

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Alice Hanlon Peisch**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing against compelled disclosure of certain information by the news media.

PETITION OF:

NAME:

Alice Hanlon Peisch

DISTRICT/ADDRESS:

14th Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1672 OF .]

## **The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the Year Two Thousand and Nine**  
\_\_\_\_\_

### **AN ACT PROVIDING AGAINST COMPELLED DISCLOSURE OF CERTAIN INFORMATION BY THE NEWS MEDIA.**

1       *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of*  
2       *the*                               *same,*                               *as*                               *follows:*  
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4       SECTION 1. This act may be cited as the "Free Flow of Information Act."  
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6       SECTION 2. Chapter 233 of the General Laws, as appearing in the 2006 Official Edition, is hereby  
7       amended by adding the following section:-  
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9               Section 84. (a) For the purposes of this section, the following terms shall have the following  
10       meanings:-

11               "Covered person", any person who is or has been an employee, agent, or independent  
12       contractor of any news media as defined here, who is or has been engaged in bona fide news gathering  
13       for such entity, and who obtained or prepared the news or information that is sought while serving in  
14       that capacity, or news media, or any parent, subsidiary, or affiliate of the news media as defined below  
15       to the extent that the subpoena or other compulsory process seeks news or information described in  
16       subsection (b) of this section.

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18 "News or information", written oral, pictorial, photographic or electronically recorded  
19 information or communication concerning local, national, or worldwide events, or other matters.

20 "News media", any newspaper, magazine or other periodical, book publisher, news agency, wire  
21 service, radio or television station or network, cable or satellite station or network, or audio or  
22 audiovisual production company, or any entity that is in the regular business of news gathering and  
23 disseminating news or information to the public by any means, including, but not limited to, print,  
24 broadcast, photographic, mechanical, internet, or electronic distribution.

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26 (b) (1) Except as provided in subsection (c), no entity of the judicial, legislative or executive  
27 branch of the commonwealth with the power to issue a subpoena or provide other compulsory process  
28 shall compel any covered person, who is providing or has provided services for the news media to  
29 disclose:

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31 (i) the source of any news or information procured by such covered person, or any information  
32 that would tend to identify such source, while providing services for the news media, whether or not  
33 such source has been promised confidentially: or

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35 (ii) any news or information procured by the covered person, while providing services for the  
36 news media, that is not itself communicated in the news media, including any: notes; outtakes;  
37 photographs or photographic negatives; video or sound tapes; film or; other data, irrespective of its  
38 nature, that is not itself communicated in the news media.

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40 (2) The protection from compelled disclosure described in subparagraph (1) shall apply to a  
41 supervisor, employer or any person assisting a covered person to whom said subparagraph (1) applies.

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43 (3) Any news or information obtained in violation of this section shall be inadmissible in any  
44 action, proceeding or hearing before any entity of the judicial legislative or executive branch of the  
45 commonwealth.

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47 (c) A state entity may not compel a covered person to testify or produce any document in any  
48 proceeding or in connection with any issue arising under state law unless:

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50 (i)disclosure of the identity of a source is necessary to prevent imminent and actual harm to  
51 public security from acts of terrorism;

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53 (ii)compelled disclosure of the identity of a source would prevent such harm; and

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55 (iii) the harm sought to be redressed by requiring disclosure clearly outweighs the public interest  
56 in protecting the free flow of information.

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58 (d)(1) A court may compel disclosure of news or information described in clause (ii) of paragraph  
59 (1) of subsection (b) and protected from disclosure under said subsection (b) if the court finds, after  
60 providing notice and an opportunity to be heard to the person or entity from whom the news or  
61 information is sought, that the party seeking the news or information has established by clear and  
62 convincing evidence that:

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64 (i) the news or information is critical and necessary to the resolution of a significant legal issue  
65 before an entity of the judicial, legislative or executive branch of the commonwealth that has the power  
66 to issue a subpoena;

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68 (ii) the news or information could not be obtained by any alternative means; and

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70 (iii) there is an overriding public interest in the disclosure.

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72 (2) A court may not compel disclosure of the source of any news or information described in  
73 clause (i) of paragraph (1) of subsection (b) and protected from disclosure under said subsection (b).

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75 (e) The publication by the news media or the dissemination by a covered person while providing  
76 services for the news media of a source of news or information, or a portion of the news or information,  
77 procured in the course of pursuing professional activities shall not constitute a waiver of the protection  
78 from compelled disclosure that is described in subsection (b).

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