S T A T E O F N E W Y O R K

1838

2011-2012 Regular Sessions

I N S E N A T E

January 13, 2011

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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

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

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

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

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

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

LBD06315-01-1

(b) Exemption of professional journalists and newscasters from contempt: Absolute protection for confidential news. Notwithstanding the provisions of any general or specific law to the contrary, no professional journalist or newscaster presently or having previously been employed or otherwise associated with any newspaper, magazine, BOOK PUBLISHER, news agency, press association, wire service, radio or television transmission station or network or other professional medium of communicating news or information to the public shall be adjudged in contempt by any court in connection with any civil or criminal proceeding, or by the legislature or other body having contempt powers, nor shall a grand jury seek to have a journalist or newscaster held in contempt by any court, legislature or other body having contempt powers for refusing or failing to disclose any news obtained or received in confidence or the identity of the source of any such news coming into such person's possession in the course of gathering or obtaining news for publication or to be published in a newspaper, magazine, or for broadcast by a radio or television transmission station or network or for public dissemination by any other professional medium or agency which has as one of its main functions the dissemination of news to the public, by which such person is professionally employed or otherwise associated in a news gathering capacity notwithstanding that the material or identity of a source of such material or related material gathered by a person described above performing a function described above is or is not highly relevant to a particular inquiry of government and notwithstanding that the information was not solicited by the journalist or newscaster prior to disclosure to such person.

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

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

S 5. This act shall take effect immediately.