

SENATE BILL No. 290

By Committee on Judiciary

1-17

1 AN ACT concerning grand juries; relating to immunity from civil liability;
2 witnesses; amending K.S.A. 2017 Supp. 22-3001 and 22-3008 and
3 repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2017 Supp. 22-3001 is hereby amended to read as
7 follows: 22-3001. (a) A majority of the district judges in any judicial
8 district may order a grand jury to be summoned in any county in the
9 district when it is determined to be in the public interest.

10 (b) The district or county attorney in such attorney's county may
11 petition the chief judge or the chief judge's designee in such district court
12 to order a grand jury to be summoned in the designated county in the
13 district to consider any alleged felony law violation, including any alleged
14 misdemeanor law violation which arises as part of the same criminal
15 conduct or investigation. The attorney general in any judicial district may
16 petition the chief judge or the chief judge's designee in such judicial
17 district to order a grand jury to be summoned in the designated county in
18 the district to consider any alleged felony law violation, including any
19 alleged misdemeanor law violation which arises as part of the same
20 criminal conduct or investigation, if authorized by the district or county
21 attorney in such judicial district or if jurisdiction is otherwise authorized
22 by law. The chief judge or the chief judge's designee in the district court of
23 the county shall then consider the petition and, if it is found that the
24 petition is in proper form, as set forth in this subsection, shall order a
25 grand jury to be summoned within 15 days after receipt of such petition.

26 (c) (1) A grand jury shall be summoned in any county within 60 days
27 after a petition praying therefor is presented to the district court, bearing
28 the signatures of a number of electors equal to 100 plus 2% of the total
29 number of votes cast for governor in the county in the last preceding
30 election.

31 (2) The petition, upon its face, shall state the name, address and
32 phone number of the person filing the petition, the subject matter of the
33 prospective grand jury, a reasonably specific identification of areas to be
34 inquired into and sufficient general allegations to warrant a finding that
35 such inquiry may lead to information which, if true, would warrant a true
36 bill of indictment.

1 (3) (A) The petition shall be in substantially the following form:

2 The undersigned qualified electors of the county of _____
3 and state of Kansas hereby request that the district court of
4 _____ county, Kansas, within 60 days after the filing of this
5 petition, cause a grand jury to be summoned in the county to investigate
6 alleged violations of law and to perform such other duties as may be
7 authorized by law.

8 (B) (i) The signatures to the petition need not all be affixed to one
9 paper, but each paper to which signatures are affixed shall have
10 substantially the foregoing form written or printed at the top thereof. Each
11 signer shall add to such signer's signature such signer's place of residence,
12 giving the street and number or rural route number, if any. One of the
13 signers of each paper shall verify upon oath that each signature appearing
14 on the paper is the genuine signature of the person whose name it purports
15 to be and that such signer believes that the statements in the petition are
16 true.

17 (ii) The petition shall be filed in the office of the clerk of the district
18 court who shall forthwith transmit it to the county election officer, who
19 shall determine whether the persons whose signatures are affixed to the
20 petition are qualified electors of the county. Thereupon, the county election
21 officer shall return the petition to the clerk of the district court, together
22 with such election officer's certificate stating the number of qualified
23 electors of the county whose signatures appear on the petition and the
24 aggregate number of votes cast for all candidates for governor in the
25 county in the last preceding election.

26 (iii) The judge or judges of the district court of the county shall then
27 consider the petition and, if it is found that the petition is in proper form
28 and bears the signatures of the required number of electors, a grand jury
29 shall be ordered to be summoned. If a grand jury is not summoned because
30 of a finding that the petition, substantially in the form required by this
31 subsection on its face, is not in proper form, the person who filed the
32 petition and whose name, address and phone number appear on the face of
33 each petition shall have the right to appeal the decision to not summon a
34 grand jury as a final judgment pursuant to K.S.A. 22-3601, and
35 amendments thereto.

36 (4) After a grand jury is summoned pursuant to this subsection, but
37 before it begins deliberations, the judge or judges of the district court of
38 the county in which the petition is presented shall provide instructions to
39 the grand jury regarding its conduct and deliberations, which instructions
40 shall include, but not be limited to, the following:

41 (A) You have been impaneled as a grand jury pursuant to a citizens'
42 petition filed in this court, signed by (insert number) qualified electors of
43 this county, stating (insert the subject matter described in the petition,

1 including a reasonably specific identification of the areas to be inquired
2 into and the allegations sufficient to warrant a finding that the grand jury's
3 inquiry may lead to information which, if true, would warrant a true bill of
4 indictment). You are charged with making inquiry with regard to this
5 subject matter and determining whether the facts support allegations
6 warranting a true bill of indictment.

7 (B) The person filing the citizens' petition filed in this court must be
8 the first witness you call for the purpose of presenting evidence and
9 testimony as to the subject matter and allegations of the petition.

10 (C) You may, with the approval of this court, employ special counsel
11 and investigators, and incur such other expense for services and supplies
12 as you and this court deem necessary. Any special counsel or investigator
13 you employ shall be selected by a majority vote of your grand jury. You
14 may make such selection only after hearing testimony from the person
15 who filed the citizens' petition. You may utilize the services of any special
16 counsel or investigator you employ instead of, or in addition to, the
17 services of the prosecuting attorney.

18 (D) If any witness duly summoned to appear and testify before you
19 fails or refuses to obey, compulsory process will be issued by this court to
20 enforce the witness' attendance.

21 (E) If any witness appearing before you refuses to testify or to answer
22 any questions asked in the course of the witness' examination, you shall
23 communicate that fact to this court in writing, together with a statement
24 regarding the question the witness refuses to answer. This court will
25 determine and inform you of whether the witness is bound to answer or
26 not. However, no witness appearing before you can be compelled to make
27 any statement which will incriminate such witness.

28 (F) Any person may file a written request with the prosecuting
29 attorney or with the foreman of the grand jury and request to testify or
30 retestify in an inquiry before a grand jury or to appear before a grand jury.
31 Any written request shall include a summary of such person's written
32 testimony.

33 (G) At the conclusion of your inquiry and determination, you will
34 return either a no bill of indictment or a true bill of indictment.

35 (5) *The person who filed the petition and whose name, address and*
36 *phone number appear on the face of each petition shall be immune from*
37 *civil liability for any good-faith conduct under this article.*

38 (d) The grand jury shall consist of 15 members and shall be drawn,
39 qualified and summoned in the same manner as petit jurors for the district
40 court. Twelve members thereof shall constitute a quorum. The judge or
41 judges ordering the grand jury shall direct that a sufficient number of
42 legally qualified persons be summoned for service as grand jurors. In the
43 case of grand juries impaneled pursuant to subsection (c), the judge or

1 judges ordering the grand jury shall allow the person that filed the petition
2 under the provisions of subsection (c)(2), and such person's attorney, to
3 witness the instructions to the grand jury regarding its conduct and
4 deliberations pursuant to subsection (c)(4).

5 Sec. 2. K.S.A. 2017 Supp. 22-3008 is hereby amended to read as
6 follows: 22-3008. (a) (1) Whenever required by any grand jury, its
7 presiding juror or the prosecuting attorney, the clerk of the court in which
8 the jury is impaneled shall issue subpoenas and other process to bring
9 witnesses to testify before the grand jury. ~~The person who filed the petition~~

10 (2) *If the grand jury is impaneled pursuant to K.S.A. 22-3001(c), and*
11 *amendments thereto, the person who filed the petition and whose name,*
12 *address and phone number appear on the face of each petition shall be the*
13 *first witness called by the grand jury for the purpose of presenting*
14 *evidence and testimony as to the subject matter and allegations of the*
15 *petition.*

16 (b) If any witness duly summoned to appear and testify before a
17 grand jury fails or refuses to obey, compulsory process shall be issued to
18 enforce the witness' attendance, and the court may punish the delinquent in
19 the same manner and upon the same proceedings as provided by law for
20 disobedience of a subpoena issued out of the court in other cases.

21 (c) If any witness appearing before a grand jury refuses to testify or to
22 answer any questions asked in the course of the witness' examination, the
23 fact shall be communicated to a district judge of the judicial district in
24 writing, on which the question refused to be answered shall be stated. The
25 judge shall then determine whether the witness is bound to answer or not,
26 and the grand jury shall be immediately informed of the decision.

27 (d) No witness before a grand jury shall be required to incriminate the
28 witness' self.

29 (e) (1) The county or district attorney, or the attorney general, at any
30 time, on behalf of the state, and the district judge, upon determination that
31 the interest of justice requires, and after giving notice to the prosecuting
32 attorney and hearing the prosecuting attorney's recommendations on the
33 matter, may grant in writing to any person:

34 (A) Transactional immunity. Any person granted transactional
35 immunity shall not be prosecuted for any crime which has been committed
36 for which such immunity is granted or for any other transactions arising
37 out of the same incident.

38 (B) Use and derivative immunity. Any person granted use and
39 derivative use immunity may be prosecuted for any crime, but the state
40 shall not use any testimony against such person provided under a grant of
41 such immunity or any evidence derived from such testimony. Any
42 defendant may file with the court a motion to suppress in writing to
43 prevent the state from using evidence on the grounds that the evidence was

1 derived from and obtained against the defendant as a result of testimony or
2 statements made under such grant of immunity. The motion shall state
3 facts supporting the allegations. Upon a hearing on such motion, the state
4 shall have the burden to prove by clear and convincing evidence that the
5 evidence was obtained independently and from a collateral source.

6 (2) Any person granted immunity under either or both of subsections
7 (e)(1)(A) or (e)(1)(B) may not refuse to testify on grounds that such
8 testimony may self incriminate unless such testimony may form the basis
9 for a violation of federal law for which immunity under federal law has not
10 been conferred. No person shall be compelled to testify in any proceeding
11 where the person is a defendant.

12 (3) No immunity shall be granted for perjury as provided in K.S.A.
13 2017 Supp. 21-5903, and amendments thereto, which was committed in
14 giving such evidence.

15 (f) If the judge determines that the witness must answer and if the
16 witness persists in refusing to answer, the witness shall be brought before
17 the judge, who shall proceed in the same manner as if the witness had been
18 interrogated and had refused to answer in open court.

19 (g) Any person may file a written request with the prosecuting
20 attorney or with the foreman of the grand jury and request to testify or
21 retestify in an inquiry before a grand jury or to appear before a grand jury.
22 Any written request shall include a summary of such person's written
23 testimony.

24 Sec. 3. K.S.A. 2017 Supp. 22-3001 and 22-3008 are hereby repealed.

25 Sec. 4. This act shall take effect and be in force from and after its
26 publication in the statute book.