highly material and relevant; (ii) is critical or
45 necessary to the maintenance of a party's claim, defense or proof of an
46 issue material thereto; and (iii) is not obtainable from any alternative
47 source. A court shall order disclosure only of such portion, or
48 portions, of the news sought as to which the above-described showing has
49 been made and shall support such order with clear and specific findings
50 made after a hearing. The provisions of this subdivision shall not
51 affect the availability, under appropriate circumstances, of sanctions
52 under section thirty-one hundred twenty-six of the civil practice law
53 and rules.

54 S 5. This act shall take effect immediately.