

1838

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I N S E N A T E

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Introduced by Sens. OPPENHEIMER, DIAZ, KRUEGER, SAMPSON -- 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:

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

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

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

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

56 S 5. This act shall take effect immediately.