

Senate File 568

Judiciary—
Coleman, Chairman
Shaw
Riley

*1/14/73 Passed 1/15
Judiciary 3/23 adopted 1/19*

FILED MAY 16 1973

SENATE FILE 568

BY COMMITTEE ON JUDICIARY

Passed Senate, Date 3-26-74 (1013) Passed House, Date 4-30-74 (2246)

Vote: Ayes 44 Nays 1 Vote: Ayes 85 Nays 3

Approved 5-27-74

*Passed Senate on committee by Hanner
5-5-74 (1745)
46-1*

A BILL FOR

1 An Act relating to the granting of immunity to witnesses
2 testifying in criminal proceedings and providing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 Section 1. NEW SECTION. Before any witness shall be
2 compelled to answer or to produce evidence after having
3 asserted that such answer or evidence would tend to render
4 him criminally liable, incriminate him or violate his right
5 to remain silent under the fifth amendment to the Constitu-
6 tion of the United States, the witness must knowingly waive
7 his right or:

8 1. A county attorney or the attorney general must file
9 with a judge of a district court or the supreme court a
10 certificate setting forth that:

11 a. The testimony of the witness, or the production of
12 documents or other evidence in the possession of such wit-
13 ness, or both, is probably necessary and material; and

14 b. The witness has refused, or there is reason to believe
15 he will refuse to testify, or to produce documents or other
16 evidence, or both, upon the ground that such testimony or
17 evidence would tend to incriminate him; and

18 c. It is the considered judgment of the county attorney
19 or attorney general that justice and the public interest re-
20 quire the testimony, documents or evidence in question.

21 2. Upon consideration of such certificate the judge
22 shall enter an order granting the witness immunity to prose-
23 cution for any crime or public offense concerning which he
24 was compelled to give competent and relevant testimony or to
25 produce competent and relevant evidence.

26 3. Testimony, documents or evidence which has been given
27 by a witness granted immunity shall not be used against him
28 in any trial or proceeding, or subject him to any penalty or
29 forfeiture; provided, that such immunity shall not apply to
30 any prosecution or proceeding for a perjury or a contempt of
31 court committed in the course of or during the giving of
32 such testimony.

33 Sec. 2. NEW SECTION. A complete verbatim transcript of
34 testimony given pursuant to such order of immunity shall be
35 made and filed with the certificate and the order of court

1 which provided therefor and with the transcript, if any was
2 made, of the testimony of said witness and the proceedings
3 pertinent thereto, prior to and during the granting of the
4 immunity. The transcript so filed, and the certificate and
5 order granting immunity, shall be sealed upon motion of the
6 county attorney or attorney general and shall be opened only
7 by order of the court. This section shall not bar
8 the use of such transcript as evidence in any proceedings
9 other than proceedings against the witness himself.

10 Sec. 3. NEW SECTION. Whoever shall refuse to testify
11 or to produce evidence after having been granted immunity as
12 aforesaid shall be subject to punishment for contempt of
13 court as in the case of any witness who refuses to testify,
14 a claim to privilege against self-incrimination notwith-
15 standing.

16 Sec. 4. Sections six hundred twenty-two point fourteen
17 (622.14), six hundred twenty-two point fifteen (622.15),
18 and six hundred twenty-two point sixteen (622.16), Code
19 1973, are repealed.

20 EXPLANATION

21 The Fifth Amendment to the Constitution of the United
22 States provides that no person shall be compelled in any
23 criminal case to be a witness against himself. And while
24 there is no similar provision in the Iowa Constitution,
25 Section 622.14, Code of Iowa, 1973, provides that a witness
26 is not compelled to testify if his testimony would tend to
27 render him criminally liable or "to expose him to public
28 ignominy".

29 A witness may be constitutionally compelled to testify,
30 however, if he is granted immunity from the use of any
31 evidence which he is compelled to give. In other words, if
32 the evidence would clearly not render him criminally liable,
33 he can be punished for contempt of court for refusing to
34 answer on that account. The immunity granted him need be
35 no broader than the privilege against self-incrimination and

1 it is not necessary to render him completely immune from
2 prosecution--only from the use of his evidence against him
3 which, as a practical matter, will often amount to the same
4 thing as immunity from prosecution.

5 There is a serious question as to whether any person can
6 be granted immunity from being exposed to public ignominy
7 but, on the other hand, no witness has the constitutional
8 right to be protected from public ignominy--only from self-
9 incrimination. Thus, this bill eliminates the public
10 ignominy protection.

11 Presently, under Iowa law a witness may be granted immu-
12 nity only in certain kinds of cases, like gambling and pros-
13 titution. This bill would allow a witness in any criminal
14 case, even murder, to be granted and protected by immunity
15 from prosecution for any crime or public offense concerning
16 which he is compelled to give testimony or evidence. The
17 theory is that it is better to let one or more coconspira-
18 tors or codefendants go free (at least from the use of
19 their own testimony against them) than to convict no one
20 for a crime because of insufficiency of evidence.

21 This bill contains ample protection of both the witness
22 and the state. The procedure does not lend itself to per-
23 mitting a witness to "take an immunity bath". The provisions
24 are similar to those of the federal law and many other states.
25 The bill will strengthen law enforcement without jeopardizing
26 any witness's constitutional rights.

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H-3036

1 Amend Senate File 568 as amended and passed by the
2 Senate as follows:
3 1. Page 2, by striking lines 9 and 10 and insert-
4 ing in lieu thereof the following:
5 "with a district court judge or district associate
6 judge a verified application setting forth that:"
7 2. Page 2, line 13, by striking the word "pro-
8 bably".
9 3. Page 2, by striking lines 14 and 15 and in-
10 sserting in lieu thereof the following:
11 "b. The witness has refused to testify, or to
12 produce documents or other".
13 4. Page 2, by inserting after line 20 the follow-
14 ing:
15 "2. Any testimony given in support of the appli-
16 cation for immunity shall be reported and a transcript
17 of the testimony shall be filed with the application."
18 5. Page 2, line 21, by striking the numeral "2"
19 and inserting in lieu thereof the numeral "3".
20 6. Page 2, line 21, by striking the word "certi-
21 ficate" and inserting in lieu thereof the word "appli-
22 cation".
23 7. Page 2, by striking lines 33 through 35.
24 8. Page 3, by striking lines 1 through 9 and in-
25 sserting in lieu thereof the following:
26 Sec. 2. NEW SECTION. A complete verbatim trans-
27 cript of testimony given pursuant to an order of im-
28 munity shall be made and filed with the application and
29 the order of court. The application, order granting
30 immunity and all transcripts filed shall be sealed
31 upon motion of the defendant, county attorney, or at-
32 torney general and shall be opened only by order of
33 the court. This section shall not bar the use of the
34 transcript as evidence in any proceeding except the
35 transcript shall not be used in any proceeding against
36 the witness himself.

H-3036 Filed - Amended by 3037 By KNOKE of Pottawattamie
April 29, 1974 and adopted 4/30

H-3037

1 Amend the Knoke amendment, H-3036, to Senate File
2 568 as amended and passed by the Senate by adding
3 before the word "Any" in line 15 the following:
4 "The application, transcripts and orders required
5 by this Act shall be filed as a separate case in the
6 criminal docket entitled 'In the matter of the testi-
7 mony of _____' and shall be indexed
8 (Name of witness)
8 in the criminal index under the name of the witness."

H-3037 Filed - Adopted 4/30 By KNOKE of Pottawattamie
April 29, 1974

HOUSE AMENDMENT TO SENATE FILE 568

1 Amend Senate File 568 as amended and passed by the Senate
2 as follows:

- 3 1. Page 2, by striking lines 9 and 10 and inserting in
4 lieu thereof the following:
5 "with a district court judge or district associate judge
6 a verified application setting forth that:"
7 2. Page 2, line 13, by striking the word "probably".
8 3. Page 2, by striking lines 14 and 15 and inserting in
9 lieu thereof the following:
10 "b. The witness has refused to testify, or to produce
11 documents or other".
12 4. Page 2, by inserting after line 20 the following:
13 "2. The application, transcripts and orders required by
14 this Act shall be filed as a separate case in the criminal
15 docket entitled 'In the matter of the testimony of
16 _____' and shall be indexed in the criminal
(Name of witness)
17 index under the name of the witness. Any testimony given
18 in support of the application for immunity shall be reported
19 and a transcript of the testimony shall be filed with the
20 application."
21 5. Page 2, line 21, by striking the numeral "2" and
22 inserting in lieu thereof the numeral "3".
23 6. Page 2, line 21, by striking the word "certificate"
24 and inserting in lieu thereof the word "application".
25 7. Page 2, by striking lines 33 through 35.

Page 2

- 1 8. Page 3, by striking lines 1 through 9 and inserting
2 in lieu thereof the following:
3 Sec. 2. NEW SECTION. A complete verbatim transcript of
4 testimony given pursuant to an order of immunity shall be
5 made and filed with the application and the order of
6 court. The application, order granting immunity and all
7 transcripts filed shall be sealed upon motion of the defendant,
8 county attorney, or attorney general and shall be opened
9 only by order of the court. This section shall not bar the
10 use of the transcript as evidence in any proceeding except
11 the transcript shall not be used in any proceeding against
12 the witness himself.

Received from the House
May 2, 1974

Senate concurred 5/3

S-2572

1 Amend Senate File 568, page 2, line 2 by inserting
2 after the word "evidence" the words "in any judicial
3 proceeding".

S-2572 Filed - *Adopted 3/26*
March 25, 1974

By RILEY