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ASSEMBLY, No. 1535

STATE OF NEW JERSEY

INTRODUCED JUNE 22, 1978

By Assemblymen GORMLEY, KERN, EDWARDS, DOYLE,
and HERMAN

(Without Reference)

A SUPPLEMENT to "The Evidence Act 1960," approved June 20,
1960 (P. L. 1960, c. 52).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. (New section) Any person*, *corporation, partnership, pro-*
2 *prietorship or other entity** engaged on, engaged in, connected with,
3 or *otherwise** employed ***[by news media for the purpose of]***
4 *in** gathering, procuring, transmitting, compiling, editing*, *pub-*
5 *lishing,** or disseminating news for the ***[general]*** public*,* or on
6 whose behalf news is so gathered, procured, transmitted, compiled,
7 edited*, *published** or disseminated ***[has a privilege to]*** *shall**
8 be free from searches *and seizures**, by *State, county and local**
9 law enforcement officers***[, for]*** *with respect to** any *docu-*
10 *mentary** materials obtained in the course of pursuing ***[his**
11 **professional]*** *the aforesaid** activities whether or not such ma-
12 terial has been *or will be** disseminated *or published**.

13 **This section shall not restrict or impair the ability of any law*
14 *enforcement officer, pursuant to otherwise applicable law, to search*
15 *for or seize such materials, if there is probable cause to believe*
16 *that:*

17 a. *The person, corporation, partnership, proprietorship or other*
18 *entity possessing the materials has committed or is committing the*
19 *criminal offense for which the materials are sought; or*

20 b. *The immediate seizure of the materials is necessary to prevent*
21 *the death of or serious bodily injury to a human being; or*

22 c. *The giving of notice pursuant to a subpoena duces tecum would*
23 *result in the destruction, alteration or deliberate concealment of the*
24 *documentary materials other than work product; or*

25 d. *The documentary materials, other than work product, have not*

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

26 *been produced in response to a court order directing compliance*
 27 *with a subpoena duces tecum, and*

28 *(1) All appellate remedies have been exhausted by the party*
 29 *seeking to quash the subpoena duces tecum; or*

30 *(2) There is a probability that the delay in an investigation or*
 31 *trial occasioned by further proceedings relating to the subpoena*
 32 *would threaten the interests of justice. In the event a search war-*
 33 *rant is sought pursuant to this subparagraph, the person, corpora-*
 34 *tion, partnership, proprietorship or other entity possessing the*
 35 *materials shall be afforded adequate opportunity to submit an*
 36 *affidavit to the court setting forth the basis for any contention that*
 37 *the materials sought are not subject to seizure.*

1 *2. (New section) In the event a search warrant is sought pursuant*
 2 *to Section 1 of this act, all applications to the court for such war-*
 3 *rants shall be approved in advance of their submission by the*
 4 *Attorney General or the prosecutor of the county in which execution*
 5 *of the warrant will take place.*

1 *3. (New section) a. A person, corporation, partnership, propri-*
 2 *etorship or other entity aggrieved by a search for or seizure of*
 3 *materials in violation of this act shall have a civil cause of action*
 4 *for damages for such search or seizure:*

5 *(1) Against the State of New Jersey, or against any other gov-*
 6 *ernmental unit, all of which shall be liable for violations of this*
 7 *act by their officers, employees or agents while acting within the*
 8 *scope or under color of their office, employment or agency.*

9 *(2) Against an officer, employee or agent of the State of New Jersey*
 10 *or any other governmental unit who has violated this act while*
 11 *acting other than within the scope or under color of his office,*
 12 *employment or agency. It shall be a complete defense to a civil*
 13 *action brought under this paragraph that the officer, employee or*
 14 *agent had a reasonable good faith belief in the lawfulness of his*
 15 *conduct unless his error is due to an ignorance of an official state-*
 16 *ment of the law.*

17 *b. The State of New Jersey or any other governmental unit,*
 18 *liable for violations of this act under paragraph 3(a)(1), may not*
 19 *assert as a defense to a claim arising under this act the immunity of*
 20 *the officer, employee or agent whose violation is complained of or*
 21 *his reasonable good faith belief in the lawfulness of his conduct,*
 22 *except that such a defense may be asserted if the violation com-*
 23 *plained of is that of a judge.*

24 *c. The remedy provided by paragraph 3 a. (1) against the State*
 25 *of New Jersey or any other governmental unit is exclusive of any*
 26 *other civil action or proceeding for conduct constituting a violation*

27 of this act, against the officer, employee or agent whose violation
 28 gave rise to the claim, or against the estate of such officer, employee
 29 or agent.

30 d. A person, corporation, partnership, proprietorship or other
 31 entity having a cause of action under this section shall be entitled to
 32 recover actual damages but not less than liquidated damages of
 33 \$1,000.00, such punitive damages as may be warranted, and such
 34 reasonable attorney's fee and other litigation costs reasonably in-
 35 curred as the court, in its discretion, may award; provided, how-
 36 ever, that the State of New Jersey or any other governmental unit
 37 shall not be liable for interest prior to judgment.

38 e. The Attorney General is authorized to settle a claim for
 39 damages brought against the State of New Jersey under this section
 40 and shall promulgate regulations to provide for the commencement
 41 of an administrative inquiry following a determination of a viola-
 42 tion of this act by an officer, employee or agent of the State of New
 43 Jersey or any other governmental unit and for the imposition of
 44 administrative sanctions against such officer, employee or agent if
 45 warranted.

46 f. A county prosecutor may settle a claim for damages brought
 47 against the county of his jurisdiction or any other governmental
 48 unit under this section.

1 4. (New section) As used in this act: a. "Documentary materials"
 2 means materials upon which information is recorded and includes,
 3 but is not limited to, written or printed materials, photographs,
 4 tapes, videotapes, negatives, films, outtakes and interview files.

5 b. "Work product" means any documentary materials created by
 6 or for a person in connection with his plans, or the plans of the
 7 person creating such materials, to gather, file, procure, transmit,
 8 compile, edit, publish or disseminate news for the public, except
 9 such work product as constitutes contraband, or the fruits, instru-
 10 mentalities or evidence of a crime.

11 c. "Any other governmental unit" includes any branch, sub-
 12 division or agency of the government of the State or any locality
 13 within it.

14 d. "Attorney General" means the Attorney General of the State
 15 of New Jersey, or his designee.

16 e. "County prosecutor" means the duly appointed prosecutor of
 17 a county, or his designee.

1 5. (New section) Nothing contained in this act shall be construed
 2 to limit the right of the Department of Corrections to search the
 3 offices of inmate newspapers or the public information offices of any
 4 inmate organization located within a correctional facility.*

1 ***[2.]*** *6.* This act shall take effect immediately.

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and HERMAN

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A SUPPLEMENT to "The Evidence Act 1960," approved June 20,
1960 (P. L. 1960, c. 52).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. (New section) Any person engaged on, engaged in, connected
2 with, or employed by news media for the purpose of gathering,
3 procuring, transmitting, compiling, editing or disseminating news
4 for the general public or on whose behalf news is so gathered, pro-
5 cured, transmitted, compiled, edited or disseminated has a
6 privilege to be free from searches, by law enforcement officers, for
7 any materials obtained in the course of pursuing his professional
8 activities whether or not such material has been disseminated.

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to preserve the First Amendment's
freedom of the press by insuring that the files of the news media
will not be the subject of a search by law enforcement officials.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1535
with Assembly committee amendment

STATE OF NEW JERSEY

DATED: JUNE 28, 1979

The purpose of this bill is to preserve the first amendment's freedom of the press by insuring that the files of the news media shall not be the subject of searches and seizures by law enforcement officials, except, as amended by the committee, in specifically enumerated special cases. The exceptions are where there is probable cause to believe that: the news media is involved in a crime, the seizure is necessary to prevent death or serious injury, the subpoena process would result in concealment or destruction of evidence, the subpoena process has not worked and justice is being thwarted. Committee amendment also provides for a civil cause of action against the State or the individual if a search and seizure against the news media is in violation of this act. Finally, the committee amendment explicitly refers to and reaffirms the power of the Department of Corrections to search inmate newspapers within a correctional facility.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1535

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 1979

This bill would restrict searches and seizures of news media files by law enforcement officials to situations where there is probable cause to believe that: (1) the person or organization has committed the crime for which the materials are sought; or (2) immediate seizure is necessary to prevent death or serious bodily injury; or (3) advance notice would result in destruction or concealment of the materials; or (4) the materials have not been produced pursuant to a court order for which all remedies have been exhausted and further delay would thwart the ends of justice. As additionally amended in the Assembly, the bill would further provide a cause of action against the State or an individual if a search or seizure violates the act. The act does not apply to inmate newspapers.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FEBRUARY 28, 1980

FOR FURTHER INFORMATION

KATHRYN FORSYTH/PATRICK SWEENEY

Governor Brendan Byrne today signed the following bills:

S-3185, sponsored by Senator Carmen Orschio (D-Essex) which increases the penalties for hit-and-run accidents.

The bill increases the penalties from a fine of \$100 to not less than \$100 or not more than \$1000 and/or imprisonment for 30 days for the first offense; and from a fine of \$500 to not less than three months or more than six months for a subsequent offense.

In addition, the bill requires that the license of a first offender will be suspended for not less than six months from the date of conviction for a first offense. For a subsequent offense, the driver's license will be suspended for good.

The bill also establishes a procedure for the temporary suspension of driving privileges in certain cases involving automobile fatalities following a preliminary "probable cause" hearing pending a full hearing by the Division of Motor Vehicles.

A-1535, sponsored by Assemblyman William L. Gormley (R-Atlantic), which imposes a strict prohibition against searches and seizures of a newsman's "work product" materials, except in specific situations.

The two narrow exceptions are: when there is probable cause to believe that the person possessing the materials has committed the offense for which the specific materials are sought; or when there is reason to believe that immediate seizure is necessary to prevent death or serious bodily injury.

The bill requires that all applications to the court for warrants authorizing the search of premises occupied by the news media must be approved in advance of their submission by either the Attorney General or a County Prosecutor.

Enforcement will be through a civil damage action in favor of any person subjected to a search in violation of the requirements of the statute. The bill provides for civil remedies including actual, punitive and liquidated damages of not less than \$1,000 in addition to attorney's fees. Violations committed by State, county, local or municipal officers acting within the scope of their office would trigger the damage remedy against the government body employing the law enforcement official.

S-3008, sponsored by Senator Steven Perskie (D-Atlantic) which gives the Director of the Division of Taxation the power to license certain individuals related to the cigarette distribution industry.

Under the current law, the Director is empowered to grant licenses to companies. This bill extends that power to require certain individuals involved with the companies to be licensed also.

The people to be licensed include: individuals having any interest whatsoever in a proprietorship or company; partners; joint venturers; stockholders of more than 5% of the outstanding shares; employees receiving more than \$30,000 in salary and having the power to make discretionary business judgements; others who in the Director's judgement have the power to control the applicant entity.

The bill would not apply to dealers operating five or less machines, retail grocery stores or hotels, restaurants or motels operated by a national corporation in at least six states.

The Director could not issue a license to anyone he had reasonable cause to believe was convicted of a crime of moral turpitude, was a career offender or was contumaciously defiant before an official investigation body.

The Governor line-item vetoed the appropriation on the bill, reducing it from \$136,000 to \$35,000 for the current fiscal year.

A-3652, sponsored by Assemblyman James W. Bornheimer (D-Middlesex), which amends the law concerning the small loan business. This bill increases from \$2,500 to \$5,000 the amount which a small loan business is permitted to lend.