

# HOUSE BILL 8

E2  
HB 370/14 – JUD

(PRE-FILED)

5lr0301

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By: **Delegate Rosenberg**

Requested: July 15, 2014

Introduced and read first time: January 14, 2015

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 15, 2015

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Uniform Act to Secure the Attendance of Witnesses From Without the State in**  
3 **Criminal Proceedings – News Media Privilege**

4 FOR the purpose of prohibiting a judge from issuing a certain summons directing a witness  
5 to attend and testify in court outside the State if the witness is a certain member of  
6 the news media, the record indicates the witness reasonably relied on certain  
7 protections when the witness engaged in certain conduct, and the judge makes  
8 certain findings related to the privileged communications laws of the other ~~state and~~  
9 state, the likelihood that the witness will be directed to disclose the name of a  
10 confidential source or be held in contempt of court, and whether the disclosure would  
11 be contrary to a certain provision of law; and generally relating to summoning news  
12 media witnesses to testify in another state.

13 BY repealing and reenacting, without amendments,  
14 Article – Courts and Judicial Proceedings  
15 Section 9–112  
16 Annotated Code of Maryland  
17 (2013 Replacement Volume and 2014 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article – Courts and Judicial Proceedings  
20 Section 9–302  
21 Annotated Code of Maryland  
22 (2013 Replacement Volume and 2014 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
2 That the Laws of Maryland read as follows:

3 **Article – Courts and Judicial Proceedings**

4 9–112.

5 (a) In this section, “news media” means:

6 (1) Newspapers;

7 (2) Magazines;

8 (3) Journals;

9 (4) Press associations;

10 (5) News agencies;

11 (6) Wire services;

12 (7) Radio;

13 (8) Television; and

14 (9) Any printed, photographic, mechanical, or electronic means of  
15 disseminating news and information to the public.

16 (b) The provisions of this section apply to any person who is, or has been:

17 (1) Employed by the news media in any news gathering or news  
18 disseminating capacity;

19 (2) An independent contractor of the news media acting within the scope of  
20 a contract in any news gathering or news disseminating capacity; or

21 (3) Enrolled as a student in an institution of postsecondary education and  
22 engaged in any news gathering or news disseminating capacity recognized by the  
23 institution as a scholastic activity or in conjunction with an activity sponsored, funded,  
24 managed, or supervised by school staff or faculty.

25 (c) Except as provided in subsection (d) of this section, any judicial, legislative, or  
26 administrative body, or anybody that has the power to issue subpoenas may not compel any  
27 person described in subsection (b) of this section to disclose:

1           (1)     The source of any news or information procured by the person while  
2 employed by the news media or while enrolled as a student, whether or not the source has  
3 been promised confidentiality; or

4           (2)     Any news or information procured by the person while employed by the  
5 news media or while acting as an independent contractor of the news media, in the course  
6 of pursuing a professional activity, or any news or information procured by the person while  
7 enrolled as a student, in the course of pursuing a scholastic activity or in conjunction with  
8 an activity sponsored, funded, managed, or supervised by school staff or faculty, for  
9 communication to the public but which is not so communicated, in whole or in part,  
10 including:

11                   (i)     Notes;

12                   (ii)    Outtakes;

13                   (iii)   Photographs or photographic negatives;

14                   (iv)   Video and sound tapes;

15                   (v)     Film; and

16                   (vi)   Other data, irrespective of its nature, not itself disseminated in  
17 any manner to the public.

18           (d)    (1)     A court may compel disclosure of news or information, if the court finds  
19 that the party seeking news or information protected under subsection (c)(2) of this section  
20 has established by clear and convincing evidence that:

21                   (i)     The news or information is relevant to a significant legal issue  
22 before any judicial, legislative, or administrative body, or anybody that has the power to  
23 issue subpoenas;

24                   (ii)    The news or information could not, with due diligence, be  
25 obtained by any alternate means; and

26                   (iii)   There is an overriding public interest in disclosure.

27           (2)     A court may not compel disclosure under this subsection of the source  
28 of any news or information protected under subsection (c)(1) of this section.

29           (e)     If any person described in subsection (b) of this section disseminates a source  
30 of any news or information, or any portion of the news or information procured while  
31 pursuing an activity described in subsection (b) of this section, the protection from  
32 compelled disclosure under this section is not waived by the person.

1 (a) If a judge of a court of record in any state which by its laws has made provision  
 2 for commanding persons within that state to attend and testify in the State certifies under  
 3 the seal of the court that there is a criminal prosecution pending in the court, or that a  
 4 grand jury investigation has commenced or is about to commence, that a person being  
 5 within the State is a material witness in the prosecution, or grand jury investigation, and  
 6 that his presence will be required for a specified number of days, upon presentation of the  
 7 certificate to any judge of a court of record, in the county in which the person is, the judge  
 8 shall fix a time and place for a hearing, and shall make an order directing the witness to  
 9 appear at a time and place certain for the hearing.

10 (b) **(1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
 11 **SUBSECTION, IF** at the hearing the judge determines that the witness is material and  
 12 necessary, that it will not cause undue hardship to the witness to be compelled to attend  
 13 and testify in the prosecution or a grand jury investigation in the other state, and that the  
 14 laws of the state in which the prosecution is pending, or grand jury investigation has  
 15 commenced or is about to commence, and of any other state through which the witness may  
 16 be required to pass by ordinary course of travel, will give to him protection from arrest and  
 17 the service of civil and criminal process, he shall issue a summons, with a copy of the  
 18 certificate attached, directing the witness to attend and testify in the court where the  
 19 prosecution is pending, or where a grand jury investigation has commenced or is about to  
 20 commence at a time and place specified in the summons. In the hearing the certificate shall  
 21 be prima facie evidence of all the facts stated therein.

22 **(2) A JUDGE MAY NOT ISSUE A SUMMONS UNDER THIS SUBSECTION**  
 23 **IF:**

24 **(I) THE WITNESS BEING SUMMONED IS A PERSON DESCRIBED**  
 25 **IN § 9-112(B) OF THIS TITLE; ~~AND~~**

26 **(II) THE RECORD INDICATES THAT THE WITNESS REASONABLY**  
 27 **RELIED ON THE PROTECTIONS PROVIDED UNDER § 9-112(D)(2) OF THIS TITLE**  
 28 **REGARDING DISCLOSURE OF A SOURCE THAT HAS BEEN PROMISED**  
 29 **CONFIDENTIALITY WHEN THE WITNESS ENGAGED IN THE CONDUCT THAT GAVE RISE**  
 30 **TO THE SUMMONS REQUEST; AND**

31 **~~(H)~~ (III) THE JUDGE FINDS:**

32 **1. THE LAWS OF THE STATE IN WHICH THE**  
 33 **PROSECUTION IS PENDING REGARDING PRIVILEGED COMMUNICATIONS WITH**  
 34 **MEMBERS OF THE NEWS MEDIA DO NOT PROVIDE PROTECTIONS FOR THE WITNESS**  
 35 **SUBSTANTIALLY SIMILAR TO THOSE PROVIDED UNDER § 9-112 OF THIS TITLE; ~~AND~~**

1                   **2.     THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE**  
2 **WITNESS WILL BE DIRECTED TO DISCLOSE THE NAME OF A CONFIDENTIAL SOURCE**  
3 **OR BE HELD IN CONTEMPT OF COURT; AND**

4                   **3.     THE DISCLOSURE OF THE NAME OF THE**  
5 **CONFIDENTIAL SOURCE WOULD BE CONTRARY TO THE PROVISIONS OF § 9-112 OF**  
6 **THIS TITLE.**

7           (c)     If a certificate recommends that the witness be taken into immediate custody  
8 and delivered to an officer of the requesting state to assure his attendance in the requesting  
9 state, the judge may, in lieu of notification of the hearing, direct that the witness be  
10 forthwith brought before him for a hearing; and the judge at the hearing being satisfied of  
11 the desirability of the custody and delivery, for which determination the certificate shall be  
12 prima facie proof of a desirability may, in lieu of issuing a subpoena or summons, order that  
13 a witness be forthwith taken into custody and delivered to an officer of the requesting state,  
14 provided, however, that the witness may be admitted to bail in the amount as may be fixed  
15 by the judge upon condition that the witness will appear at the time and place specified in  
16 the subpoena or summons served upon him.

17           (d)     If the witness, who is summoned as above provided, after being paid or  
18 tendered by some properly authorized person the sum of 10 cents a mile for each mile by  
19 the ordinary traveled route to and from the court where the prosecution is pending and \$5  
20 for each day, that he is required to travel and attend as a witness, fails without good cause  
21 to attend and testify as directed in the summons, he shall be punished in the manner  
22 provided for the punishment of any witness who disobeys a summons issued from a court  
23 of record in this State.

24           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2015.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.