

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 941

6  
7 H.P. 732

House of Representatives, March 1, 1983

8 On Motion of Representative Hobbins of Saco referred to the Committee  
9 on Judiciary. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Cashman of Old Town.  
Cosponsor: Representative Carroll of Gray.

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Amend the Law Governing the  
18 Compelling Evidence in Criminal Cases.  
19

20 Be it enacted by the People of the State of Maine as  
21 follows:

22 15 MRSA §1314-A, as enacted by PL 1967, c. 526,  
23 is amended to read:

24 §1314-A. Compelling evidence in criminal proceed-  
25 ings; immunity

26 In any criminal proceeding before a court or  
27 grand jury, if a person refuses to answer questions  
28 or produce evidence of any kind on the ground that he  
29 may be incriminated thereby, and if the prosecuting  
30 attorney, in writing, and with the written approval  
31 of the Attorney General, requests the court to order  
32 that person to answer the questions or produce the  
33 evidence, and the court after notice to the witness

1 and hearing shall so order, unless it finds to do so  
2 would be clearly contrary to the public interest,  
3 that person shall comply with the order; but no  
4 testimony or other information compelled under the  
5 order, or any information directly or indirectly  
6 derived from such testimony or information, may be  
7 used against the witness in any criminal case, except  
8 a prosecution for perjury, giving a false statement  
9 or otherwise failing to comply with the order. After  
10 complying, and if, but for this section, he would  
11 have had the right to withhold the answers given or  
12 the evidence produced by him, that person shall not  
13 be prosecuted or subjected to penalty or forfeiture  
14 for or on account of any transaction, matter or thing  
15 concerning which, in accordance with the order, he  
16 gave answer or produced evidence. Failure to answer  
17 questions or produce evidence as ordered by the court  
18 following notice and hearing shall constitute con-  
19 tempt of court. He may nevertheless be prosecuted or  
20 subjected to penalty or forfeiture for any perjury,  
21 false swearing or contempt committed in answering, or  
22 failing to answer, or in producing or failing to pro-  
23 duce evidence, in accordance with the order.

#### 24 STATEMENT OF FACT

25 Under present Maine law, Title 15, section  
26 1314-A, the only type of immunity which can be  
27 granted to a witness in a criminal proceeding who  
28 refuses to answer questions or produce evidence is  
29 the so-called "transactional" immunity. Once this  
30 type of immunity is granted, the person who received  
31 it may never be prosecuted for any crime concerning  
32 which he gave testimony or produced evidence, not-  
33 withstanding the fact that there may exist independ-  
34 ent evidence to prosecute that person.

35 This bill, which is patterned on the Federal  
36 Witness Immunity Act, United States Code, Title 18,  
37 section 6002, would amend Title 15, section 1314-A to  
38 eliminate "transactional" immunity and authorize the  
39 granting of "use" and "derivative use" immunity. A  
40 person who is granted "use" and "derivative use"  
41 immunity is not totally immune from prosecution.  
42 Rather, no testimony or evidence which he was com-  
43 pelled to give or produce, and no information

1 directly or indirectly derived from that compelled  
2 testimony or information, may be used against him in  
3 a criminal case. In such a situation, the person may  
4 be prosecuted but only on the basis of evidence which  
5 was obtained independently of any testimony or infor-  
6 mation which he was compelled to give under the grant  
7 of immunity, and any evidence derived therefrom. It  
8 is the State's burden to demonstrate that any evi-  
9 dence used against such a person was independently  
10 obtained, i.e., was not directly or indirectly  
11 derived from his compelled testimony or other infor-  
12 mation.

13 The constitutionality of "use" and "derivative  
14 use" immunity has been upheld by the United States  
15 Supreme Court in Kastigar v. United States, 406  
16 United States 441 (1972).

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