

BILL ANALYSIS

C.S.S.B. 966

By: Ellis

Judiciary

Committee Report (Substituted)

BACKGROUND AND PURPOSE

Whistleblowers may be hesitant to come forward to discuss matters of public concern because of fear of retribution. As the law stands, a journalist has no assurance that a whistleblower's identity or information may be kept confidential without the journalist risking going to jail. Without the ability to promise confidentiality, information may not be provided to reporters, and the public could suffer from the resulting lack of information.

The bill enacts a qualified privilege providing a balancing test for compelled disclosure of confidential and non-confidential information and sources from a journalist. The test would be applied by a judge rather than solely by the subpoenaing party or the journalist. By adopting this measure, Texas would join 32 other states and the District of Columbia that have statutes relating to the free flow of information and the rights of the journalists to gather and communicate the news.

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 22, Civil Practice and Remedies Code, by adding Subchapter C, as follows:

SUBCHAPTER C. JOURNALIST'S QUALIFIED TESTIMONIAL PRIVILEGE

Sec. 22.021. DEFINITIONS. Defines "communication service provider," "journalist," "news medium," "official proceeding," "public servant", and "violent offense".

Sec. 22.022. PURPOSE. Sets forth the legislative intent of this subchapter.

Sec. 22.023. PRIVILEGE. (a) Prohibits a judicial, legislative, administrative, or other body with authority to issue a subpoena or other compulsory process from compelling a journalist to testify, produce, or disclose in an official proceeding certain information, documents, items, or the sources thereof, except as otherwise provided by this subchapter.

(b) Prohibits a subpoena or other compulsory process from compelling the parent, subsidiary, division, or affiliate of a communication service provider or news medium to disclose the identity of a source of news or information, or information, documents or items that are privileged from disclosure under Subsection (a).

Sec. 22.024. LIMITED DISCLOSURE: DISCLOSURE OTHER THAN IN CERTAIN CRIMINAL CIRCUMSTANCES. Authorizes a court, after notice and an opportunity to be heard, to compel a journalist, his or her employer, or a person with an independent contract with a journalist to testify, produce, or disclose any information, document, or item obtained while acting as a journalist, other than as described by Section 22.025, if the person seeking the information makes a clear and specific showing that certain actions have been taken and certain conditions are met.

Sec. 22.025. LIMITED DISCLOSURE: DISCLOSURE IN CERTAIN CRIMINAL CIRCUMSTANCES. (a) Sets forth specific circumstances when a journalist may be compelled to disclose certain information, documents, or items obtained while acting as a journalist.

(b) Provides that this section does not apply if the alleged criminal conduct is the act of communicating, receiving, or possessing the information, document, or item and the information does not relate to one of the serious crimes defined as a "violent offense". Provides further that notwithstanding the preceding sentence, Section 22.025(a)(1) does apply to any information disclosed or received in violation of a grand jury oath.

(c) Requires an application for or issuance of a subpoena to a journalist by a prosecutor in a criminal case be signed by the appropriate elected prosecutor.

Sec. 22.026. NOTICE. Authorizes an order to compel testimony or production of the information, or the source of any information, under this subchapter to be issued only after timely notice to certain persons and a hearing. Requires the order to include clear and specific findings and the clear and specific evidence on which the court relied in issuing the order.

Sec. 22.027. PUBLICATION OF PRIVILEGED INFORMATION. Provides that the publication or dissemination of privileged information under this subchapter by a news medium or communication service provider is not a waiver of the journalist's privilege.

SECTION 2. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.11, as follows:

Art. 38.11. JOURNALIST'S TESTIMONIAL PRIVILEGE. Provides that Subchapter C, Chapter 22, Civil Practice and Remedies Code, applies to a criminal proceeding.

SECTION 3. Makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2007

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the proposed Section 22.024, Civil Practice and Remedies Code, by changing the text pertaining to the list of items to be shown which may permit compulsion of a journalist to testify to state that reasonable grounds to believe a crime has occurred must be "based on something other than the assertion of the person requesting the subpoena". The original had required the grounds to be based on "an independent source".

The substitute also adds a new sentence not in the original to proposed Section 22.025(b), Civil Practice and Remedies Code, stating that Section 22.025(a)(1) applies to any information received in violation of a grand jury oath.

The substitute adds a new subsection (c) to Section 22.025, Civil Practice and Remedies Code, to require subpoenas issued to journalists to be signed by the elected prosecutor.