

By: Van Arsdale

H.B. No. 2249

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 who for financial gain, for a substantial portion of the person's livelihood, or for subscription purposes gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates,

1 processes, or publishes news or information that is disseminated by
2 a news medium or communication service provider and includes:

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

5 (B) a person who is or has been a journalist,
6 scholar, or researcher employed by an institution of higher
7 education; or

8 (C) a person who is on a professional track to
9 earn a significant portion of the person's livelihood by obtaining
10 or preparing information for dissemination by a news medium or an
11 agent, assistant, employee, or supervisor of that person.

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

21 (A) print;

22 (B) television;

23 (C) radio;

24 (D) photographic;

25 (E) mechanical;

26 (F) electronic; and

27 (G) other means, known or unknown, that are

1 accessible to the public.

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

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

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

10 (B) a juror or grand juror;

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

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

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

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

23 Sec. 22.023. PRIVILEGE. (a) Except as otherwise provided
24 by this subchapter, a judicial, legislative, administrative, or
25 other body with the authority to issue a subpoena or other
26 compulsory process may not compel a journalist to testify, produce,
27 or disclose in an official proceeding:

1 (1) any confidential or nonconfidential information,
2 document, or item obtained or prepared while acting as a
3 journalist; or

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

6 (b) A subpoena or other compulsory process may not compel
7 the parent, subsidiary, division, or affiliate of a communication
8 service provider or news medium to disclose the identity of a source
9 of news or information or information, documents, or items that are
10 privileged from disclosure under Subsection (a).

11 Sec. 22.024. LIMITED DISCLOSURE: DISCLOSURE OTHER THAN AS
12 CRIMINAL WITNESS. After notice and an opportunity to be heard, a
13 court may compel a journalist, a journalist's employer, or a person
14 with an independent contract with a journalist to disclose any
15 information, document, or item obtained while acting as a
16 journalist, other than as described by Section 22.025, if the
17 person seeking the information, document, or item establishes by
18 clear and convincing evidence that:

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

21 (2) to the extent possible, the subpoena or compulsory
22 process does not require the production of a large volume of
23 unpublished material and is limited to the verification of
24 published information and the surrounding circumstances relating
25 to the accuracy of the published information;

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

1 (4) nondisclosure would be contrary to public
2 interest;

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

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

7 (A) is relevant and material to the proper
8 administration of the official proceeding for which the testimony
9 or production is sought and is essential to the maintenance of a
10 claim or defense of the person seeking the testimony or production;
11 or

12 (B) is central to the investigation or
13 prosecution of a criminal case regarding the establishment of guilt
14 or innocence and, based on an independent source, reasonable
15 grounds exist to believe that a crime has occurred.

16 Sec. 22.025. LIMITED DISCLOSURE: CRIMINAL WITNESS. (a) A
17 journalist may be compelled to disclose any information, document,
18 or item obtained while acting as a journalist if the person seeking
19 the testimony or production establishes that the information,
20 document, or item, including any physical evidence or visual or
21 audio recording of the observed conduct:

22 (1) was obtained as the result of an eyewitness
23 observation of criminal conduct or commitment of criminal conduct
24 by the journalist and a court determines by clear and convincing
25 evidence that the person requesting the disclosure has exhausted
26 reasonable efforts to obtain the information, document, or item
27 from alternative sources; or

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

3 (b) This section does not apply if the alleged criminal
4 conduct is the act of communicating, receiving, or possessing the
5 information, document, or item.

6 Sec. 22.026. NOTICE. An order to compel testimony or
7 production to which a journalist has asserted a privilege under
8 this subchapter may be issued only after timely notice to the
9 journalist, the journalist's employer, or a person who has an
10 independent contract with a journalist and a hearing. The order
11 must include clear and specific findings as to the showing made by
12 the person seeking the testimony or production and the clear and
13 convincing evidence on which the court relied in issuing the
14 court's order.

15 Sec. 22.027. PUBLICATION OF PRIVILEGED INFORMATION.
16 Publication or dissemination by a news medium or communication
17 service provider of information, documents, or items privileged
18 under this subchapter is not a waiver of the journalist's
19 privilege.

20 Sec. 22.028. SOURCE NOT ADMISSIBLE. The source of any news
21 or information or any news or information obtained in violation of
22 this subchapter is not admissible in any action, proceeding, or
23 hearing before a judicial, legislative, administrative, or other
24 body.

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

27 Art. 38.11. JOURNALIST'S TESTIMONIAL PRIVILEGE.

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

3 SECTION 3. This Act applies only to information, documents,
4 or items obtained or prepared for publication in a news medium or
5 communication service provider on or after the effective date of
6 this Act.

7 SECTION 4. This Act takes effect September 1, 2007.