

FIRST REGULAR SESSION

# SENATE BILL NO. 58

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRAHAM.

Pre-filed December 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0303S.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  
2 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  
2 Flow of Information Act of 2007".**

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

**5 (1) "Covered person", an entity that disseminates information by  
6 print, broadcast, cable, satellite, mechanical, photographic, electronic,  
7 or other means, and that meets one of the following three criteria:**

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

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

**14 (c) Operates a news agency or wire service, or a news or feature  
15 syndicate.**

**16 A "covered person" also shall include a parent, subsidiary, or  
17 affiliate of any entity described in this subdivision, if such parent,  
18 subsidiary, or affiliate is engaged in news gathering or the dissemination  
19 of news and information; or an employee, contractor, or other person  
20 who gathers, edits, photographs, records, prepares, or disseminates news  
21 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22           (2) "Unpublished or non-broadcast information", information not  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 sought  
24 nor by any entity described in this section, including but not limited to,  
25 any notes, photographs, tapes, film, outtakes, or other data, regardless  
26 of whether information based upon or related to such information has  
27 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 to  
49 disclose the information sought. The motion shall allege the name of the  
50 person claiming the privilege, the entity with which he or she was  
51 connected at the time he or she obtained the information, the specific  
52 information sought and its relevancy to the proceeding, and the  
53 necessity of disclosure of the information. In cases involving allegations  
54 of libel or slander, the motion shall also contain a prima facie showing  
55 of falsity of the alleged defamation, and actual harm or injury that  
56 resulted therefrom.

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

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

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

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

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

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

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

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

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