

HOUSE BILL No. 2151

By Committee on Judiciary

2-6

1 AN ACT concerning citizen-initiated grand juries; relating to immunity
2 from civil liability; witnesses; amending K.S.A. 2018 Supp. 22-3001
3 and 22-3008 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 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~~ that 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~~ that 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 *citizen-initiated* grand jury shall be summoned in any county
27 within 60 days after a *citizen-initiated* petition praying therefor is
28 presented to the district court, bearing the signatures of a number of
29 electors equal to 100 plus 2% of the total number of votes cast for
30 governor in the county in the last preceding election.

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

1 (3) (A) The *citizen-initiated* petition shall be in substantially the
2 following form:

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

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

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

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

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

43 (A) You have been impaneled as a *citizen-initiated* grand jury

1 pursuant to a ~~citizens'~~ *citizen-initiated* petition filed in this court, signed by
2 (insert number) qualified electors of this county, stating (insert the subject
3 matter described in the petition, including a reasonably specific
4 identification of the areas to be inquired into and the allegations sufficient
5 to warrant a finding that the grand jury's inquiry may lead to information
6 ~~which~~*that*, if true, would warrant a true bill of indictment). You are
7 charged with making inquiry with regard to this subject matter and
8 determining whether the facts support allegations warranting a true bill of
9 indictment.

10 (B) The person filing the ~~citizens'~~ *citizen-initiated* petition filed in
11 this court must be the first witness you call for the purpose of presenting
12 evidence and testimony as to the subject matter and allegations of the
13 petition.

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

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

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

32 (F) Any person may file a written request with the prosecuting
33 attorney or with the foreman of the *citizen-initiated* grand jury and request
34 to testify or retestify in an inquiry before a grand jury or to appear before a
35 grand jury. Any written request shall include a summary of such person's
36 written testimony.

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

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

43 (d) The grand jury shall consist of 15 members and shall be drawn,

1 qualified and summoned in the same manner as petit jurors for the district
2 court. Twelve members thereof shall constitute a quorum. The judge or
3 judges ordering the grand jury shall direct that a sufficient number of
4 legally qualified persons be summoned for service as grand jurors. In the
5 case of *citizen-initiated* grand juries impaneled pursuant to subsection (c),
6 the judge or judges ordering the grand jury shall allow the person that filed
7 the *citizen-initiated* petition under the provisions of subsection (c)(2), and
8 such person's attorney, to witness the instructions to the *citizen-initiated*
9 grand jury regarding its conduct and deliberations pursuant to subsection
10 (c)(4).

11 Sec. 2. K.S.A. 2018 Supp. 22-3008 is hereby amended to read as
12 follows: 22-3008. (a) (1) Whenever required by any grand jury, its
13 presiding juror or the prosecuting attorney, the clerk of the court in which
14 the jury is impaneled shall issue subpoenas and other process to bring
15 witnesses to testify before the grand jury. ~~The person who filed the petition~~

16 (2) *If a citizen-initiated grand jury is impaneled* pursuant to K.S.A.
17 22-3001(c), and amendments thereto, *the person who filed the citizen-*
18 *initiated petition and whose name, address and phone number appear on*
19 *the face of each petition* shall be the first witness called by the *citizen-*
20 *initiated* grand jury for the purpose of presenting evidence and testimony
21 as to the subject matter and allegations of the petition.

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

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

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

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

40 (A) Transactional immunity. Any person granted transactional
41 immunity shall not be prosecuted for any crime ~~which~~ *that* has been
42 committed for which such immunity is granted or for any other
43 transactions arising out of the same incident.

1 (B) Use and derivative immunity. Any person granted use and
2 derivative use immunity may be prosecuted for any crime, but the state
3 shall not use any testimony against such person provided under a grant of
4 such immunity or any evidence derived from such testimony. Any
5 defendant may file with the court a motion to suppress in writing to
6 prevent the state from using evidence on the grounds that the evidence was
7 derived from and obtained against the defendant as a result of testimony or
8 statements made under such grant of immunity. The motion shall state
9 facts supporting the allegations. Upon a hearing on such motion, the state
10 shall have the burden to prove by clear and convincing evidence that the
11 evidence was obtained independently and from a collateral source.

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

18 (3) No immunity shall be granted for perjury as provided in K.S.A.
19 2018 Supp. 21-5903, and amendments thereto, ~~which~~ *that* was committed
20 in giving such evidence.

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

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

30 Sec. 3. K.S.A. 2018 Supp. 22-3001 and 22-3008 are hereby repealed.

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