

SENATE BILL No. 211

By Senators D. Schmidt and Hensley

2-4

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

11

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

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

14 (a) "Journalist" means a publisher, editor, reporter or other person
15 employed by a newspaper, magazine, news wire service, television station
16 or radio station who gathers, receives or processes information for com-
17 munication to the public.

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

25 (c) "Acting as a journalist" means a journalist who is engaged in ac-
26 tivities that are part of such journalist's gathering, receiving or processing
27 information for communication to the public.

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

34 Sec. 3. A journalist may not be compelled to disclose any information
35 or the source of any such information procured while acting as a journalist
36 until the party seeking to compel the disclosure establishes by clear and
37 convincing evidence in district court that the disclosure sought:

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

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

41 (c) is of a compelling and overriding interest for the party seeking the
42 disclosure and is necessary to secure the interests of justice.

43 Sec. 4. Upon a finding by the court that the party seeking to compel

1 the disclosure has met the requirements in section 3, and amendments
2 thereto, the court shall order the disclosure, and such disclosure only, for
3 in camera inspection. Upon such in camera inspection, the court shall
4 determine whether the disclosure is likely to be admissible as evidence
5 and whether its probative value is likely to outweigh any harm done to
6 the free dissemination of information to the public through the activities
7 of journalists. The party claiming the privilege and the party seeking to
8 compel disclosure shall be entitled to a hearing in connection with the in
9 camera inspection of such disclosure by the court, during which hearing
10 each party shall have a full opportunity to be heard. If the court then
11 determines that such disclosure is admissible and that its probative value
12 outweighs any harm to the free dissemination of information to the public
13 through the activities of journalists, then the court shall direct production
14 of such disclosure and such disclosure only.

15 Sec. 5. If the court finds no reasonable basis has been shown for
16 requesting the disclosure, costs and attorney fees may be assessed against
17 the party seeking disclosure. If an application for attorney fees is made,
18 the judge shall set forth the reasons for awarding or denying such costs
19 or fees.

20 Sec. 6. The rights and privileges provided by this act are in addition
21 to any other rights guaranteed by the constitutions of the United States
22 or the state of Kansas. The provisions of sections 1 through 6, and amend-
23 ments thereto, shall not be construed to create or imply any limitation on
24 or to otherwise affect a privilege guaranteed by the constitutions of the
25 United States or the state of Kansas.

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