

CHAPTER 114

SENATE Substitute for HOUSE BILL No. 2585°

AN ACT concerning journalists; providing a privilege with regard to certain disclosures of information.

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

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

(a) “Journalist” means: (1) A publisher, editor, reporter or other person employed by a newspaper, magazine, news wire service, television station or radio station who gathers, receives or processes information for communication to the public; or (2) an online journal in the regular business of newsgathering and disseminating news or information to the public.

(b) “Information” means any information gathered, received or processed by a journalist, whether or not such information is actually published, and whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, photographs, tapes and other recordings or other data of whatever sort that is gathered by a journalist in the process of gathering, receiving or processing information for communication to the public.

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

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

Sec. 3. (a) A journalist may not be compelled to disclose any previously undisclosed information or the source of any such information procured while acting as a journalist until the party seeking to compel the disclosure establishes by a preponderance of the evidence in district court that the disclosure sought:

(1) Is material and relevant to the proceeding for which the disclosure is sought;

(2) could not, after a showing of reasonable effort, be obtained by readily available alternative means; and

(3) is of a compelling interest.

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

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

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

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

Sec. 4. The party claiming the privilege and the party seeking to compel disclosure shall be entitled to a hearing. After such hearing, the court may conduct an in camera inspection to determine if such disclosure is admissible. If the court then specifically finds that such disclosure is admissible and that its probative value outweighs any harm to the free dissemination of information to the public through the activities of journalists, then the court shall direct production of such disclosure and such disclosure only.

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

Sec. 6. The rights and privileges provided by this act are in addition to any other rights guaranteed by the constitutions of the United States or the state of Kansas. The provisions of sections 1 through 6, and amend-

ments thereto, shall not be construed to create or imply any limitation on or to otherwise affect a privilege guaranteed by the constitutions of the United States or the state of Kansas.

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

Approved April 15, 2010.
