

1-1 By: Ellis, Duncan, Hinojosa S.B. No. 966
1-2 (In the Senate - Filed February 27, 2007; March 7, 2007, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 16, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 4, Nays 0; April 16, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 966 By: Watson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a qualified privilege of a journalist not to testify.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Chapter 22, Civil Practice and Remedies Code, is
1-13 amended by adding Subchapter C to read as follows:
1-14 SUBCHAPTER C. JOURNALIST'S QUALIFIED TESTIMONIAL PRIVILEGE
1-15 Sec. 22.021. DEFINITIONS. In this subchapter:
1-16 (1) "Communication service provider" means a person or
1-17 the parent, subsidiary, division, or affiliate of a person who
1-18 transmits information chosen by a customer by electronic means,
1-19 including:
1-20 (A) a telecommunications carrier, as defined by
1-21 Section 3, Communications Act of 1934 (47 U.S.C. Section 153);
1-22 (B) a provider of information service, as defined
1-23 by Section 3, Communications Act of 1934 (47 U.S.C. Section 153);
1-24 (C) a provider of interactive computer service,
1-25 as defined by Section 230, Communications Act of 1934 (47 U.S.C.
1-26 Section 230); and
1-27 (D) an information content provider, as defined
1-28 by Section 230, Communications Act of 1934 (47 U.S.C. Section 230).
1-29 (2) "Journalist" means a person, including a parent,
1-30 subsidiary, division, or affiliate of a person, that for a
1-31 substantial portion of the person's livelihood or for substantial
1-32 financial gain, gathers, compiles, prepares, collects,
1-33 photographs, records, writes, edits, reports, investigates,
1-34 processes, or publishes news or information that is disseminated by
1-35 a news medium or communication service provider and includes:
1-36 (A) a person who supervises or assists in
1-37 gathering, preparing, and disseminating the news or information; or
1-38 (B) notwithstanding the foregoing, a person who
1-39 is or was a journalist, scholar, or researcher employed by an
1-40 institution of higher education at the time the person obtained or
1-41 prepared the requested information; or a person who at the time the
1-42 person obtained or prepared the requested information:
1-43 (i) is earning or is on a professional track
1-44 to earn a significant portion of the person's livelihood by
1-45 obtaining or preparing information for dissemination by a news
1-46 medium or communication service provider; or
1-47 (ii) was serving as an agent, assistant,
1-48 employee, or supervisor of a news medium or communication service
1-49 provider.
1-50 (3) "News medium" means a newspaper, magazine or
1-51 periodical, book publisher, news agency, wire service, radio or
1-52 television station or network, cable, satellite, or other
1-53 transmission system or carrier or channel, or a channel or
1-54 programming service for a station, network, system, or carrier, or
1-55 an audio or audiovisual production company or Internet company or
1-56 provider, or the parent, subsidiary, division, or affiliate of that
1-57 entity, that disseminates news or information to the public by any
1-58 means, including:
1-59 (A) print;
1-60 (B) television;
1-61 (C) radio;
1-62 (D) photographic;
1-63 (E) mechanical;

2-1 (F) electronic; and
2-2 (G) other means, known or unknown, that are
2-3 accessible to the public.

2-4 (4) "Official proceeding" means any type of
2-5 administrative, executive, legislative, or judicial proceeding
2-6 that may be conducted before a public servant.

2-7 (5) "Public servant" means a person elected, selected,
2-8 appointed, employed, or otherwise designated as one of the
2-9 following, even if the person has not yet qualified for office or
2-10 assumed the person's duties:

2-11 (A) an officer, employee, or agent of government;

2-12 (B) a juror or grand juror;

2-13 (C) an arbitrator, referee, or other person who
2-14 is authorized by law or private written agreement to hear or
2-15 determine a cause or controversy;

2-16 (D) an attorney or notary public when
2-17 participating in the performance of a governmental function; or

2-18 (E) a person who is performing a governmental
2-19 function under a claim of right, although the person is not legally
2-20 qualified to do so.

2-21 Sec. 22.022. PURPOSE. The purpose of this subchapter is to
2-22 increase the free flow of information and preserve a free and active
2-23 press and, at the same time, protect the right of the public to
2-24 effective law enforcement and the fair administration of justice.

2-25 Sec. 22.023. PRIVILEGE. (a) Except as otherwise provided
2-26 by this subchapter, a judicial, legislative, administrative, or
2-27 other body with the authority to issue a subpoena or other
2-28 compulsory process may not compel a journalist to testify, produce,
2-29 or disclose in an official proceeding:

2-30 (1) any confidential or nonconfidential information,
2-31 document, or item obtained or prepared while acting as a
2-32 journalist; or

2-33 (2) the source of any information, document, or item
2-34 described by Subdivision (1).

2-35 (b) A subpoena or other compulsory process may not compel
2-36 the parent, subsidiary, division, or affiliate of a communication
2-37 service provider or news medium to disclose the information,
2-38 documents, or items or the source of any information, documents, or
2-39 items that are privileged from disclosure under Subsection (a).

2-40 Sec. 22.024. LIMITED DISCLOSURE: DISCLOSURE OTHER THAN AS
2-41 CRIMINAL WITNESS. After notice and an opportunity to be heard, a
2-42 court may compel a journalist, a journalist's employer, or a person
2-43 with an independent contract with a journalist to testify, produce,
2-44 or disclose any information, document, or item or the source of any
2-45 information, document, or item obtained while acting as a
2-46 journalist, other than as described by Section 22.025, if the
2-47 person seeking the information, document, or item or the source of
2-48 any information, document, or item makes a clear and specific
2-49 showing that:

2-50 (1) all reasonable efforts have been exhausted to
2-51 obtain the information from an alternative source;

2-52 (2) the subpoena is not overbroad, unreasonable or
2-53 oppressive and, where appropriate, will be limited to the
2-54 verification of published information and the surrounding
2-55 circumstances relating to the accuracy of the published
2-56 information;

2-57 (3) reasonable and timely notice was given of the
2-58 demand for the information, document, or item;

2-59 (4) in this instance, the interest of the party
2-60 subpoenaing the information outweighs the public interest in
2-61 gathering and dissemination of news, including the concerns of the
2-62 journalist;

2-63 (5) the subpoena or compulsory process is not being
2-64 used to obtain peripheral, nonessential, or speculative
2-65 information; and

2-66 (6) the information, document, or item:

2-67 (A) is relevant and material to the proper
2-68 administration of the official proceeding for which the testimony,
2-69 production, or disclosure is sought and is essential to the

3-1 maintenance of a claim or defense of the person seeking the
3-2 testimony, production, or disclosure; or

3-3 (B) is central to the investigation or
3-4 prosecution of a criminal case regarding the establishment of guilt
3-5 or innocence and, based on an independent source, reasonable
3-6 grounds exist to believe that a crime has occurred.

3-7 Sec. 22.025. LIMITED DISCLOSURE: CRIMINAL WITNESS. (a) A
3-8 journalist may be compelled to testify, produce, or disclose any
3-9 information, document, or item or the source of any information,
3-10 document, or item obtained while acting as a journalist if the
3-11 person seeking the testimony, production, or disclosure makes a
3-12 clear and specific showing that the information, document, or item
3-13 or the source of any information, document, or item:

3-14 (1) was obtained as the result of an eyewitness
3-15 observation of criminal conduct by the journalist and a court
3-16 determines by clear and specific evidence that the person
3-17 requesting the testimony, production, or disclosure has exhausted
3-18 reasonable efforts to obtain the information, document, or item
3-19 from alternative sources; or

3-20 (2) is reasonably necessary to stop or prevent
3-21 reasonably certain death or substantial bodily harm.

3-22 (b) This section does not apply if the alleged criminal
3-23 conduct is the act of communicating, receiving, or possessing the
3-24 information, document, or item.

3-25 Sec. 22.026. NOTICE. An order to compel testimony,
3-26 production, or disclosure to which a journalist has asserted a
3-27 privilege under this subchapter may be issued only after timely
3-28 notice to the journalist, the journalist's employer, or a person
3-29 who has an independent contract with a journalist and a hearing.
3-30 The order must include clear and specific findings as to the showing
3-31 made by the person seeking the testimony, production, or disclosure
3-32 and the clear and specific evidence on which the court relied in
3-33 issuing the court's order.

3-34 Sec. 22.027. PUBLICATION OF PRIVILEGED INFORMATION.
3-35 Publication or dissemination by a news medium or communication
3-36 service provider of information, documents, or items privileged
3-37 under this subchapter is not a waiver of the journalist's
3-38 privilege.

3-39 SECTION 2. Chapter 38, Code of Criminal Procedure, is
3-40 amended by adding Article 38.11 to read as follows:

3-41 Art. 38.11. JOURNALIST'S TESTIMONIAL PRIVILEGE.
3-42 Subchapter C, Chapter 22, Civil Practice and Remedies Code, applies
3-43 to a criminal proceeding.

3-44 SECTION 3. This Act applies only to information, documents,
3-45 or items or the source of any information, document, or item
3-46 obtained or prepared for publication in a news medium or
3-47 communication service provider on or after the effective date of
3-48 this Act.

3-49 SECTION 4. This Act takes effect September 1, 2007.

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