

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. H-163)

COMMITTEE AMENDMENT "A" to H.P. 273, L.D. 347, Bill,
"AN ACT to Increase the Penalties for violation of State Antitrust
Laws."

Amend the Bill in section 4 by striking out all of that
part designated "§1107." and inserting in its place the following:
'§1107. Investigative demand

Whenever the Attorney General believes any person, including
any corporation or organization, to be engaging or to have
engaged in any act or practice declared to be unlawful by this
chapter, he may examine or cause to be examined any books, records,
papers and memoranda of whatever nature relevant to the alleged
unlawful act or practice. The Attorney General may also require
the attendance of any person having knowledge relevant to the
alleged unlawful act or practice to give sworn testimony at any
place in the county where such person resides or has a place of
business or in Kennebec County if such person is a nonresident
or has no place of business within the State. The Attorney General
shall serve notice of the time, place and cause of such examination
or attendance at least 10 days prior to the date of such examination.

1. Service. Service of any such notice may be made by:
 - A. Delivering a duly executed copy thereof to the person to
be served or to a partner or to any officer or agent
authorized by appointment or by law to receive service of
process on behalf of such person;
 - B. Delivering a duly executed copy thereof to the principal
place of business in this State of the person to be served; or

C. Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this State or, if said person has no place of business in this State, to his principal office or place of business.

2. Contents. Each such notice shall:

A. State the time and place for taking the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs;

B. State the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation;

C. Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as to fairly indicate the material demanded;

D. Prescribe a return date within which the documentary material is to be produced; and

E. Identify the members of the Attorney General's staff to whom such documentary material is to be made available for inspection and copying.

3. Exceptions. No such notice shall:

A. Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or

B. Require the disclosure of any documentary material which would be privileged, or which contains trade secret information, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this State.

Documentary material demanded pursuant to this section shall be produced for inspection, reproduction and copying during normal business hours at the principal office or place of business of the person served, or in the county where such person resides or has a place of business, or in Kennebec County if the person served is a nonresident or has no place of business within the State, or at such other times and places as may be agreed upon by the person served and the Attorney General. Any book, record, paper, memorandum or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this State for good cause shown, be disclosed to any person other than the authorized agent or representative of the Attorney General, unless with the consent of the person producing the same. This section shall not be applicable to any criminal prosecution brought under the laws of this State.

At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand. The motion may be filed in the Superior Court of the county in which the person served resides or has his usual place of business, or in Kennebec County.

Nothing in this section shall be construed as infringing upon the rights of any person to refuse to incriminate himself as guaranteed by the Maine and United States Constitutions.

At the request of the person under investigation or his attorney, any testimony taken pursuant to a demand or notice hereunder shall be taken before a court reporter authorized to serve as such under the laws of the State or recorded on a recording device. Upon request of either party, all such testimony so taken or recorded shall be transcribed by a court reporter so authorized, and in that case the original transcript thereof shall be preserved by the Attorney General. The cost of said taking or recording and transcription shall be borne by the State. In the event the Attorney General or some other party obtains judgment against the party whose testimony is so taken for a violation of this chapter, the cost of said court reporter or recording and transcription shall be recovered by the State in such judgment.

Sec. 5. 10 MRSA §1108 is enacted to read:

§1108. Penalties

A person upon whom a notice is served pursuant to section 1107 shall comply with the terms thereof unless otherwise provided by the order of a court of this State. Any person who fails to appear, or with intent to avoid, evade or prevent compliance, in whole or in part, with any investigative demand under section 1107 removes from any place, conceals, withholds or destroys, mutilates, alters or by any other means falsifies any documentary material in the possession, custody or control of any person subject of any such notice, or knowingly conceals any relevant information, shall be guilty of a Class D crime.

Whenever any person fails to comply with any notice served upon him under section 1107, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the Superior Court of the county in which such person resides or has his principal place of business or of Kennebec County, if such person is a nonresident or has no principal place of business in this State, and serve upon such person in the same manner as provided in section 1107, a petition for an order of such court for the enforcement of this section. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.'

Statement of Fact

This amendment replaces section 4 of the bill, dealing with investigative demands by the Attorney General, with a new section 4 which is based on the investigative procedure now in the unfair trade practices laws, Title 5, section 211. It adds a new section 5, providing penalties for failure to comply with the investigative procedure, also modelled on the Unfair Trade Practices Act.

Reported by the Minority of the Committee on Judiciary.

Reproduced and distributed under the direction of the Clerk of the House.

4/19/77

(Filing No. H-163)