

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 966
By: Ellis et al.
Jurisprudence
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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

C.S.S.B. 966 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 an unbiased third party, a judge, rather than the subpoenaing party or the journalist. By adopting this measure, Texas would join 32 other states and the District of Columbia that safeguard the free flow of information and the rights of the journalists to gather and communicate the news without unwarranted intrusion.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION 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," and "public servant."

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 AS CRIMINAL WITNESS. 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: CRIMINAL WITNESS. (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.

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.

SECTION 4. Effective date: September 1, 2007.