

Shield Law bill again filed in state Senate



Newspapers' coverage has helped in this process

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Last month's column talked about the challenges that awaited the Press Association in its efforts to move a shield law bill through the Missouri legislature. The coverage that MPA has received on this issue has been gratifying and has helped us keep this on the front burner with your state legislators.

Since last month, our supporter state Sen. Jason Crowell has refiled his bill which was mired in the Senate Judiciary Committee last year. Also, state Sen. Chuck Graham, another supporter, has filed a similar shield law bill. Efforts are underway to seek sponsorship of a similar bill in the House of Representatives. We're being assisted there by Speaker of the House Rod Jetton.

Representatives of the association met a few weeks ago with Senators Matt Bartle and Chris Koster. Both had significant issues with the bills introduced last year. Sen. Bartle has indicated he would take a further look at any legislation filed this year. Sen. Koster continues to believe this creates a privilege that is detrimental to society.

But the heart of a shield law in general is that it is a Free Flow of Information measure. It offers a layer of protection to citizens who are in possession of information which they believe the public needs to know.

In some cases, these citizens are governmental employees aware of illegal activities going on in their governmental department. Such citizens put themselves in jeopardy when they tell a reporter that information. If the reporter is subpoenaed to testify about the source of that information, Missouri law, with few exceptions, requires the reporter to disclose the source without any court supervision of the process or whether the need for that information is genuine.

Persons who claim they are harmed by the disclosure of such information may, under present law, access the name of the source without having to show that they have a valid need to know the source. Even if their sole reason is to get that person fired or to cause him harm, the reporter legally cannot withhold that information.

Sometimes the source of the information is a law enforcement officer helping a reporter working on a criminal story. The attorneys for the defendant suddenly want to know where the reporter acquired information regarding the crime.

Laws presently allow defense attorneys very free access to whatever a prosecutor has in the file regarding the investigation, so there should be no reason for those same attorneys to ask the reporter the name of the source, rather than turning to the law enforcement files to begin with.

The proposal under consideration in the Missouri legislature defines a "covered person" as any person or entity that disseminates information by print, broadcast, cable, satellite, mechanical, photographic, electronic or other means, and who either publishes in print or electronic form a periodical, operates a broadcast station or carrier, or operates a news wire or syndicate. This definition is broad, just as the First Amendment is broad.

Some have criticized this bill, claiming it amounts to governmental licensing of reporters. But nothing in the bill requires reporters to obtain any "license" before they can report the news. It does create a group, a rather broad group, of persons who could claim rights under the bill, but it in no way requires members of the media to obtain any license before they can practice their craft.

Another criticism is that it provides that a judge may end the privilege if he or she believes the disclosure of the information sought is "essential to the protection of the public interest involved in the proceedings." Some argue that language gives the judge no guidelines on when to revoke the privilege, and would allow the judge

to revoke the privilege too easily. I've seen criticism from both media attorneys and from those who oppose this bill claiming this will lead to judges revoking the privilege too easily.

While it is true that it is a law with "no teeth" in one sense, it is at least a standard on which reporters can rely. At present, with no law, there is little case law precedent in Missouri that gives reporters a basic knowledge on when they will or won't be required to reveal a source. Neither of these criticisms are valid grounds on which to oppose these bills.

The bills that will be considered by our legislature this session will at least ensure that a judge has the ability to weigh the need for the information by one party against the basic First Amendment principles that encourage citizens to turn to the media when their government has failed them.

It will ensure that a judge has the ability to weigh whether a party seeking access to information has properly sought it from sources where it is available as direct evidence, rather than take the easy route and seek it from a third party reporter who may or may not know anything about the information other than it was given to that reporter by a source.

The media's vested interest, if it has one, is to continue its role as the watchdog for the public over governmental processes and entities.

When a Free Flow of Information bill is drafted that ultimately supports the public in general, one must wonder about the motives of those who find reasons to argue that it is a bad idea. What interest are they supporting, if not the public interest?