

House Bill 689

In The House

February 9, 1981	Introduced and referred to Committee on Judiciary.
Febraury 20, 1981	Committee recommend bill do pass.
Febraury 21, 1981	Bill printed and placed on members' desks. Second reading do pass.
February 23, 1981	Considered correctly engrossed.
February 24, 1981	Third reading passed.

In The Senate

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 25, 1981	Committee recommend bill concurred as amended.
March 27, 1981	Second reading pass consideration. On motion taken from second reading and referred to Committee on Judiciary. Motion adopted.
April 23, 1981	Died in Committee.

1 HOUSE BILL NO. 689
 2 INTRODUCED BY *[Signature]*
 3 BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 6 COMPULSION OF INCRIMINATING TESTIMONY OF WITNESSES BEFORE
 7 COURTS, STATE AGENCIES, AND THE LEGISLATURE; AND REGULATING
 8 THE FURTHER USE THEREOF; REPEALING SECTIONS 5-5-105,
 9 46-4-305, AND 46-15-311, MCA."
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Definitions. As used in this part, the
 13 following definitions apply:

14 (1) "Agency" means an office, position, commission,
 15 committee, board, department, council, division, bureau,
 16 section, or any other entity or instrumentality of the
 17 executive branch of state government.

18 (2) "Other information" includes any book, paper,
 19 document, record, recording, or other material.

20 (3) "Proceeding before an agency" means any proceeding
 21 before an agency with respect to which it is authorized to
 22 issue subpoenas and to take testimony or receive other
 23 information from witnesses under oath.

24 (4) "Court" means any of the following courts:

25 (a) the court of impeachment, which is the senate;

- 1 (b) the supreme court;
- 2 (c) a district court;
- 3 (d) a municipal court;
- 4 (e) a justice's court;
- 5 (f) a city court;
- 6 (g) any other court of limited jurisdiction that the
- 7 legislature may establish.

8 Section 2. Effect of order -- immunity generally.
 9 Whenever a witness refuses on the basis of his privilege
 10 against self-incrimination to testify or provide other
 11 information in a proceeding before or ancillary to a
 12 proceeding before a court, grand jury, agency, the senate,
 13 the house of representatives, or a committee of either house
 14 of the legislature and the person presiding over the
 15 proceeding communicates to the witness an order issued under
 16 [this act], the witness may not refuse to comply with the
 17 order on the basis of his privilege against
 18 self-incrimination. However, no testimony or other
 19 information compelled under the order or any information
 20 directly or indirectly derived from such testimony or other
 21 information may be used against the witness in any criminal
 22 case, except a prosecution for perjury, giving a false
 23 statement, or otherwise failing to comply with the order.

24 Section 3. Court and grand jury proceedings. (1) If an
 25 individual has been or may be called to testify or provide

1 other information at any proceeding before or ancillary to a
 2 proceeding before a court or a grand jury, the district
 3 court for the county of the judicial district in which the
 4 proceeding is or may be held shall issue in accordance with
 5 subsection (2), upon the request of the county attorney for
 6 such county or counsel for a defendant in such proceeding,
 7 an order requiring such individual to give testimony or
 8 provide other information which he refuses to give or
 9 provide on the basis of his privilege against
 10 self-incrimination, such order to be effective as provided
 11 in [section 2].

12 (2) A county attorney or counsel for a defendant in a
 13 proceeding may request an order under subsection (1) upon
 14 certification in writing that:

15 (a) the testimony or other information from such
 16 individual may be necessary to the public interest; and

17 (b) such individual has refused or is likely to refuse
 18 to testify or provide other information on the basis of his
 19 privilege against self-incrimination.

20 Section 4. Certain administrative proceedings. (1) If
 21 an individual has been or may be called to testify or
 22 provide other information at any proceeding before an
 23 agency, the district court for the county in which the
 24 proceeding is or may be held shall issue, upon request of
 25 the agency in accordance with subsection (2), an order

1 requiring the individual to give testimony or provide other
 2 information which he refuses to give or provide on the basis
 3 of his privilege against self-incrimination, such order to
 4 be effective as provided in [section 2].

5 (2) An agency may apply for an order under subsection
 6 (1) only upon certification in writing that:

7 (a) the testimony or other information from such
 8 individual may be necessary to the public interest; and

9 (b) such individual has refused or is likely to refuse
 10 to testify or provide other information on the basis of his
 11 privilege against self-incrimination.

12 Section 5. Legislative proceedings. (1) If an
 13 individual has been or may be called to testify or provide
 14 other information at any proceeding before either house of
 15 the legislature or any committee of either house, a district
 16 court shall issue, in accordance with subsection (2), upon
 17 the request of the president of the senate, speaker of the
 18 house, or chairman of the committee concerned, an order
 19 requiring such individual to give testimony or provide other
 20 information which he refuses to give or provide on the basis
 21 of his privilege against self-incrimination, such order to
 22 be effective as provided in [section 2].

23 (2) Before issuing an order under subsection (1), the
 24 district court must find that:

25 (a) in the case of a proceeding before either house of

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1 the legislature, the request for such an order has been
2 approved by an affirmative vote of a majority of the members
3 present of that house; or

4 (b) in the case of a proceeding before a committee of
5 either house of the legislature, the request for such an
6 order has been approved by an affirmative vote of two-thirds
7 of the members of the committee.

8 Section 6. Repealer. Sections 5-5-105, 46-4-305, and
9 46-15-311, MCA, are repealed.

-End-

Approved by Committee on Judiciary

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23 information from witnesses under oath.

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11 information in a proceeding before or ancillary to a
12 proceeding before a court, grand jury, agency, the senate,
13 the house of representatives, or a committee of either house
14 of the legislature and the person presiding over the
15 proceeding communicates to the witness an order issued under
16 [this act], the witness may not refuse to comply with the
17 order on the basis of his privilege against
18 self-incrimination. However, no testimony or other
19 information compelled under the order or any information
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1 the legislature, the request for such an order has been
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6 order has been approved by an affirmative vote of two-thirds
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-End-

March 25, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 689 be amended as follows:

1. Title, line 8.

Following: "THEREOF;"

Insert: "AMENDING SECTION 46-4-305, MCA;"

Following: "5-5-105"

Strike: ", "

2. Title, line 9.

Following: line 8

Strike: "46-4-305,"

3. Page 2, lines 11 through 14.

Following: "information" on line 11

Strike: line 11 through "legislature" on line 14

Insert: "as provided in [sections 3 through 6]"

4. Page 3, line 4.

Following: "held"

Strike: "shall"

Insert: "may"

5. Page 4, line 15.

Following: "of"

Strike: "either house"

Insert: "the legislature"

6. Page 5, line 5.

Following: line 4

Strike: "either house of"

7. Page 5, following line 7.

Insert: "Section 6. Section 46-4-305, MCA, is amended to read:

"46-4-305. Self-incrimination and immunity. (1) No person subpoenaed to give testimony pursuant to this part may be required to make any statement or produce any evidence which may incriminate him. The attorney general or the county attorney may, with the approval of the justice or judge who authorized the issuance of the subpoena on behalf of the state, grant any person subpoenaed immunity from prosecution or punishment ~~for or on account of any transaction or other matter concerning which the person testifies or produces evidence pursuant to the subpoena. After being granted such immunity, no person may be excused from testifying on the grounds that his testimony may incriminate him. The immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena~~ as provided for in [section 2].

(2) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law."

Renumber: subsequent section

8. Page 5, line 8.

Following: "5-5-105"

Strike: ", 46-4-305,"