

LATEST NEWS

2009 TEXAS FFOIA LEGISLATIVE EFFORT

5/26/09

First Successful Use of the 2009 Texas Free Flow of Information Act

as reported by Mary Ann Cavazos, Corpus Christi Caller-Times

CORPUS CHRISTI — The newly enacted Free Flow of Information Act has been used in Corpus Christi in what likely is the first time to persuade a Texas judge to grant a request preventing a journalist from being called to testify in a criminal case.

District Judge Sandra Watts on Tuesday granted a motion to quash a subpoena that prosecutors had sought seeking testimony from KIII-TV3 reporter Katy Kiser.

According to a motion filed by attorney Jorge Rangel on behalf of the station, Kiser interviewed Kenneth Hubbard, a man who was accused of sexual assault in a criminal case. A news report including that footage aired on July 8, 2008.

Kiser received a subpoena earlier this month requiring her to appear as a witness for the prosecution.

Rangel states in the filing that prosecutors already had a copy of the news broadcast and that Kiser wasn't needed as a witness.

Prosecutor Bill Ainsworth said his main motivation for the subpoena was for Kiser to authenticate the copy of the news report on the stand.

He said the news report included statements by Hubbard in which he admitted the victim was injured but says the sex was consensual.

Rangel argued that under the new act, testimony was not needed for authentication of footage already broadcast and that journalists are protected from revealing unpublished information. Rangel also is the attorney for the "Caller-Times."

"The enactment of this law is very significant because it provides a strong basis for protecting journalists as they go about gathering and reporting the news," Rangel said.

Hubbard, 48, had been facing two counts of aggravated sexual assault. On Tuesday afternoon, he took a plea deal for a lesser charge and was sentenced to eight years in prison.

Watts' order also prohibits the issuance of any other subpoenas for Kiser or the TV station related to the case.

Gov. Rick Perry signed the act, also known as House Bill 670, into law on May 13. The shield law provides a qualified privilege that prevents journalists who receive a subpoena from having to testify or produce documents that were gathered during their journalistic duties.

It also allows journalists to protect their confidential sources in some instances.

Exceptions to the bill that still may require journalists to reveal a source's identity include when prosecutors can prove to a judge that all reasonable efforts were made to obtain the information by other means. Journalists also still must reveal a confidential source in cases in which they learn the source committed a felony or when revealing the source's identity is vital to prevent a death or bodily harm.

Laura Prather, an Austin media attorney and board president of the Freedom of Information Foundation of Texas, said the local case is an example of why the law was needed.

"I'm thrilled to see the act being used in the way it should be used," Prather said.

She said it seemed fitting that the shield law was put to early use in Corpus Christi considering state Rep. Todd Hunter, R-Corpus Christi, played such a vital role in making it a reality.

Hunter, chairman of the House Judiciary Committee, led the negotiations between prosecutors, the news media and legislators including one 13-hour session between the groups to hammer out the details of the bill.

Hunter said he was glad to see the act was working and even more excited that Corpus Christi is likely the first place it was used successfully.

"I think it's not only ironic but it proves to me that we did the right thing," Hunter said.

5/13/09

Gov. Rick Perry signs HB 670 (CSHB 670) into Law

With a stroke of his pen Texas Gov. Rick Perry enacted HB 670 into law. Due to its enacting clause, HB 670 goes into immediate effect.

5/4/09

HB 670 (CSHB 670) Received in the Governor's Office

HB 670 is now awaiting action by Texas Gov. Rick Perry. The bill was officially sent to the Governor's Office today via the Secretary of State.

Gov. Perry has until May 14 to act on the measure by signing HB 670 into law, letting it become law without his signature or vetoing the bill.

Under the Texas Constitution, the Governor has 10 days to act on a bill, excluding Sundays, while the Legislature is in session.

Earlier today, HB 670 was enrolled and the final printing of the bill was signed by the Speaker and Lt. Governor in the presence of their respective chambers.

4/30/09

House Concurs on Senate Amendments to HB 670 (CSHB 670)

The Texas House voted **146 - 0** to concur in the Senate amendments to HB 670, the Texas Free Flow of Information Act.

The bill will now have its enrollment printing which includes the signature lines for the Speaker of the House, Lt. Governor and Governor.

HB 670 must be signed by the Speaker and Lt. Governor in the presence of their respective chambers before it officially goes to the Gov. Rick Perry's desk via the Secretary of State's office.

Gov. Perry will have 10 days to act on the bill either by signing it into law, letting it become law without his signature or vetoing the measure.

Because all floor votes on the bill, including House concurrence, were by more than a 2/3rds vote, the law will go into immediate effect if signed by the Governor.

In fact, all of the final floor votes on HB 670 have been unanimous.

4/28/09

Senate Passes HB 670 (CSHB 670) on Final Reading

The Texas Senate voted **31 - 0** to pass HB 670, the Texas Free Flow of Information Act, on final reading.

Sen. Rodney Ellis, D-Houston and Sen. Robert Duncan, R-Lubbock, successfully fended off a negative amendment to the bill by Sen. Tommy Williams, R-The Woodlands.

Williams' amendment would have required a disclaimer on stories containing confidential sources.

Williams eventually pulled his amendment down prior to the final vote.

The bill now makes one final trip to the House where the lower chamber will be asked to concur in the Senate amendments to the bill by a floor vote, which should happen in a matter of days.

If successful, the bill will then go to Gov. Rick Perry's desk.

The Senate Jurisprudence Committee added conforming language which had previously been added to the Senate version of the bill a few weeks ago.

There was also a new addition to the bill – an immediate effect clause if the measure becomes law.

The Texas Constitution allows a bill to take immediate effect if approved by each chamber by more than a 2/3rds vote.

Both chambers have now done so in floor votes of the House (146-0) and Senate (31-0).

The House concurrence vote on Senate amendments will also need to be a 2/3rds vote or better (100+) to satisfy the requirements of the Texas Constitution for the immediate effect clause to take effect.

4/24/09

Media Shield Proposal Delayed in Senate; Dewhurst Wants to Review It, Aide Says

as reported by W. Gardner Selby, Austin American-Statesman

Against expectations, the Texas Senate stopped short today of taking up a proposal to protect journalists from testifying in court or giving up their notes or video tapes except under certain circumstances.

A spokesman for Lt. Gov. David Dewhurst said the measure—long sought by advocates for newspapers and broadcast outlets—didn't get called up for two reasons: Senators wanted to end its daily session by 2 p.m. and Dewhurst still wanted to review the House-approved shield proposal.

He "hadn't had a chance to review it," said Mike Wintemute, Dewhurst's communications director. And the Senate ended its floor session at 2 p.m.

Asked if Dewhurst wants the shield plan to pass into law, Wintemute said he didn't know. But, he stressed, Dewhurst supported shield measures taken up in past sessions.

Sen. Rodney Ellis, D-Houston, had expected to win floor approval of the Senate-amended approach Thursday or today.

His spokesman, Jeremy Warren, said this afternoon there didn't appear to be anything questionable about the lack of action.

"The lieutenant governor has been known to be deliberative his entire tenure," Warren said.

He noted that interest groups including prosecutors and media representatives reached an accord on the legislation earlier this session.

Warren said he expects the measure to be headed back to the House early next week.

4/23/09

HB 670 (CSHB 670) Becomes Eligible for Senate Floor Vote

HB 670 was certified for the local and uncontested Calendar. It is also eligible for consideration by the full Senate on the Senate intent calendar starting today.

4/15/09

Senate Jurisprudence Committee adopts Committee Substitute for HB 670 (CSHB 670)

The Senate Jurisprudence Committee voted 5 - 0 to adopt a committee substitute for HB 670 by Rep. Trey Martinez-Fischer, D-San Antonio.

Voting "YES"

Sen. Jeff Wentworth, R-San Antonio, Chairman
Sen. Mario Gallegos, D-Houston, Vice Chairman
Sen. Robert Duncan, R-Lubbock, Co-Author of SB 915, Senate FFOIA
Sen. Juan "Chuy" Hinojosa, D-McAllen
Sen. Kirk Watson, D-Austin

Voting "NO"

None

Absent

Sen. John J. Carona, R-Dallas
Sen. Chris Harris, R-Arlington

The Committee added conforming language which had previously been added to the Senate version of the bill a few weeks ago.

There was also a new addition to the bill – an immediate effect clause if the measure becomes law. The Texas Constitution allows a bill to take immediate effect if approved by each chamber by more than a 2/3rds vote.

The Texas House has already done so with its 146-0 vote on April 2. The bill could be taken up by the full Senate as early as next week.

4/7/09

HB 670 (CSHB 670) is referred to the Senate Jurisprudence Committee

The Texas FFOIA is referred to committee, but it appears unlikely a committee substitute will return in time from Legislative Council for a hearing this week.

4/2/09

House passes HB 670 (CSHB 670) on Final Reading

The Texas House of Representatives voted 146 - 0 to pass HB 670, the Texas Free Flow of Information Act, on final reading.

The measure now moves to the Texas Senate where it is expected to be referred to the Senate Jurisprudence Committee. It is possible the bill could be referred in time to be heard on Wednesday, April 8.

Rep. Debbie Riddle, R-Houston and Rep. Randy Weber, R-Pearland, who voted against the bill on April 1, voted “yes” this time.

House Speaker Joe Straus abstained from voting, which is normal practice. Rep. Robert Alonzo, D-Dallas; Rep. Dan Gattis, R-Georgetown and Rep. Tracy King, D-Eagle Pass, who all voted “yes” on April 1, were absent.

More clarifying language related to the bill’s section on grand juries was added by bill author Rep. Trey Martinez Fischer. Laura Prather, a media law attorney with Sedgwick Detert Moran & Arnold, drafted the language of the amendment.

4/1/09

House Passes HB 670 (CSHB 670) to Third Reading

The Texas House of Representatives voted 146 – 2 to pass HB 670, the Texas Free Flow of Information Act, to third reading. The bill will have its third and final vote on Thursday, April 2.

Rep. Debbie Riddle, R-Houston and Rep. Randy Weber, R-Pearland, voted against the bill.

House Speaker Joe Straus abstained from voting, which is normal practice. Rep. Joe Pickett, D-El Paso, was absent.

A clarifying amendment related to grand juries was added by bill author Rep. Trey Martinez Fischer, D-San Antonio.

Laura Prather, a media law attorney with Sedgwick Detert Moran & Arnold, and one of the media negotiators in the extensive bill discussions with the prosecutorial community, drafted the language of the amendment.

Rep. Leo Berman, R-Tyler, signed as the fourth and final joint co-author of the bill.

3/31/09

House Schedules Floor Vote for HB 670 (CSHB 670)

The Texas House of Representatives scheduled a vote on HB 670 for Wednesday, April 1. The bill is the first bill on the major state calendar for the day.

Supporters are urged to call House lawmakers and ask them to vote YES on HB 670.

3/25/09

Senate Jurisprudence Committee adopts Committee Substitute for SB 915 (CSSB 915)

The Senate Jurisprudence Committee voted 6 - 0 to adopt a committee substitute for SB 915 by Sen. Rodney Ellis, D-Houston and Sen. Robert Duncan, R-Lubbock.

The bill is sent to the local and uncontested calendar, an unprecedented move for this legislation which has seen its fair share of contentious Senate floor debate over the past two legislative sessions.

Voting “YES”

Sen. Jeff Wentworth, R-San Antonio, Chairman
Sen. Mario Gallegos, D-Houston, Vice Chairman
Sen. John J. Carona, R-Dallas
Sen. Robert Duncan, R-Lubbock, Co-Author of SB 915
Sen. Chris Harris, R-Arlington
Sen. Juan “Chuy” Hinojosa, D-McAllen

Voting "NO"

None

Absent

Sen. Kirk Watson, D-Austin

3/23/09

House Judiciary and Civil Jurisprudence Committee adopts Committee Substitute for HB 670 (CSHB 670)

The entire House Judiciary and Civil Jurisprudence Committee voted unanimously, **11 - 0**, to approve a committee substitute for the House version of the bill, HB 670 by Rep. Trey Martinez-Fischer, D-San Antonio.

Voting "YES"

Rep. Todd Hunter, R-Corpus Christi, Chairman
Rep. Bryan Hughes, R-Mineola, Vice Chairman
Rep. Roberto Alonzo, D-Dallas
Rep. Dan Branch, R-Dallas
Rep. Will Hartnett, R-Dallas
Rep. Jim Jackson, R-Carrollton
Rep. David Leibowitz, D-San Antonio
Rep. Tryon Lewis, R-Odessa
Rep. Jerry Madden, R-Richardson
Rep. Armando "Mando" Martinez, D-Weslaco
Rep. Beverly Woolley, R-Houston

Voting "NO"

None

3/23/09

Straus: Shield Law Vote Likely Soon

As reported by the Associated Press

(AP) AUSTIN, Texas — A shield law to protect journalists is gaining support this legislative session and may be one of the earliest bills voted on in Texas House, Speaker Joe Straus told news industry executives Monday.

So far the House has not approved any substantive legislation this session, but it's expected to in the next few days.

Straus told the Texas Daily Newspaper Association that he suspects that the shield legislation championed by the news industry will be among the initial bills up for a vote.

The proposed shield law, known as the Free Flow of Information Act, would protect journalists in many situations from revealing confidential sources and notes in court.

News industry officials say such a law would encourage whistleblowers to come forward and share information that could expose corruption.

Late last week, news industry representatives and the Texas District and County Attorneys' Association held a marathon meeting and reached a compromise on the bill so that prosecutors will no longer oppose it, said Laura Prather, a media law attorney and president of the Freedom of Information Foundation of Texas.

Prather said the compromise does not water down the bill. She said some of the changes, expected to be in the version of the bill that reaches the full House, clarify existing provisions of the legislation.

"It is a clearer bill that probably functions with more ease now," she said. Thirty-six states and the District of Columbia have a shield law.

3/19/09

Thirteen-Hour Bill Language Negotiation Session

House Judiciary and Civil Jurisprudence Committee Chairman Todd Hunter, R-Corpus Christi, personally led a marathon discussion between media representatives and the prosecutorial community.

The session produced compromise language which became a committee substitute bill.

The legislation would create a qualified privilege for protecting confidential sources and journalist work product.

Media Representatives

Sen. Don Adams (retired) – Adams & Adams

Shane Fitzgerald, Editor, *Corpus Christi Caller-Times*

Laura Lee Prather – Sedgwick Detert Moran & Arnold LLP, TAB board member, TDNA Legislative Advisory Committee member, president of Freedom of Information Foundation of Texas

Michael Schneider – Director of Programs, Texas Association of Broadcasters

Paul Watler – Jackson Walker LLP, TAB board member, past president of Freedom of Information Foundation of Texas

Prosecutor Representatives

Katrina Daniels – Assistant Criminal District Attorney, Bexar County

Clifford C. Herberg, Jr. – First Assistant Criminal District Attorney, Bexar County

John Rolater – Assistant District Attorney, Appellate Chief, Collin County

Randall C. Sims – District Attorney, 47th District, Potter County

3/19/09

Hearing set for SB 915

SB 915 is posted for a Wednesday, March 25 hearing in the Senate Jurisprudence Committee in room E2.012 of the Capitol Extension.

The Texas Association of Broadcasters (TAB), Texas Daily Newspaper Association (TDNA) and Texas Press Association (TPA) are coordinating witness testimony and committee materials.

3/16/09

House Judiciary and Civil Jurisprudence Committee adopts HB 670

The Texas House Judiciary and Civil Jurisprudence Committee approved HB 670, the Texas Free Flow of Information Act, in a **7 - 1** vote.

Chairman Hunter announces from the dais that discussions between the media and prosecutorial communities will continue to see if any compromise language can be agreed to by the groups.

Voting "YES"

Rep. Todd Hunter, R-Corpus Christi, Chairman

Rep. Roberto Alonzo, D-Dallas

Rep. Dan Branch, R-Dallas

Rep. Will Hartnett, R-Dallas

Rep. David Leibowitz, D-San Antonio

Rep. Jerry Madden, R-Richardson

Rep. Armando "Mando" Martinez, D-Weslaco

Voting "NO"

Rep. Tryon Lewis, R-Odessa

Absent

Rep. Bryan Hughes, R-Mineola, Vice Chairman

Rep. Jim Jackson, R-Carrollton

Rep. Beverly Woolley, R-Houston

3/10/09

Rep. Trey Martinez-Fischer announces several HB 670 joint co-authors

The following House committee chairmen and vice chairman sign on to HB 670 as joint co-authors:

- Rep. Jim Pitts, R-Waxahachie, CHAIRMAN – Appropriations
- Rep. Pete Gallego, D-Alpine, CHAIRMAN – Criminal Jurisprudence
- Rep. Eddie Lucio III, D-San Benito, VICE CHAIRMAN – Calendars

3/9/09

SB 915 is referred to the Senate Jurisprudence Committee

The Senate bill is referred to committee.

3/2/09

House Judiciary and Civil Jurisprudence Committee holds hearing on HB 670

House Judiciary and Civil Jurisprudence Committee took nearly four hours of testimony on HB 670. The following witnesses testified in favor of the bill:

- Toni Locy - the former *USA Today* reporter ordered to pay thousands of dollars in daily fines for failing to identify sources in the government's investigation of a series of anthrax attacks in 2001.
- Chris Cobler, editor, *Victoria Advocate*
- George Levesque, news director, KTXS-TV Abilene
- Gayle Reaves, editor, *Fort Worth Weekly*
- Brian Collister, investigative reporter, WOAI-TV San Antonio
- Doug Toney, editor, *New Braunfels Herald-Zeitung*
- Joe Ellis, investigative producer, KDFW-TV Dallas
- Craig T. Enoch, former Texas Supreme Court justice, Winstead PC
- David Furlow, former Harris Co. assistant District Attorney, Thompson & Knight
- Joel White, First Amendment / media attorney, Joel R. White & Associates
- Laura Prather, First Amendment / media attorney, Sedgwick Detert Moran & Arnold

2/25/09

Hearing set for HB 670

HB 670 is posted for a Monday, March 2 (Texas Independence Day) hearing before the House Judiciary and Civil Jurisprudence Committee in room E2.010 of the Capitol Extension.

The Texas Association of Broadcasters (TAB), Texas Daily Newspaper Association (TDNA) and Texas Press Association (TPA) are coordinating witness testimony and committee materials.

2/18/09

HB 670 is referred to the House Judiciary and Civil Jurisprudence Committee

The House bill is referred to committee.

2/17/09

Sen. Rodney Ellis and Sen. Robert Duncan File SB 915

Sen. Rodney Ellis, D-Houston and Sen. Robert Duncan, R-Lubbock, file SB 915. The duo co-authored the FFOIA in the 2005 and 2007 legislative sessions.

2/13/09

House Judiciary/Civil Jurisprudence Committee is Named

The House Judiciary and Civil Jurisprudence Committees are merged by the newly adopted House rules. The new 11-member committee will be chaired by Rep. Todd Hunter, R-Corpus Christi, a civil case attorney with more than three decades of experience in that realm.

Three members of the new committee served on the House Judiciary Committee when it heard testimony on the FFOIA bill in 2005, for an interim report in 2006 and in 2007: Rep. Bryan Hughes, R-Mineola (vice-chairman), Rep. Will Hartnett, R-Dallas and Rep. Roberto Alonzo, D-Dallas.

2/2/09

Dewhurst: Shield Law Will Pass in Senate Again

as reported by Mike Ward, Austin American-Statesman

Lt. Gov. David Dewhurst predicted today that a so-called "shield law" for journalists will pass the Senate in late March or early April.

Texas is one of 14 states without a law that generally protects reporters from having to publicly disclose unnamed sources by a 27-4 vote, the Texas Senate passed a shield law in the 2007 legislative session, Dewhurst said, but it never passed the House.

This time, Texas' No. 2 elected leader told the Texas Association of Broadcasters meeting at an Austin hotel, the Free Flow of Information Act should be approved by the Senate in "the second half of March or early April," and will then go the House again.

While nothing happened there in 2007, he added, "I'm hoping that won't happen again."

"I'm a big believer in the First Amendment," Dewhurst told the group. "I've tried to do everything I can to put as much sunshine on government as I can ... I think it makes the government process better."

1/30/09

Senate Jurisprudence Committee is Named

No changes in membership of the Senate Jurisprudence Committee from 2007. Sen. Robert Duncan, R-Lubbock, a co-author of the Senate version of the FFOIA in 2005 and 2007, serves on the committee.

1/16/09

Rep. Trey Martinez-Fischer files HB 670

Rep. Trey Martinez-Fischer, D-San Antonio, a five-term House member, filed a Free Flow of Information Act based on the House Committee Substitute to SB 966 from 2007.

The legislation would create a qualified privilege for protecting confidential sources and journalist work product.