

SENATE Substitute for HOUSE BILL

No. 2585

By Committee on Judiciary

3-19

11 AN ACT concerning journalists; providing a privilege with regard to cer-
12 tain disclosures of information.

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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. As used in sections 1 through 6, and amendments thereto:

16 (a) “Journalist” means: (1) A publisher, editor, reporter or other per-
17 son employed by a newspaper, magazine, news wire service, television
18 station or radio station who gathers, receives or processes information for
19 communication to the public; or (2) an online journal in the regular busi-
20 ness of newsgathering and disseminating news or information to the
21 public.

22 (b) “Information” means any information gathered, received or proc-
23 essed by a journalist, whether or not such information is actually pub-
24 lished, and whether or not related information has been disseminated,
25 and includes, but is not limited to, all notes, outtakes, photographs, tapes
26 and other recordings or other data of whatever sort that is gathered by a
27 journalist in the process of gathering, receiving or processing information
28 for communication to the public.

29 (c) “Acting as a journalist” means a journalist who is engaged in ac-
30 tivities that are part of such journalist’s gathering, receiving or processing
31 information for communication to the public.

32 Sec. 2. Except as provided in section 3, and amendments thereto, a
33 journalist cannot be adjudged in contempt by a judicial, legislative, ad-
34 ministrative body or any other body having the power to issue subpoenas,
35 for refusing to disclose, in any state or local proceeding, any information
36 or the source of any such information procured while acting as a
37 journalist.

38 Sec. 3. (a) A journalist may not be compelled to disclose any previ-
39 ously undisclosed information or the source of any such information pro-
40 cured while acting as a journalist until the party seeking to compel the
41 disclosure establishes by a preponderance of the evidence in district court
42 that the disclosure sought:

43 (1) Is material and relevant to the controversy for which the disclo-

1 sure is sought;

2 (2) could not, after exercising due diligence, be obtained by alterna-
3 tive means; and

4 (3) is of a compelling interest.

5 (b) For purposes of this section, a “compelling interest” is evidence
6 likely to be admissible and has probative value that is likely to outweigh
7 any harm done to the free dissemination of information to the public
8 through the activities of journalists, which includes, but is not limited to:

9 (1) The prevention of a certain miscarriage of justice; or

10 (2) an imminent act that would result in death or great bodily harm.

11 Interests that are not compelling include, but are not limited to, those
12 of parties whose litigation lacks sufficient grounds, is abusive or is brought
13 in bad faith.

14 Sec. 4. The party claiming the privilege and the party seeking to com-
15 pel disclosure shall be entitled to a hearing. After such hearing, the court
16 may conduct an in camera inspection to determine if such disclosure is
17 admissible. If the court then specifically finds that such disclosure is ad-
18 missible and that its probative value outweighs any harm to the free dis-
19 semination of information to the public through the activities of journal-
20 ists, then the court shall direct production of such disclosure and such
21 disclosure only.

22 Sec. 5. If the court finds that the party seeking to compel disclosure
23 had no reasonable basis to request such disclosure, the court may assess
24 costs and attorney fees against the party seeking to compel disclosure. If
25 the court finds that the party claiming the privilege had no reasonable
26 basis to claim such privilege, the court may assess costs and attorney fees
27 against the party claiming the privilege. If an application for attorney fees
28 is made, the judge shall set forth the reasons for awarding or denying
29 such costs or fees.

30 Sec. 6. The rights and privileges provided by this act are in addition
31 to any other rights guaranteed by the constitutions of the United States
32 or the state of Kansas. The provisions of sections 1 through 6, and amend-
33 ments thereto, shall not be construed to create or imply any limitation on
34 or to otherwise affect a privilege guaranteed by the constitutions of the
35 United States or the state of Kansas.

36 Sec. 7. This act shall take effect and be in force from and after its
37 publication in the statute book.