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HOUSE BILL NO. 113

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 19, 2020)

(Patron Prior to Substitute—Delegate Roem)

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-271.5, relating to protected information; newpersons engaged in journalism.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-271.5 as follows:

§ 19.2-271.5. *Protected information; newpersons 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) 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 and employs an editor overseeing the journalism function that follows commonly accepted journalistic practice as evidenced by (a) membership in a state-based journalism organization, including the Virginia Press Association and the Virginia Association of Broadcasters; (b) membership in a national journalism organization, including the National Press Club, the Society of Professional Journalists, and the Online News Association; (c) membership in a statewide or national wire news service, including the Capital News Service, The Associated Press, and Reuters; or (d) its continuous operation since 1994 or earlier.

"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 newperson under a promise or agreement of confidentiality made by a news organization or newperson while such news organization or newperson was engaging in journalism.

B. Except as provided in subsection C, no newperson shall be compelled by the Commonwealth or a locality in any criminal proceeding 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 or criminal proceeding.

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

1. The protected information is necessary to the proof of an issue material to an administrative 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 newperson 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.