

Shield law vital to protecting a free press

by The Detroit News

The Free Flow of Information Act that overwhelmingly passed the House last week isn't perfect, but it is likely the best shield law we'll get to protect the rights of journalists to do their jobs free of government interference.

Why is a federal shield law needed? Because the watchdog role assigned to the press by the Constitution is being undermined by the escalating practice in federal courts of demanding notes and the revelation of sources. Most states, including Michigan, already have shield laws.

During the past year, more than two dozen reporters have been hauled into the federal courts and grilled about their confidential sources. Some have been fined, jailed or sentenced to home confinement; others still face prison sentences.

This harassment of journalists by federal prosecutors, if allowed to continue, will have a chilling effect on the ability of reporters to gather information vital to the public interest. Sources, fearful that under the threat of jail time a reporter will cough up their names, will be less likely to reveal details important in understanding the workings of government and other institutions. The House bill, passed by a 398-21 vote, strictly limits when a prosecutor can subpoena reporters regarding their confidential sources.

It is not an airtight shield. The law would make exceptions, including when there is evidence that disclosure of the identity of a source is necessary to protect national security. That should be enough to satisfy the Bush administration's fears that the law would protect the leakers of national secrets and avoid a threatened veto.

It also provides for suspending the shield if a reporter is a direct witness to a serious crime.

Our concern with shield laws in general is they risk getting the government involved in certifying who is and isn't a journalist. That's a particularly dicey enterprise today, with the emergence of informal Web logs devoted to news coverage and commentary. The House bill attempts to address this concern by defining who's covered as loosely as possible, extending the protection to anyone engaged in gathering and disseminating news.

We also worry that the provision suspending protections when a reporter is a witness to a crime will become a significant loophole. But on the whole, the House bill should put an end to attempts to keep public information secret by trampling the rights of the messenger.

Love the media or hate it, democracy can't exist without a free and unfettered press. The Senate, which is considering a weaker shield law, should embrace the stronger House version and send it to the president.

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