

By: King of Hemphill

H.B. No. 3388

A BILL TO BE ENTITLED

AN ACT

relating to certain limitations on a journalist's qualified privilege not to testify; creating a civil penalty.

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

SECTION 1. Subchapter C, Chapter 22, Civil Practice and Remedies Code, is amended by adding Section 22.0231 to read as follows:

Sec. 22.0231. LIMITATION ON APPLICABILITY OF SUBCHAPTER; CIVIL PENALTY. (a) The privilege established under Section 22.023 does not apply to a person who, currently or at any time during the five years preceding the official proceeding:

(1) is required to file a report under Section 254.261, Election Code;

(2) controls:

(A) a political committee as that term is defined by Section 251.001, Election Code; or

(B) a campaign committee, political action committee, connected committee, nonconnected committee, or separate segregated fund that is governed by the Federal Election Campaign Act of 1971 (52 U.S.C. Sec. 30101 et seq.);

(3) serves as the treasurer or assistant treasurer of:

(A) a candidate or political committee as provided by Chapter 252, Election Code; or

(B) a campaign committee, political action

1 committee, connected committee, nonconnected committee, or
2 separate segregated fund that is governed by the Federal Election
3 Campaign Act of 1971 (52 U.S.C. Sec. 30101 et seq.);

4 (4) makes a political expenditure described by Section
5 253.100(a), Election Code;

6 (5) is required to be disclosed on federal Internal
7 Revenue Service Form 990, or any subsequent form with a different
8 number or designation that provides substantially the same
9 information, as an entity related to a person described by
10 Subdivisions (1), (2), or (4); or

11 (6) is an employee or contractor of or acts under the
12 control or direction of a person described by Subdivisions (1)-(5)
13 or acts on behalf of a person described by Subdivisions (1)-(5).

14 (b) A person described by Subsection (a) is not considered
15 to be a journalist for the purposes of this subchapter.

16 (c) Notwithstanding Section 22.024, a court may issue a
17 subpoena or other compulsory process on request to determine
18 whether a person who asserts the privilege under Section 22.023
19 meets any of the criteria listed under Subsection (a) and is not a
20 journalist. The court may take appropriate action to enforce a
21 subpoena issued under this subsection.

22 (d) A subpoena or other compulsory process issued under
23 Subsection (c) is subject to any provisions of the Texas Rules of
24 Civil Procedure or any law governing subpoenas or the applicable
25 compulsory process to the extent that those rules or laws are
26 applicable to the official proceedings in which the person has
27 claimed the privilege. Chapter 27 does not apply to any discovery

1 authorized by this chapter.

2 (e) If it is determined as the result of a subpoena or other
3 compulsory process issued under Subsection (c) that a person who
4 asserted the privilege in an official proceeding under Section
5 22.023 is not a journalist for the purposes of this subchapter, the
6 person is liable for the costs of issuing and enforcing the subpoena
7 or other compulsory process.

8 (f) If a person asserted the privilege under Section 22.023
9 frivolously or for the purpose of delaying the official proceeding,
10 the person shall be held liable in an official proceeding before a
11 court or administrative body exercising adjudicative authority for
12 any sanctions that the court or administrative body is authorized
13 to impose in the official proceeding, including sanctions
14 authorized under Chapter 10 and the Texas Rules of Civil Procedure.

15 SECTION 2. The change in law made by this Act applies only
16 with respect to testimony regarding or production or disclosure of
17 information, documents, or items, or the source of any information,
18 document, or item, obtained or prepared on or after the effective
19 date of this Act. Testimony regarding and production or disclosure
20 of information, documents, or items, or the source of any
21 information, document, or item, obtained or prepared before the
22 effective date of this Act is governed by the law as it existed
23 immediately before the effective date of this Act, and that law is
24 continued in effect for that purpose.

25 SECTION 3. This Act takes effect September 1, 2017.