Texas Governor Signs Shield Law

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Posted in Shield Laws

Texas is on the cusp of parting company with the minority of jurisdictions that offer no statutory protection to journalists who receive subpoenas. As we have discussed in a previous post, most states have enacted laws that create a least a qualified privilege for journalists from being compelled to disclose source information. Some "shield" statutes, as they are often called, protect both confidential and non-confidential information, whereas others protect only confidential information or confidential sources. Some give absolute protection from disclosure, others qualified protection. The Reporters Committee for Freedom of the Press has an excellent database to compare the text of shield statutes in different states.

The Texas Free Flow of Information Act, HB 670, passed both chambers of the Texas legislature unanimously. On May 4, it went to Governor Rick Perry's desk for his signature, which must be given within 10 days. According to the Associated Press, Governor Perry "has not taken a firm position on the latest version of the bill," and it remains to be seen whether he will sign the bill into law, veto it, or allow it to become law without his signature.

HB 670 follows the structure of many shield statutes. The text of the bill can be viewed here. It protects both non-confidential and confidential information (including the source of such information) a person obtains while acting as a "journalist," which is defined as:

a person, including a parent, subsidiary, division, or affiliate of a person, who for a substantial portion of the person's livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information that is disseminated by a news medium or communication service provider.

Both "news medium" and "communication service provider" are defined broadly, and journalist is defined specifically to include editors and academics. The shield bill protects only "unpublished" information.

In civil proceedings, the privilege can be overcome if the party seeking disclosure establishes, with "a clear and specific showing" that:

1. all reasonable efforts have been exhausted to obtain the information from alternative sources;
2. the subpoena is not overbroad, unreasonable, or oppressive and, when appropriate, will be limited to the verification of published information and the surrounding circumstances relating to the accuracy of the published information;
3. reasonable and timely notice was given of the demand for the information, document, or item;
4. in this instance, the interest of the party subpoenaing the information outweighs the public interest in gathering and dissemination of news, including the concerns of the journalist;
5. the subpoena or compulsory process is not being used to obtain peripheral, nonessential, or speculative information; and
6. the information, document, or item is relevant and material to the proper administration of the official proceeding for which the testimony, production, or disclosure is sought and is essential to the maintenance of a claim or defense of the person seeking the testimony, production, or disclosure.

We will watch closely to see whether HB 670 becomes law in Texas. If it does, it will reduce the number of states lacking any form of statutory protection for subpoenaed reporters to 13.