

SECOND REGULAR SESSION

SENATE BILL NO. 786

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRAHAM.

Pre-filed December 29, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

4171S.011

AN ACT

To amend chapter 491, RSMo, by adding thereto one new section relating to the disclosure of news sources and information.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 491, RSMo, is amended by adding thereto one new section, to be known as section 491.003, to read as follows:

491.003. 1. This act shall be known and may be cited as the "Free Flow of Information Act of 2006".

2. For the purposes of this section, the following terms shall mean:

(1) "Covered person", an individual or entity that disseminates information by print, broadcast, cable, satellite, mechanical, photographic, electronic, or other means, and that:

(a) Publishes, in either print or electronic form, a newspaper, book, magazine, pamphlet, or any other periodical; or

(b) Operates a radio or television broadcast station, a network of such stations, a cable system, a satellite carrier, or a channel or programming service for any such station, network, system, or carrier; or

(c) Operates a news agency or wire service, or a news or feature syndicate; or

(d) A parent, subsidiary, or affiliate of any entity described in this section, if such parent, subsidiary, or affiliate is engaged in news gathering or the dissemination of news and information; or

(e) An employee, contractor, or other person who gathers, edits, photographs, records, prepares, or disseminates news or information for any entity described in this section;

22 (2) "Unpublished or non-broadcast information", information not
23 disseminated to the public by the person from whom disclosure is
24 sought nor by any entity described in this section, including but not
25 limited to, any notes, photographs, tapes, film, outtakes, or other data,
26 regardless of whether information based upon or related to such
27 information has been disseminated.

28 3. It is the policy of the state to ensure the free flow of news and
29 other information to the public, and that those who gather, write, edit,
30 or disseminate information to the public may perform these vital
31 functions only in a free and unfettered atmosphere. It is further the
32 policy of the state that compelling a covered person to disclose a source
33 of information or disclose unpublished information is contrary to the
34 public interest and inhibits the free flow of information to the public,
35 and that there is an urgent need to provide effective measures to halt
36 and prevent this inhibition.

37 4. No covered person shall be required to disclose, in any federal
38 or state proceeding, the source of any published or unpublished,
39 broadcast or non-broadcast information obtained in the gathering,
40 receiving, or processing of information for any entity described in this
41 section. No covered person shall be required to disclose, in any federal
42 or state proceeding, any unpublished or non-broadcast information
43 obtained or prepared in gathering, receiving, or processing of
44 information for any entity described in this section.

45 5. If any covered person claims the privilege provided by this
46 section, the person or entity seeking the information may move the
47 circuit court of the county in which the proceeding is located for an
48 order divesting the person of such privilege, and ordering him or her
49 to disclose the information sought. The motion shall allege the name
50 of the person claiming the privilege, the entity with which he or she
51 was connected at the time he or she obtained the information, the
52 specific information sought and its relevancy to the proceeding, and
53 the necessity of disclosure of the information. In cases involving
54 allegations of libel or slander, the motion shall also contain a prima
55 facie showing of falsity of the alleged defamation, and actual harm or
56 injury that resulted therefrom.

57 6. In granting or denying divestiture of the privilege provided
58 in this section, the court shall consider the nature of the proceedings,

59 the merits of the claim or defense, the adequacy of any remedy
60 otherwise available, if any, the possibility of establishing by other
61 means that which it is alleged the source or information will tend to
62 prove, and the relevancy of the source or information to the
63 proceeding.

64 7. Any order granting divestiture of the privilege provided by
65 this section shall issue only if the court finds that:

66 (1) The information sought does not involve matters or details
67 necessary in any proceeding that are required to be kept secret under
68 federal or state law; and that all other available sources of information
69 have been exhausted; and

70 (2) Disclosure of the information is essential to the protection of
71 the public interest involved in the proceedings; and

72 (3) In libel or slander cases, the movant's need for disclosure of
73 the information sought outweighs the public interest in protecting the
74 confidentiality of sources and information used by a reporter as part
75 of the news-gathering process under the particular facts and
76 circumstances of each particular case.

77 8. If the court orders divestiture of the privilege provided by this
78 section, it shall also order the person to disclose the information it has
79 determined must be disclosed, subject to any protective conditions the
80 court may deem necessary or appropriate.

81 9. The privilege provided by this section shall remain in effect
82 during the pendency of any appeal.

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