

SENATE BILL NO. 201

INTRODUCED BY TURNAGE, HAZELBAKER, B. BROWN

IN THE SENATE

January 19, 1983	Introduced and referred to Committee on Judiciary.
February 2, 1983	Committee recommend bill do pass. Report adopted.
February 3, 1983	Bill printed and placed on members' desks.
February 5, 1983	Second reading, do pass.
February 7, 1983	Correctly engrossed.
February 8, 1983	Third reading, passed. Ayes, 45; Noes, 5. Transmitted to House.

IN THE HOUSE

February 9, 1983	Introduced and referred to Committee on Judiciary.
March 11, 1983	Committee recommend bill be not concurred in. Report adopted.
March 14, 1983	On motion, taken from Adverse Committee Report and rereferred to Committee on Judiciary.
March 24, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in.

IN THE SENATE

March 29, 1983

Returned to Senate with  
amendments.

April 6, 1983

Second reading, amendments  
concurred in.

April 7, 1983

Third reading, amendments  
concurred in. Ayes, 50;  
Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *201*  
2 INTRODUCED BY *Turnage Hultsch Bob Brown*  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT WHEN A  
5 WITNESS IS GIVEN IMMUNITY AND COMPELLED TO TESTIFY OR  
6 PRODUCE EVIDENCE, THE TESTIMONY, EVIDENCE, OR INFORMATION  
7 DERIVED FROM IT MAY NOT BE USED AGAINST HIM IN A CRIMINAL  
8 PROSECUTION; DELETING PROVISIONS THAT THE WITNESS MAY NOT BE  
9 PROSECUTED FOR TRANSACTIONS HE TESTIFIES ABOUT; AMENDING  
10 SECTIONS 30-10-304, 30-14-221, 46-4-305, AND 46-15-311,  
11 MCA."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 30-10-304, MCA, is amended to read:  
15 "30-10-304. Investigations and subpoenas. (1) The  
16 commissioner in his discretion may:

17 (a) make such public or private investigations or  
18 examinations within or without this state as he deems  
19 necessary to determine whether any registration should be  
20 granted, denied, or revoked or whether any person has  
21 violated or is about to violate any provision of parts 1  
22 through 3 of this chapter or any rule or order hereunder or  
23 to aid in the enforcement of parts 1 through 3 of this  
24 chapter or in the prescribing of rules and forms hereunder;

25 (b) require or permit any person to file a statement

1 in writing, under oath or otherwise as the commissioner may  
2 determine, as to all the facts and circumstances concerning  
3 the matter to be investigated; and

4 (c) publish information concerning any violation of  
5 parts 1 through 3 of this chapter or any rule or order  
6 hereunder.

7 (2) For the purpose of any investigation or proceeding  
8 under parts 1 through 3 of this chapter, the commissioner or  
9 any officer designated by him may administer oaths and  
10 affirmations, subpoena witnesses, compel their attendance,  
11 take evidence, and require the production of any books,  
12 papers, correspondence, memoranda, agreements, or other  
13 documents or records which the commissioner deems relevant  
14 or material to the inquiry.

15 (3) In case of contumacy by or refusal to obey a  
16 subpoena issued to any person, any court of competent  
17 jurisdiction, upon application by the commissioner, may  
18 issue to that person an order requiring him to appear before  
19 the commissioner or the officer designated by him, there to  
20 produce documentary evidence if so ordered or to give  
21 evidence touching the matter under investigation or in  
22 question. Any failure to obey the order of the court may be  
23 punished by the court as a contempt of court.

24 (4) No person is excused from attending and testifying  
25 or from producing any document or record before the

INTRODUCED BILL

1 commissioner or in obedience to the subpoena of the  
 2 commissioner or any officer designated by him, or in any  
 3 proceeding instituted by the commissioner, on the ground  
 4 that the testimony or evidence (documentary or otherwise)  
 5 required of him may tend to incriminate him or subject him  
 6 to a penalty or forfeiture; but no individual ~~may be~~  
 7 ~~prosecuted or subjected to any penalty or forfeiture for or~~  
 8 ~~on account of any transaction, matter, or thing concerning~~  
 9 ~~which he is compelled, after claiming his privilege against~~  
 10 ~~self-incrimination, to testify or produce evidence~~  
 11 ~~(documentary or otherwise); compelled testimony or evidence~~  
 12 ~~or any information directly or indirectly derived from such~~  
 13 ~~testimony or evidence may be used against the witness in any~~  
 14 ~~criminal case.~~ except that the individual so testifying  
 15 shall witness is not be exempt from prosecution and  
 16 punishment for perjury committed in so testifying."

17 Section 2. Section 30-14-221, MCA, is amended to read:

18 "30-14-221. Investigations. (1) The department, for  
 19 the purpose of conducting hearings and investigations which  
 20 in the opinion of the department are necessary and proper  
 21 for the exercise of the powers vested in it by this part,  
 22 shall at all reasonable times have access to any evidence  
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11 (2) Upon application by the department in a case of  
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 14 the inquiry is carried on or where a person guilty of  
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 16 business, has jurisdiction to issue to that person an order  
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 19 give testimony regarding the matter under investigation.  
 20 Failure to obey the order of the court may be punished by  
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22 (3) A person may not be excused from attending and  
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 11 is not exempt from prosecution and punishment for perjury  
 12 committed in testifying."

13 Section 3. Section 46-4-305, MCA, is amended to read:

14 "46-4-305. Self-incrimination and immunity. (1) No  
 15 person subpoenaed to give testimony pursuant to this part  
 16 may be required to make any statement or produce any  
 17 evidence which may incriminate him. The attorney general or  
 18 the county attorney may, with the approval of the justice or  
 19 judge who authorized the issuance of the subpoena on behalf  
 20 of the state, grant immunity to any person subpoenaed  
 21 ~~immunity from prosecution or punishment for or on account of~~  
 22 ~~any transaction or other matter concerning which the person~~  
 23 ~~testifies or produces evidence pursuant to the subpoena.~~  
 24 After being granted such immunity, no person may be excused  
 25 from testifying on the grounds that his testimony may

1 incriminate him; but no compelled testimony or evidence or  
 2 any information directly or indirectly derived from such  
 3 testimony or evidence may be used against the witness in any  
 4 criminal prosecution. The immunity may not extend to  
 5 prosecution or punishment for false statements given  
 6 pursuant to the subpoena.

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

10 Section 4. Section 46-15-311, MCA, is amended to read:

11 "46-15-311. Compelling testimony or production of  
 12 evidence -- immunity. Before or during trial in any judicial  
 13 proceeding, a justice of the supreme court or judge of the  
 14 district court, upon request by the attorney prosecuting or  
 15 counsel for the defense, may require a person to answer any  
 16 question or produce any evidence that may incriminate him.  
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 18 evidence in accordance with this section in any  
 19 investigation or proceeding, ~~he cannot be prosecuted or~~  
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-End-

Approved by Committee  
on Judiciary

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2 INTRODUCED BY *Turnage* *Willard* *Bob Brown*  
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HOUSE JUDICIARY COMMITTEE

AMENDMENTS TO SENATE BILL 201

March 23, 1983

Third Reading Copy (blue)

be amended as follows:

1. Title, line 9.

Following: "ABOUT"

Insert: ", BUT PROVIDING THAT WHEN THE PROSECUTOR DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, HE MAY GRANT THE WITNESS IMMUNITY FROM PROSECUTION FOR SUCH TRANSACTIONS"

2. Page 3, line 14.

Following: "case"

Strike: ", except" through "testifying" on line 16

Insert: "Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."

3. Page 5, line 10.

Following: "prosecution"

Strike: ", except" through "testifying" on line 12

Insert: "Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena."

4. Page 5, line 20.

Strike: "immunity to"

Following: "subpoenaed"

Insert: "immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence against that person in any criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on an account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby"

5. Page 5, line 24.

Strike: "such"

6. Page 6, line 1.

Following: "him"

Strike: "; but" through "prosecution" on line 4.

7. Page 7, line 1.

Following: "prosecution"

Strike: ", except" through "testifying" on line 3

Insert: "Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section."

AND AS AMENDED  
BE CONCURRED IN



## SENATE BILL NO. 201

INTRODUCED BY TURNAGE, HAZELBAKER, B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT WHEN A WITNESS IS GIVEN IMMUNITY AND COMPELLED TO TESTIFY OR PRODUCE EVIDENCE, THE TESTIMONY, EVIDENCE, OR INFORMATION DERIVED FROM IT MAY NOT BE USED AGAINST HIM IN A CRIMINAL PROSECUTION; DELETING PROVISIONS THAT THE WITNESS MAY NOT BE PROSECUTED FOR TRANSACTIONS HE TESTIFIES ABOUT, ~~BUT PROVIDING THAT WHEN THE PROSECUTOR DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, HE MAY GRANT THE WITNESS IMMUNITY FROM PROSECUTION FOR SUCH TRANSACTIONS~~; AMENDING SECTIONS 30-10-304, 30-14-221, 46-4-305, AND 46-15-311, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-304, MCA, is amended to read:

"30-10-304. Investigations and subpoenas. (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of parts 1 through 3 of this

chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

1 (4) No person is excused from attending and testifying  
 2 or from producing any document or record before the  
 3 commissioner or in obedience to the subpoena of the  
 4 commissioner or any officer designated by him, or in any  
 5 proceeding instituted by the commissioner, on the ground  
 6 that the testimony or evidence (documentary or otherwise)  
 7 required of him may tend to incriminate him or subject him  
 8 to a penalty or forfeiture; but no individual--may--be  
 9 prosecuted--or-subjected-to-any-penalty-or-forfeiture-for-or  
 10 on-account-of-any-transaction, matter, or--thing--concerning  
 11 which--he-is-compelled, after claiming his privilege against  
 12 self-incrimination,---to---testify---or---produce---evidence  
 13 (documentary--or--otherwise), compelled testimony or evidence  
 14 or any information directly or indirectly derived from such  
 15 testimony or evidence may be used against the witness in any  
 16 criminal case--except--that--the--individual--so--testifying  
 17 shall witness--is--not--be--exempt--from--prosecution---and  
 18 punishment--for-perjury-committed-in-so-testifying. NOTHING  
 19 IN THIS SECTION PROHIBITS THE COMMISSIONER FROM GRANTING  
 20 IMMUNITY FROM PROSECUTION FOR OR ON ACCOUNT OF ANY  
 21 TRANSACTION, MATTER, OR THING CONCERNING WHICH A WITNESS IS  
 22 COMPELLED TO TESTIFY IF THE COMMISSIONER DETERMINES, IN HIS  
 23 SOLE DISCRETION, THAT THE ENDS OF JUSTICE WOULD BE SERVED  
 24 HEREBY. IMMUNITY MAY NOT EXTEND TO PROSECUTION OR  
 25 PUNISHMENT FOR FALSE STATEMENTS GIVEN PURSUANT TO THE

1 SUBPOENA."

2 Section 2. Section 30-14-221, MCA, is amended to read:  
 3 "30-14-221. Investigations. (1) The department, for  
 4 the purpose of conducting hearings and investigations which  
 5 in the opinion of the department are necessary and proper  
 6 for the exercise of the powers vested in it by this part,  
 7 shall at all reasonable times have access to any evidence  
 8 concerning a person being investigated or proceeded against  
 9 that relates to any matter under investigation or in  
 10 question and the right to copy such evidence. The department  
 11 may issue subpoenas requiring the attendance and testimony  
 12 of witnesses and the production of any evidence that relates  
 13 to any matter under investigation or in question before the  
 14 department or before its duly authorized agent conducting  
 15 the investigation. An agent, duly authorized by the  
 16 department for those purposes, may administer oaths and  
 17 affirmations, examine witnesses, and receive evidence. The  
 18 attendance of witnesses and the production of evidence may  
 19 be required from any place in this state at any designated  
 20 place of hearing.

21 (2) Upon application by the department in a case of  
 22 contumacy or refusal to obey a subpoena issued to a person,  
 23 a district court of this state, within the district where  
 24 the inquiry is carried on or where a person guilty of  
 25 contumacy or refusal to obey is found, resides, or transacts

business, has jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. ~~An individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled to testify or produce evidence after having claimed his privilege against self-incrimination. An individual so testifying but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution except that the witness is not exempt from prosecution and punishment for perjury committed in testifying.~~ NOTHING IN THIS SECTION PROHIBITS THE COMMISSIONER FROM GRANTING IMMUNITY FROM PROSECUTION FOR OR ON ACCOUNT OF ANY TRANSACTION, MATTER, OR THING CONCERNING WHICH A WITNESS IS COMPELLED TO TESTIFY IF THE

COMMISSIONER DETERMINES, IN HIS SOLE DISCRETION, THAT THE ENDS OF JUSTICE WOULD BE SERVED THEREBY. IMMUNITY MAY NOT EXTEND TO PROSECUTION OR PUNISHMENT FOR FALSE STATEMENTS GIVEN PURSUANT TO THE SUBPOENA."

Section 3. 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 ~~immunity to~~ any person subpoenaed IMMUNITY FROM THE USE OF ANY COMPELLED TESTIMONY OR EVIDENCE OR ANY INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM SUCH TESTIMONY OR EVIDENCE AGAINST THAT PERSON IN ANY CRIMINAL PROSECUTION. NOTHING IN THIS SECTION PROHIBITS A PROSECUTOR FROM GRANTING IMMUNITY FROM PROSECUTION FOR OR ON ACCOUNT OF ANY TRANSACTION, MATTER, OR THING CONCERNING WHICH A WITNESS IS COMPELLED TO TESTIFY IF THE PROSECUTOR DETERMINES, IN HIS SOLE DISCRETION, THAT THE ENDS OF JUSTICE WOULD BE SERVED THEREBY ~~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

1 may incriminate him ~~but no compelled testimony or evidence~~  
 2 ~~or any information directly or indirectly derived from such~~  
 3 ~~testimony or evidence may be used against the witness in any~~  
 4 ~~criminal prosecution.~~ The immunity may not extend to  
 5 prosecution or punishment for false statements given  
 6 pursuant to the subpoena.

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

10 Section 4. Section 46-15-311, MCA, is amended to read:

11 "46-15-311. Compelling testimony or production of  
 12 evidence -- immunity. Before or during trial in any judicial  
 13 proceeding, a justice of the supreme court or judge of the  
 14 district court, upon request by the attorney prosecuting or  
 15 counsel for the defense, may require a person to answer any  
 16 question or produce any evidence that may incriminate him.  
 17 If a person is required to give testimony or produce  
 18 evidence in accordance with this section in any  
 19 investigation or proceeding, he ~~cannot be prosecuted or~~  
 20 ~~subjected to any penalty or forfeiture, other than a~~  
 21 ~~prosecution or action for perjury or contempt for or on~~  
 22 ~~account of any transaction, matter, or thing concerning~~  
 23 ~~which he testified or produced evidence~~ no compelled  
 24 testimony or evidence or any information directly or  
 25 indirectly derived from such testimony or evidence may be

1 ~~used against the witness in any criminal prosecution, except~~  
 2 ~~that the witness is not exempt from prosecution and~~  
 3 ~~punishment for perjury committed in testifying.~~ NOTHING IN  
 4 THIS SECTION PROHIBITS A PROSECUTOR FROM GRANTING IMMUNITY  
 5 FROM PROSECUTION FOR OR ON ACCOUNT OF ANY TRANSACTION,  
 6 MATTER, OR THING CONCERNING WHICH A WITNESS IS COMPELLED TO  
 7 TESTIFY. IF THE PROSECUTOR DETERMINES, IN HIS SOLE  
 8 DISCRETION, THAT THE ENDS OF JUSTICE WOULD BE SERVED  
 9 THEREBY, IMMUNITY MAY NOT EXTEND TO PROSECUTION OR  
 10 PUNISHMENT FOR FALSE STATEMENTS GIVEN IN ANY TESTIMONY  
 11 REQUIRED UNDER THIS SECTION."

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