

## HOUSE BILL No. 2798

By Committee on Federal and State Affairs

2-7

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

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

Section 1. The policy of this state is to ensure that news and other information flows freely to the public and that those who gather, write or edit information for the public or disseminate information to the public perform these functions in an uninhibited atmosphere. Therefor:

(a) A person should not be inhibited, directly or indirectly, by governmental restraint or sanction imposed by governmental action, but rather should be encouraged to gather, write, edit or disseminate news or other information vigorously so that the public may be fully informed;

(b) compelling a person to disclose a source of information or to disclose gathered information is contrary to the public interest and inhibits the free flow of information to the public; and

(c) there is a need to provide effective measures to halt and prevent this inhibition.

Sec. 2. As used in this act, "medium of communication" means:

(a) A newspaper, magazine, newsletter, pamphlet or other periodical;

(b) a book;

(c) a news agency, wire service or press association;

(d) radio, television, cable or the internet; and

(e) any printed, photographic, mechanical or electronic means of disseminating news or information to the public.

Sec. 3. A person engaged on, engaged in, connected with or employed by a medium of communication for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public, or on whose behalf news is so gathered, procured, transmitted, compiled, edited or disseminated, has a privilege to refuse to disclose, in any legal or quasi-legal proceeding or before any investigative body, including, but not limited to, any court, any grand jury, any petit jury, any administrative agency, the legislature or any legislative committee, or elsewhere:

(a) The source, author, means, agency or person from or through which any information was procured, obtained, supplied, furnished, gath-

1 ered, transmitted, compiled, edited, disseminated or delivered; and

2 (b) any news or information obtained, whether or not it is  
3 disseminated.

4 Sec. 4. (a) The provisions of section 3, and amendments thereto, ap-  
5 ply regardless of whether a person has disclosed elsewhere any source,  
6 author, means, agency or person from or through which any information  
7 was procured, obtained, supplied, furnished, gathered, transmitted, com-  
8 piled, edited, disseminated or delivered.

9 (b) The provisions of section 3, and amendments thereto, continue  
10 to apply even in the event of subsequent termination of a person's con-  
11 nection with, employment by or engagement in any medium of com-  
12 munication to the public.

13 Sec. 5. (a) To sustain a claim of privilege pursuant to section 3, and  
14 amendments thereto, the claimant shall make a prima facie showing that  
15 the claimant is engaged in, connected with or employed by a medium of  
16 communication for the purpose of gathering, procuring, transmitting,  
17 compiling, editing or disseminating news for the general public or on  
18 whose behalf news is so gathered, procured, transmitted, compiled, ed-  
19 ited or disseminated.

20 (b) The claimant shall show by preponderance of the evidence that  
21 the claimant's purpose and motive in gathering, procuring, transmitting,  
22 compiling, editing or disseminating information is to distribute newswor-  
23 thy information to the general public, and not for personal purposes or  
24 with a purpose or design to defeat the policy of this act.

25 Sec. 6. A person engaged on, engaged in, connected with or em-  
26 ployed by a medium of communication for the purpose of gathering,  
27 procuring, transmitting, compiling, editing or disseminating news for the  
28 general public or on whose behalf news is so gathered, procured, trans-  
29 mitted, compiled, edited or disseminated shall not be compelled to dis-  
30 close the source, author, means, agency or person from or through whom  
31 any information was procured, obtained, supplied, furnished, gathered,  
32 transmitted, compiled, edited, disseminated or delivered unless the party  
33 seeking to compel the disclosure establishes by clear and convincing ev-  
34 idence that the disclosure sought:

35 (a) Is material and relevant to the controversy for which the disclo-  
36 sure is sought;

37 (b) cannot be obtained by alternative means; and

38 (c) is of a compelling and overriding interest for the party seeking the  
39 disclosure.

40 Sec. 7. Upon a finding by the court that the party seeking to compel  
41 the disclosure has met the requirements in section 6, and amendments  
42 thereto, the court shall order the disclosure, and such disclosure only, for  
43 *in camera* inspection and determination as to probable admissibility of

1 the disclosure in the trial. The party claiming the privilege and the party  
2 seeking enforcement of the subpoena shall be entitled to a hearing in  
3 connection with the *in camera* inspection of such disclosure by the court,  
4 during which hearing each party shall have a full opportunity to be heard.  
5 If the court, after its *in camera* review of the disclosure, determines that  
6 such disclosure is admissible the court shall direct production of such  
7 disclosure and such disclosure only.

8 Sec. 8. If the court finds no reasonable basis has been shown for  
9 requesting the disclosure, costs, including attorney fees, may be assessed  
10 against the party seeking enforcement of the subpoena. If an application  
11 for costs or attorney fees is made, the judge shall set forth the reasons  
12 for awarding or denying such costs or fees.

13 Sec. 9. (a) The rights provided by this act are in addition to any rights  
14 guaranteed by the constitution of the United States or the Kansas  
15 constitution.

16 (b) This act shall not be construed to create or imply any limitation  
17 on or to otherwise affect a privilege guaranteed by the constitution of the  
18 United States or the Kansas constitution.

19 Sec. 10. This act applies only to a subpoena for information issued  
20 on or after the effective date of this act. A subpoena for information made  
21 before the effective date of this act is governed by the law in effect at the  
22 time the subpoena was issued, and that law is continued in effect for that  
23 purpose.

24 Sec. 11. This act shall take effect and be in force from and after its  
25 publication in the statute book.

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