
A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE XVI OF THE CONSTITUTION OF THE
STATE OF HAWAII.

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

1 SECTION 1. The legislature finds that it is critically
2 important to the successful prosecution of criminal cases in
3 Hawaii that the State has the means to compel the testimony of
4 witnesses in possession of vital information. Currently, if a
5 witness asserts a privilege to refuse to testify or provide
6 evidence on the grounds of self-incrimination, the State can
7 compel that witness's testimony only by providing that witness
8 complete and permanent "transactional immunity" from any
9 criminal prosecution ever for or on account of any act,
10 transaction, or matter concerning that which the witness is
11 required to testify. This severely burdens Hawaii's
12 prosecutors. By comparison, in prosecutions by the United
13 States and most other states, a witness's testimony can be
14 compelled, so long as the testimony and any evidence and
15 information derived from that testimony is not used against that
16 witness in any criminal case, except one for perjury, false
17 statement, failing to comply with the order to testify, or



1 similar offenses. Such a system is called "use immunity," and
2 has been upheld as constitutional by the United States Supreme
3 Court.

4 Hawaii's legislature enacted a use immunity statute, but
5 the Hawaii Supreme Court struck it down as a violation of the
6 Hawaii Constitution. Thus, amending the Hawaii Constitution is
7 the only option if use immunity is to be allowed in Hawaii.

8 The purpose of this Act is to propose an amendment to
9 article XVI of the Hawaii Constitution to establish use immunity
10 to compel testimony before the criminal courts and grand juries
11 of the State. The legislature finds that use immunity
12 appropriately balances the societal need to prosecute serious
13 criminal cases with the rights of individuals. The legislature
14 finds that the current system, which conditions compelling
15 testimony on a grant of transactional immunity, forces society
16 to pay too high a price for this testimony and severely impedes
17 the ability of prosecutors to obtain convictions in appropriate
18 cases.

19 This amendment is self-executing. If adopted, judges of
20 the circuit courts must issue use immunity orders compelling
21 testimony or other evidence upon application of the attorney
22 general or the attorney general's designee, but these orders



1 must also provide that no testimony or other evidence compelled
2 under the order, nor any information directly or indirectly
3 derived from the testimony or other evidence, may be used
4 against the witness in any criminal case, except a prosecution
5 for committing perjury while giving the compelled testimony, for
6 giving a false statement while giving the compelled testimony,
7 or for failing to comply with the order to testify.

8 SECTION 2. Article XVI of the Hawaii Constitution is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"USE IMMUNITY**

12 **Section** . Whenever a witness refuses, on the basis of
13 the witness's privilege against self-incrimination, to testify
14 or provide other evidence to a grand jury or to a court in a
15 criminal case, upon application of the attorney general or the
16 attorney general's designee, a judge of the circuit court of the
17 circuit in which the grand jury or court is located shall issue
18 an order to the witness to testify or provide the evidence;
19 provided that the order shall provide that no testimony or other
20 evidence compelled under the order, or any information or
21 evidence directly or indirectly derived from the testimony or
22 evidence, may be used against the witness in any criminal case,



1 except for a prosecution for perjury, false statement, or
2 failing to comply with the order to testify.

3 A witness issued this order may not refuse to comply with
4 the order on the basis of the witness' privilege against self-
5 incrimination; provided that no testimony or other evidence
6 compelled under the order, or any information or evidence
7 directly or indirectly derived from the testimony or evidence,
8 may be used against the witness in any criminal case, except for
9 a prosecution for perjury, false statement, or failing to comply
10 with the order to testify."

11 SECTION 3. The question to be printed on the ballot shall
12 be as follows:

13 "Shall the Constitution of the State of Hawaii be amended
14 to provide that a witness who asserts a privilege against
15 self-incrimination may be compelled to testify or provide
16 evidence to a grand jury or a court in a criminal case, so
17 long as the testimony, evidence, and any information
18 derived therefrom cannot be used against that witness in
19 any criminal case except for a prosecution for perjury,
20 false statement, or failing to comply with the order to
21 testify?"

22 SECTION 4. New constitutional material is underscored.



Report Title:

Constitutional Amendment; Use Immunity

Description:

Proposes a constitutional amendment to provide that a witness in a criminal case who asserts self-incrimination privilege may be compelled to testify or provide evidence so long as the testimony or evidence cannot later be used against the witness in a criminal case except for perjury, false statement, or failure to comply with the order to testify. (HB3042 HD1)

