



# House of Representatives

**File No. 566**

General Assembly

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February Session, 2006 **(Reprint of File No. 495)**

House Bill No. 5212  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 19, 2006

**AN ACT CONCERNING FREEDOM OF THE PRESS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2006*) As used in sections 1 to 7,  
2 inclusive, of this act:

3 (1) "Information" has its ordinary meaning and includes, but is not  
4 limited to, any oral, written or pictorial material, whether or not  
5 recorded, including any notes, outtakes, photographs, video or sound  
6 tapes, film or other data of whatever sort in any medium; and

7 (2) "News media" means:

8 (A) Any newspaper, magazine or other periodical, book publisher,  
9 news agency, wire service, radio or television station or network, cable  
10 or satellite or other transmission system or carrier, or channel or  
11 programming service for such station, network, system or carrier, or  
12 audio or audiovisual production company that disseminates  
13 information to the public, whether by print, broadcast, photographic,  
14 mechanical, electronic or any other means or medium;

15 (B) Any person or entity that is or has been engaged in gathering,  
16 preparing or disseminating information to the public for any entity  
17 specified in subparagraph (A) of this subdivision or any other person  
18 supervising or assisting such person or entity with gathering,  
19 preparing or disseminating information; or

20 (C) Any parent, subsidiary, division or affiliate of any entity  
21 specified in subparagraph (A) or (B) of this subdivision to the extent  
22 the subpoena or other compulsory process seeks the identity of a  
23 source or the information described in section 2 of this act.

24 Sec. 2. (NEW) (*Effective October 1, 2006*) Except as provided in  
25 section 3 of this act, no judicial, executive, legislative or other body  
26 with the power to issue a subpoena or other compulsory process may  
27 compel the news media to testify concerning or to produce or  
28 otherwise disclose:

29 (1) Any information obtained or received in confidence by the news  
30 media in its capacity in gathering, receiving or processing information  
31 for potential communication to the public, or the identity of the source  
32 of any such information, or any information that would tend to  
33 identify the source of any such information; or

34 (2) Any other information not described in subdivision (1) of this  
35 section obtained or received by the news media in its capacity in  
36 gathering, receiving or processing information for potential  
37 communication to the public, or the identity of the source of any such  
38 information.

39 Sec. 3. (NEW) (*Effective October 1, 2006*) (a) Prior negotiations with  
40 the news media shall be pursued in all matters in which the issuance of  
41 a subpoena to, or the initiation of other compulsory process against,  
42 the news media is contemplated for information described in  
43 subdivision (2) of section 2 of this act or the identity of the source of  
44 such information.

45 (b) If the news media and the party seeking to compel disclosure of

46 information described in subdivision (2) of section 2 of this act or the  
47 identity of the source of such information fail to reach a resolution, a  
48 court may compel disclosure of such information or the identity of the  
49 source of such information only if the court finds, after notice to and an  
50 opportunity to be heard by the news media, that the party seeking  
51 such information or the identity of the source of such information has  
52 established by clear and convincing evidence:

53 (1) That (A) in a criminal investigation or prosecution, based on  
54 information obtained from other sources than the news media, there  
55 are reasonable grounds to believe that a crime has occurred, or (B) in a  
56 civil action or proceeding, based on information obtained from other  
57 sources than the news media, there is a prima facie cause of action; and

58 (2) That in all matters, whether criminal or civil: (A) The information  
59 or the identity of the source of such information is critical or necessary  
60 to the maintenance of a party's claim, defense or proof of an issue  
61 material thereto, (B) the information or the identity of the source of  
62 such information is not obtainable from any alternative source, and (C)  
63 there is an overriding public interest in the disclosure.

64 (c) A court of this state shall apply the procedures and standards  
65 specified by this section to any subpoena or other compulsory process  
66 whether it arises from or is associated with a proceeding under the  
67 laws of this state or any other jurisdiction, except that with respect to a  
68 proceeding arising under the laws of another jurisdiction, a court of  
69 this state shall not afford lesser protection to the news media than that  
70 afforded by such other jurisdiction. No subpoena or compulsory  
71 process arising from or associated with a proceeding under the laws of  
72 another jurisdiction shall be enforceable in this state unless a court in  
73 this state has personal jurisdiction over the person or entity against  
74 which enforcement is sought.

75 Sec. 4. (NEW) (*Effective October 1, 2006*) The protection from  
76 compelled disclosure provided in section 2 of this act shall also apply  
77 to any subpoena issued to, or other compulsory process initiated

78 against, a third party that seeks information concerning business  
79 transactions between such third party and the news media for the  
80 purpose of discovering the identity of a source or obtaining  
81 information described in section 2 of this act. Whenever a subpoena is  
82 issued to, or other compulsory process is initiated against, a third party  
83 that seeks information concerning business transactions between such  
84 third party and the news media, the affected news media shall be  
85 given reasonable and timely notice of the subpoena or compulsory  
86 process before it is executed or initiated, as the case may be, and an  
87 opportunity to be heard.

88 Sec. 5. (NEW) (*Effective October 1, 2006*) Publication or dissemination  
89 by the news media of information described in section 2 of this act, or a  
90 portion thereof, shall not constitute a waiver of the protection from  
91 compelled disclosure provided in section 2 of this act with respect to  
92 any information that is not published or disseminated.

93 Sec. 6. (NEW) (*Effective October 1, 2006*) Any information obtained in  
94 violation of the provisions of sections 1 to 7, inclusive, of this act, and  
95 the identity of the source of such information, shall be inadmissible in  
96 any action, proceeding or hearing before any judicial, executive,  
97 legislative or other body.

98 Sec. 7. (NEW) (*Effective October 1, 2006*) Whenever any person or  
99 entity seeks the disclosure from the news media of information that is  
100 not protected against compelled disclosure pursuant to section 2 of this  
101 act, such person or entity shall pay the customary price charged in the  
102 marketplace for the type of the information being sought when  
103 compulsory process is not available and may not use compulsory  
104 process as a means to avoid paying such market price.

105 Sec. 8. (NEW) (*Effective October 1, 2006*) Nothing in sections 1 to 7,  
106 inclusive, of this act shall be construed to deny or infringe the rights of  
107 an accused in a criminal prosecution guaranteed under the sixth  
108 amendment to the Constitution of the United States and article twenty-  
109 ninth of the amendments to the Constitution of the state of

110 Connecticut.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	New section
Sec. 2	<i>October 1, 2006</i>	New section
Sec. 3	<i>October 1, 2006</i>	New section
Sec. 4	<i>October 1, 2006</i>	New section
Sec. 5	<i>October 1, 2006</i>	New section
Sec. 6	<i>October 1, 2006</i>	New section
Sec. 7	<i>October 1, 2006</i>	New section
Sec. 8	<i>October 1, 2006</i>	New section

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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### **OFA Fiscal Note**

**State Impact:** See Below

**Municipal Impact:** See Below

### **Explanation**

The bill exempts members of the news media from any compulsory process (including a subpoena) to compel them to provide certain information. It requires any governmental body considering the initiation of such a compulsory process to first negotiate with the news media and, if the parties fail to reach resolution, the court may compel the disclosure of the information provided certain conditions are met. Any workload associated with adjudication under this provision could be accommodated by the Judicial Department within budgeted resources since these situations are expected to occur infrequently. The net fiscal impact on any governmental entity seeking to compel information under the bill would be determined on a case-by-case basis. To the extent that litigation is precluded in any case, a potential savings would accrue; however, if the bill's provisions result in a more complex proceeding or investigation, a cost could be incurred.

House Amendment "A" specified that the provisions of the bill cannot be construed to deny or infringe on certain constitutional rights. There is no related fiscal impact.

### **The Out Years**

**State and Municipal Impact:** The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis****HB 5212 (as amended by House "A")\******AN ACT CONCERNING FREEDOM OF THE PRESS.*****SUMMARY:**

This bill prohibits judicial, executive, legislative, and other bodies with the power to issue subpoenas or compulsory process (subpoenas) from compelling the news media to testify about, produce, or disclose (1) information obtained or received in confidence in gathering, receiving, or processing information for potential communication to the public; (2) the identity of the information's source; or (3) information tending to identify the source.

With some exceptions, the bill also protects from a subpoena non-confidential information the media possess as a result of gathering, receiving, or processing information for potential communication to the public and the identity of its source. The exception is for information (1) necessary to a pending investigation, prosecution, or civil action; (2) not otherwise available; and (3) of interest to the public.

In criminal prosecutions, the bill also provides that it cannot be construed to deny or infringe an accused's constitutional rights under the (1) 6<sup>th</sup> Amendment to the U.S. Constitution and (2) Article 29 of the amendments to the Connecticut Constitution. Both of these constitutional provisions give the accused the right to have compulsory process to obtain witnesses in his behalf.

The bill also prohibits using compulsory process to avoid paying the market price for the type of information being sought.

It provides that the news media's publication or dissemination of information the bill protects does not waive the protection for other protected information.

The bill makes information and the identity of a source obtained in violation of the bill inadmissible in any action, proceeding, or hearing before a judicial, executive, legislative, or other body.

\*House Amendment "A" adds the provision on an accused's constitutional rights.

EFFECTIVE DATE: October 1, 2006

### **NEWS MEDIA AND INFORMATION**

The bill defines "news media" as a:

1. newspaper, magazine, or other periodical; book publisher; news agency; wire service; radio or TV station or network; cable, satellite, or other transmission system or carrier; channel or programming service for a station, network, system or carrier; audio or audiovisual production company that disseminates information to the public by print, broadcast, photographic, mechanical, electronic, or other means or medium;
2. person or entity that is or has been engaged in gathering, preparing, or disseminating information to the public for one of the entities listed above or any other person supervising or assisting such a person or entity with gathering, preparing, or disseminating information; and
3. parent, subsidiary, division, or affiliate of one of the entities listed above to the extent the subpoena or compulsory process seeks the identity of a source or information protected by the bill.

"Information" has its ordinary meaning and specifically includes pictures, oral, written material, notes, outtakes, video or sound tapes, film, and other data of any sort in any medium, whether recorded or not.

### **DISCLOSURE OF NON-CONFIDENTIAL INFORMATION**

The bill requires a judicial, executive, legislative, or other body considering issuing a subpoena for non-confidential information to negotiate with the news media. If the parties cannot resolve the issue, a court can compel disclosure if, after notice to the news media and an opportunity for a hearing, the party seeking disclosure establishes by clear and convincing evidence that:

1. (a) there are reasonable grounds to believe that a crime has occurred based on information from sources other than the news media, when the matter is a criminal investigation or prosecution or (b) there is a prima facie cause of action based on information from sources other than the new media, when the matter is a civil action or proceeding;
2. the information or identity of the source is critical or necessary to a party's claim, defense, or proof of a material issue;
3. the information or identity of the source is not obtainable from an alternative source; and
4. there is an overriding public interest in disclosure.

It is not clear under what circumstances an executive or legislative agency could compel disclosure under these criteria.

#### ***Application by State Courts***

The bill requires state courts to apply these procedures and standards to any subpoena related to an investigation or case based on Connecticut law or the law in any other jurisdiction. When another jurisdiction's law is involved, the court:

1. must give the news media at least the same protection as it could receive in the other jurisdiction and
2. cannot enforce the subpoena unless it has personal jurisdiction over the news media.

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**GETTING THE INFORMATION FROM THIRD PARTIES WITH BUSINESS TRANSACTIONS WITH THE NEWS MEDIA**

The bill's protections also apply to subpoenas seeking information from a third party concerning its business transactions with the news media when aimed at discovering the identity of a source or obtaining information protected by the bill. The bill requires reasonable and timely notice to the news media and an opportunity for a hearing before executing the subpoena for this information.

**BACKGROUND*****Related Law***

The law prohibits warrants to search a place or seize anything in the possession, control, or custody of a journalist or news organization unless there is probable cause that (1) the person or organization committed or is committing the offense related to the property named in the warrant or (2) the property is contraband or an instrument of a crime. The law states that it does not limit the right to subpoena any evidence otherwise permitted by law (CGS §§ 54-33i and j).

***Related Case***

In a civil case, a Superior Court recognized a limited constitutional privilege of a newsman to withhold confidential sources. The court found two conditions necessary to require disclosure of confidential sources: (1) a reasonable effort must first be made by the inquirer to obtain the information in some other manner, and (2) the information sought must be highly relevant to the proceeding (*Connecticut State Board of Labor Relations v. Fagin*, 33 Conn. Supp. 204 (1976)).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 30 Nay 10 (03/27/2006)