

3660

2009-2010 Regular Sessions

I N   S E N A T E

March 27, 2009

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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.