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HOUSE BILL NO. 2250

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact § 19.2-325 of the Code of Virginia and to amend the Code of Virginia by adding in Article 5 of Chapter 14 of Title 8.01 a section numbered 8.01-410.1, relating to protected information; newspersons engaged in journalism.

Patrons—Roem, Hurst, Ayala, Gooditis, Hope, Keam, Kory, Levine, Miyares, Mullin, Plum, Rasoul, Reid, Rodman, Sickles, Simon and Ware

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-325 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 14 of Title 8.01 a section numbered 8.01-410.1 as follows:

§ 8.01-410.1. Protected information; newspersons engaged in journalism.

A. As used in this section, unless the context requires a different meaning:

"Journalism" means the gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.

"News organization" means any (i) newspaper or magazine issued at regular intervals and having a general circulation; (ii) news agency, recognized press association, or wire service; (iii) licensed radio or television station that engages in journalism; or (iv) business that, by means of photographic or electronic media, engages in journalism.

"Newsperson" means any person who, for a substantial portion of his livelihood or for substantial financial gain, engages in journalism for a news organization. "Newsperson" includes any person supervising or assisting another person in engaging in journalism for a news organization.

"Protected information" means information identifying a source who provided information to a newsperson under a promise or agreement of confidentiality made by a news organization or newsperson while such news organization or newsperson was engaging in journalism.

B. Except as provided in subsection C, no newsperson shall be compelled to testify about, disclose, or produce protected information. Any protected information obtained in violation of this subsection is inadmissible for any purpose in an administrative, civil, or criminal proceeding.

C. A court may compel a newsperson to testify about, disclose, or produce protected information only if the court finds, after notice and an opportunity to be heard by such newsperson, that:

1. The protected information is highly relevant and necessary to the proof of an issue material to an administrative, civil, or criminal proceeding;

2. The protected information is not obtainable from any alternative source;

3. The Commonwealth or locality exhausted all reasonable methods for obtaining the protected information from all relevant alternative sources, if applicable; and

4. There is an overriding public interest in the disclosure of the protected information, including preventing the imminent threat of bodily harm to or death of a person or ending actual bodily harm being inflicted upon a person.

D. The publication by a news organization or the dissemination by a newsperson of protected information obtained while engaging in journalism shall not constitute a waiver of the protection from compelled testimony, disclosure, and production provided by subsection B.

§ 19.2-325. Provisions which apply to criminal as well as civil cases; when plaintiff in error unable to pay printing costs.

Sections 8.01-410.1, 8.01-675.1, 8.01-675.2, 8.01-675.3, 8.01-684 and 17.1-328 shall apply as well to criminal cases as to civil cases. In a felony case in the Court of Appeals or the Supreme Court, if the plaintiff in error files with the Clerk of the Court an affidavit that he is unable to pay or secure to be paid the costs of printing the record in the case, together with a certificate of the judge of the trial court to the effect that he has investigated the matter and is of opinion that the plaintiff in error is unable to pay, or secure to be paid, such costs, the printing shall be done as if the costs had been paid and the clerk shall not be required to account for and pay the same into the state treasury. However, if the costs are not paid or secured to be paid and upon the hearing of the case the judgment of the court below is wholly affirmed by the Court of Appeals and no appeal granted by the Supreme Court, or wholly affirmed by the Supreme Court where appeal is granted, the Court in affirming the judgment shall also

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58 give judgment in behalf of the Commonwealth against the plaintiff in error for the amount of the costs
59 to be taxed by its clerk.