

A Bill for an Act Relating to Trade Regulation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Purpose.** The purpose of this Act is to amend section 480-23, Hawaii Revised Statutes, respecting the granting of immunity from prosecution and to conform it to recently enacted sections 621C-1 through 621C-5.

SECTION 2. Section 480-23, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 480-23 Immunity from prosecution. (a) If, in any investigation brought by the attorney general pursuant to section 480-18, a person refuses, on the basis of his privilege against self-incrimination, to attend, to testify or produce a record, document, or other object in an official proceeding conducted under this chapter, and that person is informed of an order issued under section 480-23.1, that person may not refuse to comply with the order on the basis of his privilege against self-incrimination.

(b) No individual shall be criminally prosecuted or subjected to any criminal penalty under this chapter for or on account of any transaction, matter, evidence, or thing concerning which he may so testify or produce in any investigation brought by the attorney general pursuant to section 480-18, or any county attorney, prosecuting attorney, or corporation counsel of any county or city and county, when the individual has done so pursuant to an order issued under section 480-23.1, provided no individual so testifying shall be exempt from prosecution or punishment for perjury, for giving a false statement, or for an offense involving a failure to comply with the order.”

SECTION 3. Chapter 480, Hawaii Revised Statutes, is amended by the addition of a new section to read as follows:

“Sec. 480-23.1 Procedures. (a) If a person has been or may be subpoenaed to testify or to produce a record, document, or other object in an official proceeding under this chapter, the investigating officer shall, when the investigation reaches a stage when the posture of discovered evidence renders the witness a substantially probable suspect of criminal misconduct, notify such person of his constitutional rights.

(b) A judge of a circuit court or of a district court may, upon application by the attorney general, or any county attorney, prosecuting attorney, or corporation counsel of any county or city and county, issue an order requiring the person to testify or to produce a record, document, or other object, notwithstanding his refusal to do so on the basis of his privilege against self-incrimination. The application shall specify whether the immunity being sought is use immunity as set forth in section 480-23.2 or transactional immunity as set forth in section 480-23.3.

(c) The order may be issued prior to the assertion of the privilege against self-incrimination but shall not be effective until the witness asserts his privilege against self-incrimination and the presiding officer communicates the order to him. The order shall specify the type of immunity being granted and contain appropriate explanation of the scope of protection from prosecution being afforded thereby.”

SECTION 4. Chapter 480, Hawaii Revised Statutes, is amended by the addition of a new section to read as follows:

“Sec. 480-23.2 Use immunity. The testimony or production that is compelled under the order, and any information directly or indirectly derived from the testimony or production, may not be used against the person in any manner in a criminal case, except in a prosecution for perjury, for giving a false statement, or for an offense involving a failure to comply with the order; provided that such person may be prosecuted or punished for any crime so long as testimony or production that is compelled under the order, and any information directly or indirectly derived from such testimony or production, is not used against such person in such prosecution.”

SECTION 5. Chapter 480, Hawaii Revised Statutes, is amended by the addition of a new section to read as follows:

“Sec. 480-23.3 Transactional immunity. If a person is ordered to testify or produce a record, document, or other object under this chapter and the order specified that the person is granted transactional immunity pursuant to this section, such person shall not be prosecuted or punished in any criminal action or proceeding for or on account of any act, transaction, matter, or thing concerning which he is so ordered to testify or produce a record, document, or other object, except that he may be prosecuted for perjury, for giving a false statement, or for an offense involving a failure to comply with the order.”

SECTION 6. Chapter 480, Hawaii Revised Statutes, is amended by the addition of a new section to read as follows:

“Sec. 480-23.4 Penalty. Any witness granted immunity under section 480-23(b) who fails or refuses to testify or produce information may be punished by the court for contempt, provided that the witness may also be charged with and convicted of perjury, for giving a false statement, or for an offense involving a failure to comply

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with the order notwithstanding the fact that he has been punished by the court for contempt.”

SECTION 7. Section 710-1072.5, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 710-1072.5 Obstruction of justice. (1) A person commits the offense of obstruction of justice if he intentionally engages in the following conduct: When called as a witness and having been granted immunity pursuant to chapters 621C and 480 before or after having been qualified as a witness, shall refuse to testify or be qualified as a witness when duly directed to testify or be qualified as a witness.

(2) Obstruction of justice is a class “C” felony.”

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 9. This Act shall take effect upon its approval.

(Approved May 29, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.