

BILL ANALYSIS

C.S.H.B. 1572
By: Woolley
Civil Practices
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Law enforcement on-going investigative files, strategies, and techniques have been protected from disclosure from open records requests and in the civil discovery process. In Hobson v. Moore, 734 S.W.2d 340 (Tex. 1987) the Texas Supreme Court recognized an independent law-enforcement privilege in civil litigation. Statutorily, the Legislature has recognized the confidential nature of law enforcement activities in Section 3(a)(8) of the Texas Open Records Act, Tex. Rev. Civ. Stat. Ann. art. 6252-17a. In 1993 the Texas Open Records Act was repealed and replaced by the Public Information Act., Chapter 552 of the Government Code. Relying on the Texas Open Records Act, a privilege in civil litigation for law enforcement investigations has been recognized.

Releasing information related to an on-going law enforcement investigation, when the law enforcement agency is not a party to the civil suit, can endanger the safety of witnesses who would be otherwise unidentified, the victim, and the outcome of the investigation, as information could be released to the perpetrator.

CSHB 1572 clarifies the law enforcement privilege in civil litigation by providing an exception from discovery for nonparty law enforcement agencies in civil cases for ongoing investigations.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Chapter 30, Civil Practices and Remedies Code, by adding Section 30.006 as follows:

Sec. 30.006. CERTAIN LAW ENFORCEMENT AGENCY RECORDS NOT SUBJECT TO DISCOVERY.

Provides that in an action in which a law enforcement agency is not a party, a court in a civil action may not order discovery from a nonparty law enforcement agency if such materials sought by discovery relate to the detection, investigation, or prosecution of a crime or an investigation by the nonparty law enforcement agency that does not result in a conviction or deferred adjudication; and the release of such materials sought by discovery would interfere with the detection, investigation, or prosecution of criminal acts.

Provides that the court may order discovery from the nonparty law enforcement agency if the court determines that the discovery sought is relevant and that there is a specific need for the discovery.

SECTION 2. Provides that this Act applies to an action commenced on or after the effective date of this Act or pending on the effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise begins on or after the effective date. Provides that an action commenced before the effective

date of this Act, a trial, new trial, or retrial that is in progress on the effective date is governed by the law applicable to the trial, new trial, or retrial immediately before the effective date.

SECTION 3. Effective date: September 1, 2007

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1: The substitute bill amends Chapter 30 and the original bill amends Chapter 18 of the Civil Practice and Remedies Code. The substitute adds Section 30.006 to Chapter 30 and does not add Subchapter E to Chapter 18 as the original bill did.

Sec. 30.006 is titled CERTAIN LAW ENFORCEMENT AGENCY RECORDS NOT SUBJECT TO DISCOVERY.

The substitute adds (a) defining "law enforcement agency." This was addressed in Subchapter E, Sec 18.121 in the original bill.

The substitute adds (b) stating this section does not apply to an action where a law enforcement agency is a party.

The substitute adds (c) providing the exception to discovery for a nonparty law enforcement agency .

The substitute adds (d) providing when a court may order discovery from a nonparty law enforcement.

From the original, Sec. 18.121 became Sec. 30.006 (a). Sec. 18.122 is deleted in the substitute. Sec. 18.123 is edited into Sec. 30.006 (c). The substitute deletes references to guidelines for the Supreme Court to use in promulgation of rules for the exception and instead provides stipulations for a court to follow in determining whether the court order for discovery should be granted.

The substitute deletes the original bill reference that the material sought by discovery from the nonparty law enforcement agency must be material and that a specific need in the interest of justice is required before the materials can be ordered to be released by the court.

The substitute deletes from the original bill reference to a court considering all appropriate protective measures to prevent the dissemination of privileged and confidential law enforcement materials.

The substitute deletes the provision that provided for an abatement of the proceedings which was in the original bill.

The substitute deletes from the original bill the provision that requires that parties seeking discovery from a nonparty law enforcement agency must comply with the notice requirements for the applicable form of discovery.

SECTION 2: The substitute deletes from the original bill the reference to when rules should be promulgated and in effect. Instead, the substitute provides for which actions are applicable under this Act.

SECTION 3: The substitute from the original bill deletes the immediate effect, upon requisite vote, provision.