

By: Martinez Fischer

H.B. No. 670

A BILL TO BE ENTITLED

AN ACT

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

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

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

SUBCHAPTER C. JOURNALIST'S QUALIFIED TESTIMONIAL PRIVILEGE

Sec. 22.021. DEFINITIONS. In this subchapter:

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

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

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

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

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

(2) "Journalist" means a person, including a parent, subsidiary, division, or affiliate of a person, that for a substantial portion of the person's livelihood or for substantial financial gain, gathers, compiles, prepares, collects,

1 photographs, records, writes, edits, reports, investigates,
2 processes, or publishes news or information that is disseminated by
3 a news medium or communication service provider and includes:

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

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

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

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

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

27 (A) print;

1 (B) television;

2 (C) radio;

3 (D) photographic;

4 (E) mechanical;

5 (F) electronic; and

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

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

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

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

16 (B) a juror or grand juror;

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

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

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

25 (6) "Violent offense" has the meaning assigned by
26 Article 17.032(a), Code of Criminal Procedure, and includes crimes
27 found in Sections 22.07, 43.25, 43.26(e), and 71.022, Penal Code.

1 Sec. 22.022. PURPOSE. The purpose of this subchapter is to
2 increase the free flow of information and preserve a free and active
3 press and, at the same time, protect the right of the public to
4 effective law enforcement and the fair administration of justice.

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

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

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

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

20 Sec. 22.024. LIMITED DISCLOSURE GENERALLY. After notice
21 and an opportunity to be heard, a court may compel a journalist, a
22 journalist's employer, or a person with an independent contract
23 with a journalist to testify regarding or to produce or disclose any
24 information, document, or item or the source of any information,
25 document, or item obtained while acting as a journalist, other than
26 as described by Section 22.025, if the person seeking the
27 information, document, or item or the source of any information,

1 document, or item makes a clear and specific showing that:

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

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

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

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

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

18 (6) the information, document, or item:

19 (A) is relevant and material to the proper
20 administration of the official proceeding for which the testimony,
21 production, or disclosure is sought and is essential to the
22 maintenance of a claim or defense of the person seeking the
23 testimony, production, or disclosure; or

24 (B) is central to the investigation or
25 prosecution of a criminal case regarding the establishment of guilt
26 or innocence and, based on something other than the assertion of the
27 person requesting the subpoena, reasonable grounds exist to believe

1 that a crime has occurred.

2 Sec. 22.025. LIMITED DISCLOSURE: INFORMATION OBTAINED BY
3 OBSERVING CRIME OR PERSON ALLEGED TO HAVE COMMITTED CERTAIN CRIMES;
4 PREVENTION OF CERTAIN HARMS. (a) A journalist may be compelled to
5 testify regarding or to produce or disclose any information,
6 document, or item or the source of any information, document, or
7 item obtained while acting as a journalist if the person seeking the
8 testimony, production, or disclosure makes a clear and specific
9 showing that the information, document, or item or the source of any
10 information, document, or item:

11 (1) was obtained as the result of an eyewitness
12 observation of criminal conduct by the journalist and a court
13 determines by clear and specific evidence that the person
14 requesting the testimony, production, or disclosure has exhausted
15 reasonable efforts to obtain the information, document, or item
16 from alternative sources;

17 (2) was obtained from a person who has confessed or
18 admitted to the commission of a violent offense or to a crime
19 against a child victim younger than 14 years of age at the time the
20 offense was committed and a court determines by clear and specific
21 evidence that the person requesting the testimony, production, or
22 disclosure has exhausted reasonable efforts to obtain the
23 information, document, or item from alternative sources;

24 (3) was obtained from a person for whom probable cause
25 exists that the person has participated in a violent offense or in a
26 crime against a child victim younger than 14 years of age at the
27 time the offense was committed and a court determines by clear and

1 specific evidence that the person requesting the testimony,
2 production, or disclosure has exhausted reasonable efforts to
3 obtain the information, document, or item from alternative sources;
4 or

5 (4) is reasonably necessary to stop or prevent
6 reasonably certain death or substantial bodily harm.

7 (b) If the alleged criminal conduct is the act of
8 communicating, receiving, or possessing the information, document,
9 or item and the information does not relate to conduct constituting
10 a violent offense under Section 22.021(6), this section does not
11 apply, and Section 22.024 governs the act.

12 (c) Notwithstanding Subsection (b), Subsection (a)(1)
13 applies to any information, document, or item disclosed or received
14 in violation of a grand jury oath given to either a juror or a
15 witness under Article 19.34 or 20.16, Code of Criminal Procedure.

16 (d) An application for a subpoena of a journalist under
17 Article 24.03, Code of Criminal Procedure, or a subpoena of a
18 journalist issued by an attorney representing the state under
19 Article 20.10 or 20.11, Code of Criminal Procedure, must be signed
20 by the elected district attorney, elected criminal district
21 attorney, or elected county attorney, as applicable. If the
22 elected district attorney, elected criminal district attorney, or
23 elected county attorney has been disqualified or recused, the
24 application for the subpoena or the subpoena must be signed by the
25 person succeeding the elected attorney.

26 Sec. 22.026. NOTICE. An order to compel testimony,
27 production, or disclosure to which a journalist has asserted a

1 privilege under this subchapter may be issued only after timely
2 notice to the journalist, the journalist's employer, or a person
3 who has an independent contract with the journalist and a hearing.
4 The order must include clear and specific findings as to the showing
5 made by the person seeking the testimony, production, or disclosure
6 and the clear and specific evidence on which the court relied in
7 issuing the court's order.

8 Sec. 22.027. PUBLICATION OF PRIVILEGED INFORMATION.

9 Publication or dissemination by a news medium or communication
10 service provider of information, documents, or items privileged
11 under this subchapter is not a waiver of the journalist's
12 privilege.

13 SECTION 2. Chapter 38, Code of Criminal Procedure, is
14 amended by adding Article 38.11 to read as follows:

15 Art. 38.11. JOURNALIST'S TESTIMONIAL PRIVILEGE.

16 Subchapter C, Chapter 22, Civil Practice and Remedies Code, applies
17 to a criminal proceeding.

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 September 1, 2009.