

1 AN ACT

2 relating to a qualified privilege of a journalist not to testify.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Chapter 22, Civil Practice and Remedies Code, is  
5 amended by adding Subchapter C to read as follows:

6 SUBCHAPTER C. JOURNALIST'S QUALIFIED TESTIMONIAL PRIVILEGE IN  
7 CIVIL PROCEEDINGS

8 Sec. 22.021. DEFINITIONS. In this subchapter:

9 (1) "Communication service provider" means a person or  
10 the parent, subsidiary, division, or affiliate of a person who  
11 transmits information chosen by a customer by electronic means,  
12 including:

13 (A) a telecommunications carrier, as defined by  
14 Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

15 (B) a provider of information service, as defined  
16 by Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

17 (C) a provider of interactive computer service,  
18 as defined by Section 230, Communications Act of 1934 (47 U.S.C.  
19 Section 230); and

20 (D) an information content provider, as defined  
21 by Section 230, Communications Act of 1934 (47 U.S.C. Section 230).

22 (2) "Journalist" means a person, including a parent,  
23 subsidiary, division, or affiliate of a person, who for a  
24 substantial portion of the person's livelihood or for substantial

1 financial gain, gathers, compiles, prepares, collects,  
2 photographs, records, writes, edits, reports, investigates,  
3 processes, or publishes news or information that is disseminated by  
4 a news medium or communication service provider and includes:

5 (A) a person who supervises or assists in  
6 gathering, preparing, and disseminating the news or information; or

7 (B) notwithstanding the foregoing, a person who  
8 is or was a journalist, scholar, or researcher employed by an  
9 institution of higher education at the time the person obtained or  
10 prepared the requested information, or a person who at the time the  
11 person obtained or prepared the requested information:

12 (i) is earning a significant portion of the  
13 person's livelihood by obtaining or preparing information for  
14 dissemination by a news medium or communication service provider;  
15 or

16 (ii) was serving as an agent, assistant,  
17 employee, or supervisor of a news medium or communication service  
18 provider.

19 (3) "News medium" means a newspaper, magazine or  
20 periodical, book publisher, news agency, wire service, radio or  
21 television station or network, cable, satellite, or other  
22 transmission system or carrier or channel, or a channel or  
23 programming service for a station, network, system, or carrier, or  
24 an audio or audiovisual production company or Internet company or  
25 provider, or the parent, subsidiary, division, or affiliate of that  
26 entity, that disseminates news or information to the public by any  
27 means, including:

1           (A) print;

2           (B) television;

3           (C) radio;

4           (D) photographic;

5           (E) mechanical;

6           (F) electronic; and

7           (G) other means, known or unknown, that are  
8 accessible to the public.

9           (4) "Official proceeding" means any type of  
10 administrative, executive, legislative, or judicial proceeding  
11 that may be conducted before a public servant, including a  
12 proceeding under Rule 202, Texas Rules of Civil Procedure.

13           (5) "Public servant" means a person elected, selected,  
14 appointed, employed, or otherwise designated as one of the  
15 following, even if the person has not yet qualified for office or  
16 assumed the person's duties:

17           (A) an officer, employee, or agent of government;

18           (B) a juror;

19           (C) an arbitrator, referee, or other person who  
20 is authorized by law or private written agreement to hear or  
21 determine a cause or controversy;

22           (D) an attorney or notary public when  
23 participating in the performance of a governmental function; or

24           (E) a person who is performing a governmental  
25 function under a claim of right, although the person is not legally  
26 qualified to do so.

27           Sec. 22.022. PURPOSE. The purpose of this subchapter is to

1 increase the free flow of information and preserve a free and active  
2 press and, at the same time, protect the right of the public to  
3 effective law enforcement and the fair administration of justice.

4 Sec. 22.023. PRIVILEGE. (a) Except as otherwise provided  
5 by this subchapter, a judicial, legislative, administrative, or  
6 other body with the authority to issue a subpoena or other  
7 compulsory process may not compel a journalist to testify regarding  
8 or to produce or disclose in an official proceeding:

9 (1) any confidential or nonconfidential information,  
10 document, or item obtained or prepared while acting as a  
11 journalist; or

12 (2) the source of any information, document, or item  
13 described by Subdivision (1).

14 (b) A subpoena or other compulsory process may not compel  
15 the parent, subsidiary, division, or affiliate of a communication  
16 service provider or news medium to disclose the information,  
17 documents, or items or the source of any information, documents, or  
18 items that are privileged from disclosure under Subsection (a).

19 Sec. 22.024. LIMITED DISCLOSURE GENERALLY. After notice  
20 and an opportunity to be heard, a court may compel a journalist, a  
21 journalist's employer, or a person with an independent contract  
22 with a journalist to testify regarding or to produce or disclose any  
23 information, document, or item or the source of any information,  
24 document, or item obtained while acting as a journalist, if the  
25 person seeking the information, document, or item or the source of  
26 any information, document, or item makes a clear and specific  
27 showing that:

1           (1) all reasonable efforts have been exhausted to  
2 obtain the information from alternative sources;

3           (2) the subpoena is not overbroad, unreasonable, or  
4 oppressive and, when appropriate, will be limited to the  
5 verification of published information and the surrounding  
6 circumstances relating to the accuracy of the published  
7 information;

8           (3) reasonable and timely notice was given of the  
9 demand for the information, document, or item;

10           (4) in this instance, the interest of the party  
11 subpoenaing the information outweighs the public interest in  
12 gathering and dissemination of news, including the concerns of the  
13 journalist;

14           (5) the subpoena or compulsory process is not being  
15 used to obtain peripheral, nonessential, or speculative  
16 information; and

17           (6) the information, document, or item is relevant and  
18 material to the proper administration of the official proceeding  
19 for which the testimony, production, or disclosure is sought and is  
20 essential to the maintenance of a claim or defense of the person  
21 seeking the testimony, production, or disclosure.

22           Sec. 22.025. NOTICE. An order to compel testimony,  
23 production, or disclosure to which a journalist has asserted a  
24 privilege under this subchapter may be issued only after timely  
25 notice to the journalist, the journalist's employer, or a person  
26 who has an independent contract with the journalist and a hearing.  
27 The order must include clear and specific findings as to the showing

1 made by the person seeking the testimony, production, or disclosure  
2 and the clear and specific evidence on which the court relied in  
3 issuing the court's order.

4 Sec. 22.026. PUBLICATION OF PRIVILEGED INFORMATION.  
5 Publication or dissemination by a news medium or communication  
6 service provider of information, documents, or items privileged  
7 under this subchapter is not a waiver of the journalist's  
8 privilege.

9 Sec. 22.027. NEWS MEDIA RECORDINGS. Extrinsic evidence of  
10 the authenticity of evidence as a condition precedent to the  
11 admissibility of the evidence in a civil proceeding is not required  
12 with respect to a recording that purports to be a broadcast by a  
13 radio or television station that holds a license issued by the  
14 Federal Communications Commission at the time of the recording.  
15 The court may take judicial notice of the recording license as  
16 provided by Rule 201, Texas Rules of Evidence.

17 SECTION 2. Chapter 38, Code of Criminal Procedure, is  
18 amended by adding Articles 38.11 and 38.111 to read as follows:

19 Art. 38.11. JOURNALIST'S QUALIFIED TESTIMONIAL PRIVILEGE  
20 IN CRIMINAL PROCEEDINGS

21 Sec. 1. DEFINITIONS. In this article:

22 (1) "Communication service provider" means a person or  
23 the parent, subsidiary, division, or affiliate of a person who  
24 transmits information chosen by a customer by electronic means,  
25 including:

26 (A) a telecommunications carrier, as defined by  
27 Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

1           (B) a provider of information service, as defined  
2 by Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

3           (C) a provider of interactive computer service,  
4 as defined by Section 230, Communications Act of 1934 (47 U.S.C.  
5 Section 230); and

6           (D) an information content provider, as defined  
7 by Section 230, Communications Act of 1934 (47 U.S.C. Section 230).

8           (2) "Journalist" means a person, including a parent,  
9 subsidiary, division, or affiliate of a person, who for a  
10 substantial portion of the person's livelihood or for substantial  
11 financial gain, gathers, compiles, prepares, collects,  
12 photographs, records, writes, edits, reports, investigates,  
13 processes, or publishes news or information that is disseminated by  
14 a news medium or communication service provider and includes:

15           (A) a person who supervises or assists in  
16 gathering, preparing, and disseminating the news or information; or

17           (B) notwithstanding the foregoing, a person who  
18 is or was a journalist, scholar, or researcher employed by an  
19 institution of higher education at the time the person obtained or  
20 prepared the requested information, or a person who at the time the  
21 person obtained or prepared the requested information:

22           (i) is earning a significant portion of the  
23 person's livelihood by obtaining or preparing information for  
24 dissemination by a news medium or communication service provider;  
25 or

26           (ii) was serving as an agent, assistant,  
27 employee, or supervisor of a news medium or communication service

1 provider.

2 (3) "News medium" means a newspaper, magazine or  
3 periodical, book publisher, news agency, wire service, radio or  
4 television station or network, cable, satellite, or other  
5 transmission system or carrier or channel, or a channel or  
6 programming service for a station, network, system, or carrier, or  
7 an audio or audiovisual production company or Internet company or  
8 provider, or the parent, subsidiary, division, or affiliate of that  
9 entity, that disseminates news or information to the public by any  
10 means, including:

11 (A) print;

12 (B) television;

13 (C) radio;

14 (D) photographic;

15 (E) mechanical;

16 (F) electronic; and

17 (G) other means, known or unknown, that are  
18 accessible to the public.

19 (4) "Official proceeding" means any type of  
20 administrative, executive, legislative, or judicial proceeding  
21 that may be conducted before a public servant.

22 (5) "Public servant" means a person elected, selected,  
23 appointed, employed, or otherwise designated as one of the  
24 following, even if the person has not yet qualified for office or  
25 assumed the person's duties:

26 (A) an officer, employee, or agent of government;

27 (B) a juror or grand juror;



1           (C) an arbitrator, referee, or other person who  
2 is authorized by law or private written agreement to hear or  
3 determine a cause or controversy;

4           (D) an attorney or notary public when  
5 participating in the performance of a governmental function; or

6           (E) a person who is performing a governmental  
7 function under a claim of right, although the person is not legally  
8 qualified to do so.

9           Sec. 2. PURPOSE. The purpose of this article is to increase  
10 the free flow of information and preserve a free and active press  
11 and, at the same time, protect the right of the public to effective  
12 law enforcement and the fair administration of justice.

13           Sec. 3. PRIVILEGE. (a) Except as otherwise provided by  
14 this article, a judicial, legislative, administrative, or other  
15 body with the authority to issue a subpoena or other compulsory  
16 process may not compel a journalist to testify regarding or to  
17 produce or disclose in an official proceeding:

18           (1) any confidential or nonconfidential unpublished  
19 information, document, or item obtained or prepared while acting as  
20 a journalist; or

21           (2) the source of any information, document, or item  
22 described by Subdivision (1).

23           (b) A subpoena or other compulsory process may not compel  
24 the parent, subsidiary, division, or affiliate of a communication  
25 service provider or news medium to disclose the unpublished  
26 information, documents, or items or the source of any information,  
27 documents, or items that are privileged from disclosure under

1 Subsection (a).

2 Sec. 4. PRIVILEGE CONCERNING CONFIDENTIAL SOURCES. (a) A  
3 journalist may be compelled to testify regarding or to disclose the  
4 confidential source of any information, document, or item obtained  
5 while acting as a journalist if the person seeking the testimony,  
6 production, or disclosure makes a clear and specific showing that  
7 the source of any information, document, or item:

8 (1) was observed by the journalist committing a felony  
9 criminal offense and the subpoenaing party has exhausted reasonable  
10 efforts to obtain from alternative sources the confidential source  
11 of any information, document, or item obtained or prepared while  
12 acting as a journalist;

13 (2) is a person who confessed or admitted to the  
14 journalist the commission of a felony criminal offense and the  
15 subpoenaing party has exhausted reasonable efforts to obtain from  
16 alternative sources the confidential source of any information,  
17 document, or item obtained or prepared while acting as a  
18 journalist;

19 (3) is a person for whom probable cause exists that the  
20 person participated in a felony criminal offense and the  
21 subpoenaing party has exhausted reasonable efforts to obtain from  
22 alternative sources the confidential source of any information,  
23 document, or item obtained or prepared while acting as a  
24 journalist; or

25 (4) disclosure of the confidential source is  
26 reasonably necessary to stop or prevent reasonably certain death or  
27 substantial bodily harm.

1        (b) If the alleged criminal conduct is the act of  
2 communicating, receiving, or possessing the information, document,  
3 or item, this section does not apply, and Section 5 governs the act.

4        (c) Notwithstanding Subsection (b), if the information,  
5 document, or item was disclosed or received in violation of a grand  
6 jury oath given to either a juror or a witness under Article 19.34  
7 or 20.16, a journalist may be compelled to testify if the person  
8 seeking the testimony, production, or disclosure makes a clear and  
9 specific showing that the subpoenaing party has exhausted  
10 reasonable efforts to obtain from alternative sources the  
11 confidential source of any information, document, or item obtained.  
12 In this context, the court has the discretion to conduct an in  
13 camera hearing. The court may not order the production of the  
14 confidential source until a ruling has been made on the motion.

15        (d) An application for a subpoena of a journalist under  
16 Article 24.03, or a subpoena of a journalist issued by an attorney  
17 representing the state under Article 20.10 or 20.11, must be signed  
18 by the elected district attorney, elected criminal district  
19 attorney, or elected county attorney, as applicable. If the  
20 elected district attorney, elected criminal district attorney, or  
21 elected county attorney has been disqualified or recused or has  
22 resigned, the application for the subpoena or the subpoena must be  
23 signed by the person succeeding the elected attorney. If the  
24 elected officer is not in the jurisdiction, the highest ranking  
25 assistant to the elected officer must sign the subpoena.

26        Sec. 5. PRIVILEGE CONCERNING UNPUBLISHED INFORMATION,  
27 DOCUMENT, OR ITEM AND NONCONFIDENTIAL SOURCES. (a) After service

1 of subpoena and an opportunity to be heard, a court may compel a  
2 journalist, a journalist's employer, or a person with an  
3 independent contract with a journalist to testify regarding or to  
4 produce or disclose any unpublished information, document, or item  
5 or the source of any information, document, or item obtained while  
6 acting as a journalist, other than as described by Section 4, if the  
7 person seeking the unpublished information, document, or item or  
8 the source of any information, document, or item makes a clear and  
9 specific showing that:

10 (1) all reasonable efforts have been exhausted to  
11 obtain the information from alternative sources; and

12 (2) the unpublished information, document, or item:

13 (A) is relevant and material to the proper  
14 administration of the official proceeding for which the testimony,  
15 production, or disclosure is sought and is essential to the  
16 maintenance of a claim or defense of the person seeking the  
17 testimony, production, or disclosure; or

18 (B) is central to the investigation or  
19 prosecution of a criminal case and based on something other than the  
20 assertion of the person requesting the subpoena, reasonable grounds  
21 exist to believe that a crime has occurred.

22 (b) The court, when considering an order to compel testimony  
23 regarding or to produce or disclose any unpublished information,  
24 document, or item or the source of any information, document, or  
25 item obtained while acting as a journalist, should consider the  
26 following factors, including but not limited to whether:

27 (1) the subpoena is overbroad, unreasonable, or

1 oppressive;

2 (2) reasonable and timely notice was given of the  
3 demand for the information, document, or item;

4 (3) in this instance, the interest of the party  
5 subpoenaing the information outweighs the public interest in  
6 gathering and dissemination of news, including the concerns of the  
7 journalist; and

8 (4) the subpoena or compulsory process is being used  
9 to obtain peripheral, nonessential, or speculative information.

10 (c) A court may not consider a single factor under  
11 Subsection (b) as outcome-determinative in the decision whether to  
12 compel the testimony or the production or disclosure of the  
13 unpublished information, document, or item, or the source of any  
14 information, document, or item.

15 Sec. 6. NOTICE. An order to compel testimony, production,  
16 or disclosure to which a journalist has asserted a privilege under  
17 this article may be issued only after timely notice to the  
18 journalist, the journalist's employer, or a person who has an  
19 independent contract with the journalist and a hearing. The order  
20 must include clear and specific findings as to the showing made by  
21 the person seeking the testimony, production, or disclosure and the  
22 clear and specific evidence on which the court relied in issuing the  
23 court's order.

24 Sec. 7. PUBLICATION OF PRIVILEGED INFORMATION. Publication  
25 or dissemination by a news medium or communication service provider  
26 of information, documents, or items privileged under this article  
27 is not a waiver of the journalist's privilege regarding sources and

1 unpublished information, documents, or items.

2 Sec. 8. PUBLISHED INFORMATION. This article does not apply  
3 to any information, document, or item that has at any time been  
4 published or broadcast by the journalist.

5 Sec. 9. REIMBURSEMENT OF COSTS. The subpoenaing party shall  
6 pay a journalist a reasonable fee for the journalist's time and  
7 costs incurred in providing the information, item, or document  
8 subpoenaed, based on the fee structure provided by Subchapter F,  
9 Chapter 552, Government Code.

10 Art. 38.111. NEWS MEDIA RECORDINGS. Extrinsic evidence of  
11 the authenticity of evidence as a condition precedent to the  
12 admissibility of the evidence in a criminal proceeding is not  
13 required with respect to a recording that purports to be a broadcast  
14 by a radio or television station that holds a license issued by the  
15 Federal Communications Commission at the time of the recording.  
16 The court may take judicial notice of the recording license as  
17 provided by Rule 201, Texas Rules of Evidence.

18 SECTION 3. This Act applies only to information, documents,  
19 or items or the source of any information, document, or item  
20 obtained or prepared for publication in a news medium or  
21 communication service provider on or after the effective date of  
22 this Act.

23 SECTION 4. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house, as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2009.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 670 was passed by the House on April 2, 2009, by the following vote: Yeas 146, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 670 on April 30, 2009, by the following vote: Yeas 146, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 670 was passed by the Senate, with amendments, on April 28, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor