

BILL ANALYSIS

Senate Research Center
88R15702 JTZ-D

C.S.S.B. 372
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State Affairs
3/2/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2021, a draft of United States Supreme Court Justice Samuel Alito's majority opinion in *Dobbs v. Jackson Women's Health Organization* was leaked to a news website. Draft opinions of the court, particularly on sensitive issues, should be given the highest protections.

S.B. 372 requires that a person, other than a justice or judge, who is involved in crafting an opinion or decision for an adjudicatory proceeding, shall maintain the confidentiality of all non-public judicial work product in accordance with Texas Supreme Court rules. Furthermore, a person, other than a justice or judge, with access to non-public judicial work product commits a Class A misdemeanor offense if the person knowingly discloses, wholly or partly, the contents of any non-public judicial work product. However, it would be a defense to prosecution if the disclosure was authorized either in writing by the justice or judge for whom the work product is prepared, or under Texas Supreme Court rules.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 372 amends current law relating to creating a criminal offense for the unauthorized disclosure of non-public judicial opinions and judicial work product.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 21, Government Code, by adding Section 21.013, as follows:

Sec. 21.013. CONFIDENTIALITY OF JUDICIAL WORK PRODUCT; CRIMINAL OFFENSE. (a) Defines "judicial work product" and "non-public judicial work product."

(b) Provides that this section applies to a court established under Section 1 (Judicial Power Vested in Courts; Legislative Power Regarding Courts), Article V (Judicial Department), Texas Constitution, other than a commissioners court, and to a court subject to Subtitle A (Courts).

(c) Requires a justice or judge of a court to comply with Supreme Court of Texas (supreme court) rules governing the confidentiality of non-public judicial work product.

(d) Requires a person, other than a justice or judge, who is involved in crafting an opinion or decision for an adjudicatory proceeding, including a court staff attorney, court clerk, or law clerk, to maintain the confidentiality of all non-public judicial work product in accordance with supreme court rules.

(e) Provides that a person, other than a justice or judge, with access to non-public judicial work product commits an offense if the person knowingly discloses, wholly or partly, the contents of any non-public judicial work product to a person

who is not a justice, judge, court staff attorney, court clerk, law clerk, employee of an agency established under Chapter 71 (Texas Judicial Council) or 72 (Office of Court Administration), or other court staff routinely involved in crafting an opinion or decision for an adjudicatory proceeding.

(f) Provides that an offense under this section is a Class A misdemeanor.

(g) Provides that it is a defense to prosecution under this section that the disclosure of the non-public judicial work product is authorized in writing by the justice or judge for whom the work product is prepared, or under supreme court rules.

SECTION 2. Requires the supreme court, as soon as practicable after the effective date of this Act, to adopt any rules necessary to implement Section 21.013, Government Code, as added by this Act.

SECTION 3. Effective date: September 1, 2023.