

By: Peña

H.B. No. 3919

A BILL TO BE ENTITLED

AN ACT

relating to a qualified privilege of a journalist not to testify in an administrative, executive, legislative, or civil judicial proceeding.

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 IN ADMINISTRATIVE, EXECUTIVE, LEGISLATIVE, OR CIVIL JUDICIAL PROCEEDINGS

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).

1 (2) "Journalist" means a person, including a parent,
2 subsidiary, division, or affiliate of a person, that for a
3 substantial portion of the person's livelihood or for substantial
4 financial gain, gathers, compiles, prepares, collects,
5 photographs, records, writes, edits, reports, investigates,
6 processes, or publishes news or information that is disseminated by
7 a news medium or communication service provider and includes:

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

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

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

19 (ii) was serving as an agent, assistant,
20 employee, or supervisor of a news medium or communication service
21 provider.

22 (3) "News medium" means a newspaper, magazine or
23 periodical, book publisher, news agency, wire service, radio or
24 television station or network, cable, satellite, or other
25 transmission system or carrier or channel, or a channel or
26 programming service for a station, network, system, or carrier, or
27 an audio or audiovisual production company or Internet company or

1 provider, or the parent, subsidiary, division, or affiliate of that
2 entity, that disseminates news or information to the public by any
3 means, including:

4 (A) print;

5 (B) television;

6 (C) radio;

7 (D) photographic;

8 (E) mechanical;

9 (F) electronic; and

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

12 (4) "Official proceeding" means any type of
13 administrative, executive, legislative, or civil judicial
14 proceeding that may be conducted before a public servant.

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

19 (A) an officer, employee, or agent of government
20 other than a judge presiding in a criminal proceeding;

21 (B) a juror in a civil proceeding;

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

25 (D) an attorney, other than an attorney
26 representing the state or a defendant in a criminal matter, or
27 notary public when participating in the performance of a

1 governmental function; or

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

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

9 Sec. 22.023. PRIVILEGE. (a) Except as otherwise provided
10 by this subchapter, a journalist may not be compelled to testify
11 regarding or to produce or disclose in an official proceeding:

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

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

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

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

1 as described by Section 22.025, if the person seeking the
2 information, document, or item or the source of any information,
3 document, or item makes a clear and specific showing that:

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

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

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

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

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

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

25 Sec. 22.025. LIMITED DISCLOSURE: INFORMATION OBTAINED BY
26 OBSERVING CRIME OR FROM PERSON ALLEGED TO HAVE COMMITTED A CRIME;
27 PREVENTION OF CERTAIN HARMS. (a) A journalist may be compelled to

1 testify regarding or to produce or disclose any information,
2 document, or item or the source of any information, document, or
3 item obtained while acting as a journalist if the person seeking the
4 testimony, production, or disclosure makes a clear and specific
5 showing that the information, document, or item or the source of any
6 information, document, or item:

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

13 (2) is reasonably necessary to stop or prevent
14 reasonably certain death or substantial bodily harm.

15 (b) If the alleged criminal conduct is the act of
16 communicating, receiving, or possessing the information, document,
17 or item, this section does not apply, and Section 22.024 governs the
18 act.

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

23 Sec. 22.026. NOTICE. An order to compel testimony,
24 production, or disclosure to which a journalist has asserted a
25 privilege under this subchapter may be issued only after timely
26 notice to the journalist, the journalist's employer, or a person
27 who has an independent contract with the journalist and a hearing.

1 The order must include clear and specific findings as to the showing
2 made by the person seeking the testimony, production, or disclosure
3 and the clear and specific evidence on which the court relied in
4 issuing the court's order.

5 Sec. 22.027. PUBLICATION OF PRIVILEGED INFORMATION.
6 Publication or dissemination by a news medium or communication
7 service provider of information, documents, or items privileged
8 under this subchapter is not a waiver of the journalist's
9 privilege.

10 SECTION 2. This Act applies only to information, documents,
11 items, or the confidential source of any information, document, or
12 item obtained or prepared for publication in a news medium or
13 communication service provider on or after the effective date of
14 this Act.

15 SECTION 3. This Act takes effect September 1, 2009.