

HOUSE BILL No. 2321

By Committee on Judiciary

2-8

1 AN ACT concerning grand juries; relating to sufficiency of petitions; right
2 to appeal; amending K.S.A. 2016 Supp. 22-3001 and 25-3601 and
3 repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 22-3001 is hereby amended to read as
7 follows: 22-3001. (a) A majority of the district judges in any judicial
8 district may order a grand jury to be summoned in any county in the
9 district when it is determined to be in the public interest.

10 (b) The district or county attorney in such attorney's county may
11 petition the chief judge or the chief judge's designee in such district court
12 to order a grand jury to be summoned in the designated county in the
13 district to consider any alleged felony law violation, including any alleged
14 misdemeanor law violation which arises as part of the same criminal
15 conduct or investigation. The attorney general in any judicial district may
16 petition the chief judge or the chief judge's designee in such judicial
17 district to order a grand jury to be summoned in the designated county in
18 the district to consider any alleged felony law violation, including any
19 alleged misdemeanor law violation which arises as part of the same
20 criminal conduct or investigation, if authorized by the district or county
21 attorney in such judicial district or if jurisdiction is otherwise authorized
22 by law. The chief judge or the chief judge's designee in the district court of
23 the county shall then consider the petition and, if it is found that the
24 petition is in proper form, as set forth in this subsection, shall order a
25 grand jury to be summoned within 15 days after receipt of such petition.

26 (c) (1) A grand jury shall be summoned in any county within 60 days
27 after a petition praying therefor is presented to the district court, bearing
28 the signatures of a number of electors equal to 100 plus 2% of the total
29 number of votes cast for governor in the county in the last preceding
30 election.

31 (2) The petition, upon its face, shall state the name, address and
32 phone number of the person filing the petition, the subject matter of the
33 prospective grand jury, a reasonably specific identification of areas to be
34 inquired into and sufficient general allegations to warrant a finding that
35 such inquiry may lead to information which, if true, would warrant a true
36 bill of indictment.

1 (3) (A) The petition shall be in substantially the following form:

2 The undersigned qualified electors of the county of _____
3 and state of Kansas hereby request that the district court of
4 _____ county, Kansas, within 60 days after the filing of this
5 petition, cause a grand jury to be summoned in the county to investigate
6 alleged violations of law and to perform such other duties as may be
7 authorized by law.

8 (B) (i) The signatures to the petition need not all be affixed to one
9 paper, but each paper to which signatures are affixed shall have
10 substantially the foregoing form written or printed at the top thereof. Each
11 signer shall add to such signer's signature such signer's place of residence,
12 giving the street and number or rural route number, if any. One of the
13 signers of each paper shall verify upon oath that each signature appearing
14 on the paper is the genuine signature of the person whose name it purports
15 to be and that such signer believes that the statements in the petition are
16 true.

17 (ii) The petition shall be filed in the office of the clerk of the district
18 court who shall forthwith transmit it to the county election officer, who
19 shall determine whether the persons whose signatures are affixed to the
20 petition are qualified electors of the county. Thereupon, the county election
21 officer shall return the petition to the clerk of the district court, together
22 with such election officer's certificate stating the number of qualified
23 electors of the county whose signatures appear on the petition and the
24 aggregate number of votes cast for all candidates for governor in the
25 county in the last preceding election.

26 (iii) The judge or judges of the district court of the county shall then
27 consider the petition and, if it is found that the petition is in proper form
28 and bears the signatures of the required number of electors, a grand jury
29 shall be ordered to be summoned. *If a grand jury is not summoned*
30 *because of a finding that the petition, substantially in the form required by*
31 *this subsection on its face, is not in proper form, the person who filed the*
32 *petition and whose name, address and phone number appear on the face*
33 *of each petition shall have the right to appeal the decision to not summon*
34 *a grand jury as a final judgment pursuant to K.S.A. 22-3601, and*
35 *amendments thereto.*

36 (4) After a grand jury is summoned pursuant to this subsection, but
37 before it begins deliberations, the judge or judges of the district court of
38 the county in which the petition is presented shall provide instructions to
39 the grand jury regarding its conduct and deliberations, which instructions
40 shall include, but not be limited to, the following:

41 (A) You have been impaneled as a grand jury pursuant to a citizens'
42 petition filed in this court, signed by (insert number) qualified electors of
43 this county, stating (insert the subject matter described in the petition,

1 including a reasonably specific identification of the areas to be inquired
2 into and the allegations sufficient to warrant a finding that the grand jury's
3 inquiry may lead to information which, if true, would warrant a true bill of
4 indictment). You are charged with making inquiry with regard to this
5 subject matter and determining whether the facts support allegations
6 warranting a true bill of indictment.

7 (B) The person filing the citizens' petition filed in this court must be
8 the first witness you call for the purpose of presenting evidence and
9 testimony as to the subject matter and allegations of the petition.

10 (C) You may, with the approval of this court, employ special counsel
11 and investigators, and incur such other expense for services and supplies
12 as you and this court deem necessary. Any special counsel or investigator
13 you employ shall be selected by a majority vote of your grand jury. You
14 may make such selection only after hearing testimony from the person
15 who filed the citizens' petition. You may utilize the services of any special
16 counsel or investigator you employ instead of, or in addition to, the
17 services of the prosecuting attorney.

18 (D) If any witness duly summoned to appear and testify before you
19 fails or refuses to obey, compulsory process will be issued by this court to
20 enforce the witness' attendance.

21 (E) If any witness appearing before you refuses to testify or to answer
22 any questions asked in the course of the witness' examination, you shall
23 communicate that fact to this court in writing, together with a statement
24 regarding the question the witness refuses to answer. This court will
25 determine and inform you of whether the witness is bound to answer or
26 not. However, no witness appearing before you can be compelled to make
27 any statement which will incriminate such witness.

28 (F) Any person may file a written request with the prosecuting
29 attorney or with the foreman of the grand jury and request to testify or
30 retestify in an inquiry before a grand jury or to appear before a grand jury.
31 Any written request shall include a summary of such person's written
32 testimony.

33 (G) At the conclusion of your inquiry and determination, you will
34 return either a no bill of indictment or a true bill of indictment.

35 (d) The grand jury shall consist of 15 members and shall be drawn,
36 qualified and summoned in the same manner as petit jurors for the district
37 court. Twelve members thereof shall constitute a quorum. The judge or
38 judges ordering the grand jury shall direct that a sufficient number of
39 legally qualified persons be summoned for service as grand jurors. In the
40 case of grand juries impaneled pursuant to subsection (c), the judge or
41 judges ordering the grand jury shall allow the person that filed the petition
42 under the provisions of subsection (c)(2), and such person's attorney, to
43 witness the instructions to the grand jury regarding its conduct and

1 deliberations pursuant to subsection (c)(4).

2 Sec. 2. K.S.A. 2016 Supp. 25-3601 is hereby amended to read as
3 follows: 25-3601. (a) Subject to the provisions of subsection (d), if a
4 petition is required or authorized as a part of the procedure applicable to
5 the state as a whole or any legislative election district or to any county,
6 city, school district or other municipality, or part thereof, the provisions of
7 K.S.A. 25-3601 et seq., and amendments thereto, shall apply. The
8 sufficiency of each signature and the number thereof on any such petition
9 shall be determined in accordance with the provisions of K.S.A. 25-3601
10 ~~to through 25-3607, inclusive,~~ and amendments thereto, by the county
11 election officer or such other official as designated in the applicable
12 statute. Except as provided herein, a copy of any petition requesting an
13 election in any political or taxing subdivision of the state shall be
14 submitted to the office of the county attorney of the county or district
15 attorney of the district in which all or the greater portion of the political or
16 taxing subdivision is located. If a county counselor has been appointed in
17 the county or district, the petition shall be submitted to the county
18 counselor. The petition shall be submitted either by hand-delivery or by
19 certified mail, return receipt requested. Such petition shall contain the
20 question to be submitted at the election. Within five business days
21 following submission of the petition, the county counselor, county attorney
22 or district attorney shall furnish a written advisory opinion as to the
23 legality of the form of the question contained on the petition. There shall
24 be a rebuttable presumption that the form of any question approved by the
25 county counselor, county attorney or district attorney complies with the
26 requirements of this act. If such opinion is not furnished within five days
27 of submission of the question, the form of the question shall be deemed in
28 compliance with the requirements of this act.

29 If the advisory opinion states that the form of the question contained in
30 the petition does not comply with the requirements of this act, such
31 advisory opinion shall also state specific grounds to support such
32 determination.

33 Nothing in this subsection shall be construed as prohibiting the
34 circulation of a petition for signatures or the filing of such petition with the
35 county election officer prior to obtaining the advisory opinion required by
36 this subsection.

37 (b) Any person challenging the validity of the form of a question
38 shall have the burden of proving in the district court that the form of the
39 question is invalid.

40 (c) The form of any question in a petition requesting an election on or
41 protesting an ordinance, or resolution, adopted by the governing body of
42 any county, city, school district or other municipality shall be presumed to
43 be valid and in compliance with the requirements of K.S.A. 25-3601 et

1 seq., and amendments thereto, if such petition states the title, number and
2 exact language of the ordinance, or resolution, and the title of such petition
3 states:

4 "Shall the following ordinance, or resolution, become effective?"

5 (d) When any other statute imposes specific requirements which are
6 different from the requirements imposed by K.S.A. 25-3601 et seq., and
7 amendments thereto, the provisions of the specific statute shall control.
8 The county election officer or other official with whom the petition is
9 required to be filed in accordance with the applicable statute shall give to
10 persons requesting information regarding the filing of petitions a copy of
11 K.S.A. 25-620 and article 36 of chapter 25 of the Kansas Statutes
12 Annotated, and amendments thereto.

13 (e) Any action challenging the validity of the form of a question in a
14 petition shall be filed in the district court within 20 days after such petition
15 has been filed with the county election officer.

16 The court shall render an opinion in any action filed to challenge the
17 validity of the form of a question in a petition within 20 days after the date
18 such action is filed with the court.

19 (f) The provisions of K.S.A. 25-3601 et seq., and amendments
20 thereto, shall not apply to recall petitions as described in K.S.A. 25-4301
21 et seq., and amendments thereto, *or a grand jury petition as described in*
22 *K.S.A. 22-3001(c), and amendments thereto.*

23 Sec. 3. K.S.A. 2016 Supp. 22-3001 and 25-3601 are hereby repealed.

24 Sec. 4. This act shall take effect and be in force from and after its
25 publication in the statute book.