

SECOND REGULAR SESSION

# SENATE BILL NO. 878

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRAHAM.

Pre-filed December 14, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3844S.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 2008".**

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

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

**(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.**

**A covered person also shall include a parent, subsidiary, or affiliate of any entity described in this subdivision, if such parent, subsidiary, or affiliate is engaged in news gathering or the dissemination of news and information; or 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22           **(2) "Unpublished or non-broadcast information", information not**  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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