

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2585**

As Agreed to March 30, 2010

Brief*

Senate Sub. for HB 2585 would create a journalist's privilege with regard to certain disclosures of information commonly referred to as a "shield law." The bill would:

- Define "journalist" to mean 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 an online journal in the regular business of news-gathering and disseminating news or information to the public;
- Clarify that a journalist would not be compelled to disclose any previously undisclosed information or the source of such information procured while acting as a journalist until the party seeking disclosure establishes, by the preponderance of the evidence, that the disclosure sought:
 - Is material and relevant to the proceeding for which the disclosure is sought;
 - Could not, after a showing of reasonable effort, be obtained by reasonably available alternative means; and
 - The disclosure sought is of a compelling interest;

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- Define “compelling interest” to mean evidence likely to be admissible and that 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, including but not limited to:
 - The prevention of a certain miscarriage of justice; or
 - An imminent act that would result in death or great bodily harm;

- Define interests that are not compelling to include, among others, those of parties whose litigation lacks sufficient grounds, is abusive, or is brought in bad faith;

- Delete the language providing for the procedure for an in camera inspection by the court after a finding that the requirements for disclosure have been met;

- Add a provision to clarify that after a hearing, the court may conduct an in camera inspection to determine if such disclosure would be admissible;

- Clarify that the court is authorized to direct production of such disclosure if the court specifically finds a compelling interest; and

- Provide that the court may assess costs and attorney fees against a party who had no reasonable basis to request or resist such disclosure.

Conference Committee Action

The 2010 Conference Committee agreed to the changes made by the Senate and adopted additional amendments to the bill. The first changes “controversy” to “proceeding” in the context of whether information is relevant. The second provides that, rather than an exercise of due diligence, the party seeking

disclosure must show that after a reasonable effort the information sought could not be obtained by readily available alternative means.

Background

HB 2585, as introduced, would have provided for a waiver of the marriage license fee in poverty situations. The Senate Committee on Judiciary deleted these provisions and inserted modified provisions from 2009 SB 211 regarding journalists' privilege.

The proponents of the bill who presented testimony in the Senate Committee hearing were a professor of law, and representatives from the Kansas Press Association and the Kansas Association of Broadcasters. The Kansas County and District Attorneys Association presented testimony in opposition to the bill.

According to the fiscal note on SB 211, as introduced, passage of the bill has the potential for increasing litigation in the courts. If litigation does increase, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Passage of SB 211 is not expected to have a fiscal effect on the budget of the Office of the Attorney General. Any fiscal effect resulting from passage of this bill would be in addition to amounts included in *The FY 2010 Governor's Budget Report*.

Journalist privilege; Shield Law