

109TH CONGRESS
1ST SESSION

S. 369

To establish protections against compelled disclosure of sources, and news or information, by persons providing services for the news media.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2005

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish protections against compelled disclosure of sources, and news or information, by persons providing services for the news media.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Speech Protection
5 Act of 2005”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **COVERED PERSON.**—The term “covered
9 person” means a person who—

1 (A) engages in the gathering of news or in-
2 formation; and

3 (B) has the intent, at the beginning of the
4 process of gathering news or information, to
5 disseminate the news or information to the pub-
6 lic.

7 (2) NEWS OR INFORMATION.—The term “news
8 or information” means written, oral, pictorial, photo-
9 graphic, or electronically recorded information or
10 communication concerning local, national, or world-
11 wide events, or other matters.

12 (3) NEWS MEDIA.—The term “the news media”
13 means—

14 (A) a newspaper;

15 (B) a magazine;

16 (C) a journal or other periodical;

17 (D) radio;

18 (E) television;

19 (F) any means of disseminating news or
20 information gathered by press associations,
21 news agencies, or wire services (including dis-
22 semination to the news media described in sub-
23 paragraphs (A) through (E)); or

1 (G) any printed, photographic, mechanical,
 2 or electronic means of disseminating news or in-
 3 formation to the public.

4 **SEC. 3. COMPELLED DISCLOSURE PROHIBITED.**

5 (a) IN GENERAL.—Except as provided in section 4,
 6 no entity of the judicial, legislative, or executive branch
 7 of the Federal Government with the power to issue a sub-
 8 poena or provide other compulsory process shall compel
 9 any covered person who is providing or has provided serv-
 10 ices for the news media to disclose—

11 (1) the source of any news or information pro-
 12 cured by the person, or any information that would
 13 tend to identify the source, while providing services
 14 for the news media, whether or not the source has
 15 been promised confidentiality; or

16 (2) any news or information procured by the
 17 person, while providing services for the news media,
 18 that is not itself communicated in the news media,
 19 including any—

20 (A) notes;

21 (B) outtakes;

22 (C) photographs or photographic negatives;

23 (D) video or sound tapes;

24 (E) film; or

1 (F) other data, irrespective of its nature,
 2 that is not itself communicated in the news
 3 media.

4 (b) SUPERVISORS, EMPLOYERS, AND PERSONS AS-
 5 SISTING A COVERED PERSON.—The protection from com-
 6 pelled disclosure described in subsection (a) shall apply to
 7 a supervisor, employer, or any person assisting a person
 8 covered by subsection (a).

9 (c) RESULT.—Any news or information obtained in
 10 violation of the provisions of this section shall be inadmis-
 11 sible in any action, proceeding, or hearing before any enti-
 12 ty of the judicial, legislative, or executive branch of the
 13 Federal Government.

14 **SEC. 4. COMPELLED DISCLOSURE PERMITTED.**

15 (a) NEWS OR INFORMATION.—A court may compel
 16 disclosure of news or information described in section
 17 3(a)(2) and protected from disclosure under section 3 if
 18 the court finds, after providing notice and an opportunity
 19 to be heard to the person or entity from whom the news
 20 or information is sought, that the party seeking the news
 21 or information established by clear and convincing evi-
 22 dence that—

23 (1) the news or information is critical and nec-
 24 essary to the resolution of a significant legal issue
 25 before an entity of the judicial, legislative, or execu-

1 tive branch of the Federal Government that has the
2 power to issue a subpoena;

3 (2) the news or information could not be ob-
4 tained by any alternative means; and

5 (3) there is an overriding public interest in the
6 disclosure.

7 (b) SOURCE.—A court may not compel disclosure of
8 the source of any news or information described in section
9 3(a)(1) and protected from disclosure under section 3.

10 **SEC. 5. ACTIVITIES NOT CONSTITUTING A WAIVER.**

11 The publication by the news media, or the dissemina-
12 tion by a person while providing services for the news
13 media, of a source of news or information, or a portion
14 of the news or information, procured in the course of pur-
15 suing professional activities shall not constitute a waiver
16 of the protection from compelled disclosure that is de-
17 scribed in section 3.

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