

1 AN ACT

2 relating to a qualified privilege of a journalist not to testify.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Chapter 22, Civil Practice and Remedies Code, is
5 amended by adding Subchapter C to read as follows:

6 SUBCHAPTER C. JOURNALIST'S QUALIFIED TESTIMONIAL PRIVILEGE IN
7 CIVIL PROCEEDINGS

8 Sec. 22.021. DEFINITIONS. In this subchapter:

9 (1) "Communication service provider" means a person or
10 the parent, subsidiary, division, or affiliate of a person who
11 transmits information chosen by a customer by electronic means,
12 including:

13 (A) a telecommunications carrier, as defined by
14 Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

15 (B) a provider of information service, as defined
16 by Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

17 (C) a provider of interactive computer service,
18 as defined by Section 230, Communications Act of 1934 (47 U.S.C.
19 Section 230); and

20 (D) an information content provider, as defined
21 by Section 230, Communications Act of 1934 (47 U.S.C. Section 230).

22 (2) "Journalist" means a person, including a parent,
23 subsidiary, division, or affiliate of a person, who for a
24 substantial portion of the person's livelihood or for substantial

1 financial gain, gathers, compiles, prepares, collects,
2 photographs, records, writes, edits, reports, investigates,
3 processes, or publishes news or information that is disseminated by
4 a news medium or communication service provider and includes:

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

7 (B) notwithstanding the foregoing, a person who
8 is or was a journalist, scholar, or researcher employed by an
9 institution of higher education at the time the person obtained or
10 prepared the requested information, or a person who at the time the
11 person obtained or prepared the requested information:

12 (i) is earning a significant portion of the
13 person's livelihood by obtaining or preparing information for
14 dissemination by a news medium or communication service provider;
15 or

16 (ii) was serving as an agent, assistant,
17 employee, or supervisor of a news medium or communication service
18 provider.

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

- 1 (A) print;
- 2 (B) television;
- 3 (C) radio;
- 4 (D) photographic;
- 5 (E) mechanical;
- 6 (F) electronic; and
- 7 (G) other means, known or unknown, that are
- 8 accessible to the public.

9 (4) "Official proceeding" means any type of
10 administrative, executive, legislative, or judicial proceeding
11 that may be conducted before a public servant, including a
12 proceeding under Rule 202, Texas Rules of Civil Procedure.

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

- 17 (A) an officer, employee, or agent of government;
- 18 (B) a juror;
- 19 (C) an arbitrator, referee, or other person who
20 is authorized by law or private written agreement to hear or
21 determine a cause or controversy;

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

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

27 Sec. 22.022. PURPOSE. The purpose of this subchapter is to

1 increase the free flow of information and preserve a free and active
2 press and, at the same time, protect the right of the public to
3 effective law enforcement and the fair administration of justice.

4 Sec. 22.023. PRIVILEGE. (a) Except as otherwise provided
5 by this subchapter, a judicial, legislative, administrative, or
6 other body with the authority to issue a subpoena or other
7 compulsory process may not compel a journalist to testify regarding
8 or to produce or disclose in an official proceeding:

9 (1) any confidential or nonconfidential information,
10 document, or item obtained or prepared while acting as a
11 journalist; or

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

14 (b) A subpoena or other compulsory process may not compel
15 the parent, subsidiary, division, or affiliate of a communication
16 service provider or news medium to disclose the information,
17 documents, or items or the source of any information, documents, or
18 items that are privileged from disclosure under Subsection (a).

19 Sec. 22.024. LIMITED DISCLOSURE GENERALLY. After notice
20 and an opportunity to be heard, a court may compel a journalist, a
21 journalist's employer, or a person with an independent contract
22 with a journalist to testify regarding or to produce or disclose any
23 information, document, or item or the source of any information,
24 document, or item obtained while acting as a journalist, if the
25 person seeking the information, document, or item or the source of
26 any information, document, or item makes a clear and specific
27 showing that:

1 (1) all reasonable efforts have been exhausted to
2 obtain the information from alternative sources;

3 (2) the subpoena is not overbroad, unreasonable, or
4 oppressive and, when appropriate, will be limited to the
5 verification of published information and the surrounding
6 circumstances relating to the accuracy of the published
7 information;

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

10 (4) in this instance, the interest of the party
11 subpoenaing the information outweighs the public interest in
12 gathering and dissemination of news, including the concerns of the
13 journalist;

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

17 (6) the information, document, or item is relevant and
18 material to the proper administration of the official proceeding
19 for which the testimony, production, or disclosure is sought and is
20 essential to the maintenance of a claim or defense of the person
21 seeking the testimony, production, or disclosure.

22 Sec. 22.025. NOTICE. An order to compel testimony,
23 production, or disclosure to which a journalist has asserted a
24 privilege under this subchapter may be issued only after timely
25 notice to the journalist, the journalist's employer, or a person
26 who has an independent contract with the journalist and a hearing.
27 The order must include clear and specific findings as to the showing

1 made by the person seeking the testimony, production, or disclosure
2 and the clear and specific evidence on which the court relied in
3 issuing the court's order.

4 Sec. 22.026. PUBLICATION OF PRIVILEGED INFORMATION.
5 Publication or dissemination by a news medium or communication
6 service provider of information, documents, or items privileged
7 under this subchapter is not a waiver of the journalist's
8 privilege.

9 Sec. 22.027. NEWS MEDIA RECORDINGS. Extrinsic evidence of
10 the authenticity of evidence as a condition precedent to the
11 admissibility of the evidence in a civil proceeding is not required
12 with respect to a recording that purports to be a broadcast by a
13 radio or television station that holds a license issued by the
14 Federal Communications Commission at the time of the recording.
15 The court may take judicial notice of the recording license as
16 provided by Rule 201, Texas Rules of Evidence.

17 SECTION 2. Chapter 38, Code of Criminal Procedure, is
18 amended by adding Articles 38.11 and 38.111 to read as follows:

19 Art. 38.11. JOURNALIST'S QUALIFIED TESTIMONIAL PRIVILEGE
20 IN CRIMINAL PROCEEDINGS

21 Sec. 1. DEFINITIONS. In this article:

22 (1) "Communication service provider" means a person or
23 the parent, subsidiary, division, or affiliate of a person who
24 transmits information chosen by a customer by electronic means,
25 including:

26 (A) a telecommunications carrier, as defined by
27 Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

1 (B) a provider of information service, as defined
2 by Section 3, Communications Act of 1934 (47 U.S.C. Section 153);

3 (C) a provider of interactive computer service,
4 as defined by Section 230, Communications Act of 1934 (47 U.S.C.
5 Section 230); and

6 (D) an information content provider, as defined
7 by Section 230, Communications Act of 1934 (47 U.S.C. Section 230).

8 (2) "Journalist" means a person, including a parent,
9 subsidiary, division, or affiliate of a person, who for a
10 substantial portion of the person's livelihood or for substantial
11 financial gain, gathers, compiles, prepares, collects,
12 photographs, records, writes, edits, reports, investigates,
13 processes, or publishes news or information that is disseminated by
14 a news medium or communication service provider and includes:

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

17 (B) notwithstanding the foregoing, a person who
18 is or was a journalist, scholar, or researcher employed by an
19 institution of higher education at the time the person obtained or
20 prepared the requested information, or a person who at the time the
21 person obtained or prepared the requested information:

22 (i) is earning a significant portion of the
23 person's livelihood by obtaining or preparing information for
24 dissemination by a news medium or communication service provider;
25 or

26 (ii) was serving as an agent, assistant,
27 employee, or supervisor of a news medium or communication service

1 provider.

2 (3) "News medium" means a newspaper, magazine or
3 periodical, book publisher, news agency, wire service, radio or
4 television station or network, cable, satellite, or other
5 transmission system or carrier or channel, or a channel or
6 programming service for a station, network, system, or carrier, or
7 an audio or audiovisual production company or Internet company or
8 provider, or the parent, subsidiary, division, or affiliate of that
9 entity, that disseminates news or information to the public by any
10 means, including:

11 (A) print;

12 (B) television;

13 (C) radio;

14 (D) photographic;

15 (E) mechanical;

16 (F) electronic; and

17 (G) other means, known or unknown, that are
18 accessible to the public.

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

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

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

27 (B) a juror or grand juror;

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

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

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

9 Sec. 2. PURPOSE. The purpose of this article is to increase
10 the free flow of information and preserve a free and active press
11 and, at the same time, protect the right of the public to effective
12 law enforcement and the fair administration of justice.

13 Sec. 3. PRIVILEGE. (a) Except as otherwise provided by
14 this article, a judicial, legislative, administrative, or other
15 body with the authority to issue a subpoena or other compulsory
16 process may not compel a journalist to testify regarding or to
17 produce or disclose in an official proceeding:

18 (1) any confidential or nonconfidential unpublished
19 information, document, or item obtained or prepared while acting as
20 a journalist; or

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

23 (b) A subpoena or other compulsory process may not compel
24 the parent, subsidiary, division, or affiliate of a communication
25 service provider or news medium to disclose the unpublished
26 information, documents, or items or the source of any information,
27 documents, or items that are privileged from disclosure under

1 Subsection (a).

2 Sec. 4. PRIVILEGE CONCERNING CONFIDENTIAL SOURCES. (a) A
3 journalist may be compelled to testify regarding or to disclose the
4 confidential source of any information, document, or item obtained
5 while acting as a journalist if the person seeking the testimony,
6 production, or disclosure makes a clear and specific showing that
7 the source of any information, document, or item:

8 (1) was observed by the journalist committing a felony
9 criminal offense and the subpoenaing party has exhausted reasonable
10 efforts to obtain from alternative sources the confidential source
11 of any information, document, or item obtained or prepared while
12 acting as a journalist;

13 (2) is a person who confessed or admitted to the
14 journalist the commission of a felony criminal offense and the
15 subpoenaing party has exhausted reasonable efforts to obtain from
16 alternative sources the confidential source of any information,
17 document, or item obtained or prepared while acting as a
18 journalist;

19 (3) is a person for whom probable cause exists that the
20 person participated in a felony criminal offense and the
21 subpoenaing party has exhausted reasonable efforts to obtain from
22 alternative sources the confidential source of any information,
23 document, or item obtained or prepared while acting as a
24 journalist; or

25 (4) disclosure of the confidential source is
26 reasonably necessary to stop or prevent reasonably certain death or
27 substantial bodily harm.

1 (b) If the alleged criminal conduct is the act of
2 communicating, receiving, or possessing the information, document,
3 or item, this section does not apply, and Section 5 governs the act.

4 (c) Notwithstanding Subsection (b), if the information,
5 document, or item was disclosed or received in violation of a grand
6 jury oath given to either a juror or a witness under Article 19.34
7 or 20.16, a journalist may be compelled to testify if the person
8 seeking the testimony, production, or disclosure makes a clear and
9 specific showing that the subpoenaing party has exhausted
10 reasonable efforts to obtain from alternative sources the
11 confidential source of any information, document, or item obtained.
12 In this context, the court has the discretion to conduct an in
13 camera hearing. The court may not order the production of the
14 confidential source until a ruling has been made on the motion.

15 (d) An application for a subpoena of a journalist under
16 Article 24.03, or a subpoena of a journalist issued by an attorney
17 representing the state under Article 20.10 or 20.11, must be signed
18 by the elected district attorney, elected criminal district
19 attorney, or elected county attorney, as applicable. If the
20 elected district attorney, elected criminal district attorney, or
21 elected county attorney has been disqualified or recused or has
22 resigned, the application for the subpoena or the subpoena must be
23 signed by the person succeeding the elected attorney. If the
24 elected officer is not in the jurisdiction, the highest ranking
25 assistant to the elected officer must sign the subpoena.

26 Sec. 5. PRIVILEGE CONCERNING UNPUBLISHED INFORMATION,
27 DOCUMENT, OR ITEM AND NONCONFIDENTIAL SOURCES. (a) After service

1 of subpoena and an opportunity to be heard, a court may compel a
2 journalist, a journalist's employer, or a person with an
3 independent contract with a journalist to testify regarding or to
4 produce or disclose any unpublished information, document, or item
5 or the source of any information, document, or item obtained while
6 acting as a journalist, other than as described by Section 4, if the
7 person seeking the unpublished information, document, or item or
8 the source of any information, document, or item makes a clear and
9 specific showing that:

10 (1) all reasonable efforts have been exhausted to
11 obtain the information from alternative sources; and

12 (2) the unpublished information, document, or item:

13 (A) is relevant and material to the proper
14 administration of the official proceeding for which the testimony,
15 production, or disclosure is sought and is essential to the
16 maintenance of a claim or defense of the person seeking the
17 testimony, production, or disclosure; or

18 (B) is central to the investigation or
19 prosecution of a criminal case and based on something other than the
20 assertion of the person requesting the subpoena, reasonable grounds
21 exist to believe that a crime has occurred.

22 (b) The court, when considering an order to compel testimony
23 regarding or to produce or disclose any unpublished information,
24 document, or item or the source of any information, document, or
25 item obtained while acting as a journalist, should consider the
26 following factors, including but not limited to whether:

27 (1) the subpoena is overbroad, unreasonable, or

1 oppressive;

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

4 (3) in this instance, the interest of the party
5 subpoenaing the information outweighs the public interest in
6 gathering and dissemination of news, including the concerns of the
7 journalist; and

8 (4) the subpoena or compulsory process is being used
9 to obtain peripheral, nonessential, or speculative information.

10 (c) A court may not consider a single factor under
11 Subsection (b) as outcome-determinative in the decision whether to
12 compel the testimony or the production or disclosure of the
13 unpublished information, document, or item, or the source of any
14 information, document, or item.

15 Sec. 6. NOTICE. An order to compel testimony, production,
16 or disclosure to which a journalist has asserted a privilege under
17 this article may be issued only after timely notice to the
18 journalist, the journalist's employer, or a person who has an
19 independent contract with the journalist and a hearing. The order
20 must include clear and specific findings as to the showing made by
21 the person seeking the testimony, production, or disclosure and the
22 clear and specific evidence on which the court relied in issuing the
23 court's order.

24 Sec. 7. PUBLICATION OF PRIVILEGED INFORMATION. Publication
25 or dissemination by a news medium or communication service provider
26 of information, documents, or items privileged under this article
27 is not a waiver of the journalist's privilege regarding sources and

1 unpublished information, documents, or items.

2 Sec. 8. PUBLISHED INFORMATION. This article does not apply
3 to any information, document, or item that has at any time been
4 published or broadcast by the journalist.

5 Sec. 9. REIMBURSEMENT OF COSTS. The subpoenaing party shall
6 pay a journalist a reasonable fee for the journalist's time and
7 costs incurred in providing the information, item, or document
8 subpoenaed, based on the fee structure provided by Subchapter F,
9 Chapter 552, Government Code.

10 Art. 38.111. NEWS MEDIA RECORDINGS. Extrinsic evidence of
11 the authenticity of evidence as a condition precedent to the
12 admissibility of the evidence in a criminal proceeding is not
13 required with respect to a recording that purports to be a broadcast
14 by a radio or television station that holds a license issued by the
15 Federal Communications Commission at the time of the recording.
16 The court may take judicial notice of the recording license as
17 provided by Rule 201, Texas Rules of Evidence.

18 SECTION 3. This Act applies only to information, documents,
19 or items or the source of any information, document, or item
20 obtained or prepared for publication in a news medium or
21 communication service provider on or after the effective date of
22 this Act.

23 SECTION 4. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 670 was passed by the House on April 2, 2009, by the following vote: Yeas 146, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 670 on April 30, 2009, by the following vote: Yeas 146, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 670 was passed by the Senate, with amendments, on April 28, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor