

By: Pena

H.B. No. 188

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. Subchapter B, Chapter 22, Civil Practice and Remedies Code, is amended by adding Section 22.012 to read as follows:

Sec. 22.012. JOURNALIST'S TESTIMONIAL PRIVILEGE. (a) In this section:

(1) "Journalist" means a person, or an employee, independent contractor, or agent of that person, engaged in the business of gathering, compiling, writing, editing, photographing, recording, or processing information for dissemination by any news medium.

(2) "News medium" means a person who in the ordinary course of business publishes, broadcasts, or otherwise disseminates news by print, television, radio, or other electronic means accessible to the public.

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

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

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

2 (B) a juror or grand juror;

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

6 (D) an attorney at law or notary public when
7 participating in the performance of a governmental function; or

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

11 (b) Except as provided by Subsection (c), a journalist may
12 not be compelled to disclose in an official proceeding:

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

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

18 (c) A journalist may be compelled to disclose any
19 information, document, or item obtained while acting as a
20 journalist if the person seeking the testimony or production
21 establishes by a preponderance of the evidence that the testimony
22 or production sought:

23 (1) is relevant and material to the proper
24 administration of the official proceeding for which the testimony
25 or production is sought;

26 (2) is essential to the maintenance of a claim or
27 defense of the person seeking the testimony or production; and

1 (3) cannot be obtained from alternate sources.

2 (d) An order to compel testimony or production as to which a
3 journalist has asserted a privilege under this section may be
4 issued only after notice to the journalist and a hearing. The order
5 must include clear and specific findings as to the showing made by
6 the person seeking the testimony or production.

7 (e) Notwithstanding Subsection (b), a journalist does not
8 have a privilege against disclosure of any information, document,
9 or item obtained as a result of the journalist's eyewitness
10 observation of criminal or tortious conduct, including any physical
11 evidence or visual or audio recording of the observed conduct.

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

14 Art. 38.11. JOURNALIST'S TESTIMONIAL PRIVILEGE. Section
15 22.012, Civil Practice and Remedies Code, applies to a criminal
16 proceeding.

17 SECTION 3. This Act applies only to a subpoena issued or
18 other attempt made to obtain any information, documents, or items
19 from a journalist on or after the effective date of this Act.

20 SECTION 4. This Act takes effect September 1, 2005.