

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2349

S.P. 903

In Senate, February 24, 1988

Approved for Introduction by a Majority of the Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on JUDICIARY suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland.

Cosponsored by Representative PARADIS of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-EIGHT

AN ACT to Provide Use Immunity for  
Witnesses.

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4 Be it enacted by the People of the State of Maine as  
5 follows:

6 Sec. 1. 10 MRSA §1103 is repealed.

7 Sec. 2. 12 MRSA §7949, as enacted by PL 1979,  
8 c. 420, §1, is repealed.

1       Sec. 3.   15 MRSA §1314-A, as amended by PL 1985,  
2   c. 386, §1, is repealed.

3       Sec. 4.   15 MRSA §§1314-B, 1314-C and 1314-D are  
4   enacted to read:

5   §1314-B. Compelling evidence; immunity generally

6       1. Compelling evidence.       Whenever a witness  
7   refuses to testify or produce evidence of any kind on  
8   the grounds of self-incrimination in a proceeding  
9   before or ancillary to a court or grand jury; or the  
10   Legislature, either house of the Legislature or a  
11   committee, select committee or subcommittee of the  
12   Legislature or either house of the Legislature, and  
13   the person presiding over the proceeding communicates  
14   to the witness an order issued under section 1314-C or  
15   1314-D, the witness may not refuse to comply with the  
16   order on grounds of self-incrimination.

17       2. Immunity.   Notwithstanding subsection 1, no  
18   testimony or other evidence compelled under the order,  
19   or any information directly or indirectly derived from  
20   such testimony or other evidence, may be used against  
21   the witness in any criminal, juvenile or civil  
22   violation proceeding, except in a prosecution for  
23   perjury, false swearing, contempt or otherwise failing  
24   to comply with the order.

25   §1314-C. Court and grand jury proceedings

26       1. Order issued upon written request of  
27   prosecuting attorney. In the case of any person who  
28   has been or may be called to testify or produce  
29   evidence of any kind in any proceeding before or  
30   ancillary to a court or grand jury, the court in which  
31   the proceeding is or may be held shall issue, in  
32   accordance with subsection 2, upon the written request  
33   of the prosecuting attorney accompanied by the written  
34   approval of the Attorney General, an order requiring  
35   the person to give testimony or produce other evidence  
36   which the person refuses to give or produce on grounds  
37   of self-incrimination, such order to become effective  
38   as provided in section 1314-B.

1           2. Written request of prosecuting attorney. A  
2 prosecuting attorney may, with the written approval of  
3 the Attorney General, request in writing an order  
4 under subsection 1 when in the prosecuting attorney's  
5 judgment:

6           A. The testimony or other evidence from that  
7 person may be necessary to the public interest; and

8           B. That person has refused or is likely to refuse  
9 to testify or produce other evidence on the  
10 grounds of self-incrimination.

11 §1314-D. Legislative proceedings

12           1. Order issued upon written request of duly  
13 authorized representative of Legislature. In the case  
14 of any person who has been or may be called to testify  
15 or produce evidence of any kind in any proceeding  
16 before or ancillary to the Legislature, either house  
17 of the Legislature, a committee, select committee,  
18 subcommittee of the Legislature or either house of the  
19 Legislature, a Superior Court shall issue, in  
20 accordance with subsection 2, upon the written request  
21 of a duly authorized representative of the Legislature  
22 or house of the Legislature or committee concerned, an  
23 order requiring such person to give testimony or  
24 produce other evidence which he refuses to give or  
25 produce on the grounds of self-incrimination, such  
26 order to become effective as provided in section  
27 1314-B.

28           2. Superior Court findings. Before issuing an  
29 order under subsection 1, the Superior Court must find  
30 that:

31           A. In the case of a proceeding before the  
32 Legislature, the request for such an order has  
33 been approved by an affirmative vote of a majority  
34 of the members of the Legislature;

35           B. In the case of a proceeding before a house of  
36 the Legislature, the request for such an order has  
37 been approved by an affirmative vote of a majority

1 of the members of that house of the Legislature;

2 C. In the case of a proceeding before a  
3 committee, select committee or subcommittee of the  
4 Legislature or either house of the Legislature,  
5 the request for such an order has been approved by  
6 an affirmative vote of 2/3 of the members of the  
7 committee, select committee or subcommittee  
8 concerned; and

9 D. Ten or more days prior to the day on which the  
10 request for such an order was made, the Attorney  
11 General was served with notice of an intention to  
12 request the order.

13 3. Deferring issuance of order upon application  
14 of Attorney General. Upon application of the Attorney  
15 General, the Superior Court shall defer the issuance  
16 of any order under subsection 1 for such period, not  
17 longer than 20 days from the date of the request for  
18 the order, as the Attorney General may specify.

19 **Sec. 5. 16 MRSA §201, as repealed and replaced**  
20 **by PL 1975, c. 740, §2-A, is repealed.**

21 STATEMENT OF FACT

22 This bill replaces Maine's transactional immunity  
23 statutes with a general use immunity provision modeled  
24 after the federal use immunity statutes, United State  
25 Code, Title 18, Sections 6001 to 6005. The Law Court  
26 has already acknowledged that use immunity does not  
27 violate either the state or federal constitutional  
28 protection against compelled self-incrimination:

29 Since Kastigar v. United States, 406 U.S.  
30 441, 92 S.Ct. 1653, 32 L.Ed. 2d 212 (1972), found  
31 no Fifth Amendment infirmity in 18 U.S.C.  
32 §§6002-03, which can be characterized as a use  
33 immunity statute, and since we construe Article 1,  
34 Section 6 of the Maine Constitution by the same  
35 standard, it is clear that this provision does not  
36 constitutionally require granting the broadly

1 expansive transactional immunity envisioned by the  
2 appellant. In short, the Maine Legislature could  
3 have constitutionally enacted a statute of the  
4 same tenor as that adopted by the Congress of the  
5 United States.

6 State v. Hanson, 342 A.2d 300, 304 (Me. 1975.)  
7 (footnote omitted).

8 The advantage of use immunity over transactional  
9 immunity is that use immunity immunizes testimony  
10 only, whereas transactional immunity immunizes the  
11 underlying criminal conduct. With the immunity, a  
12 witness may be compelled to testify in exchange for  
13 immunity from having the State use that particular  
14 testimony against the witness in any proceeding; but  
15 the witness may still be prosecuted on independent  
16 evidence for the conduct or transactions described in  
17 the testimony. With transactional immunity, the  
18 witness may not even be prosecuted for any conduct or  
19 transactions covered by the testimony of that witness.

20 Section 1 of the bill repeals the transactional  
21 immunity provision contained in the laws governing  
22 restraint of trade, monopolies and profiteering.

23 Section 2 repeals the automatic use immunity  
24 provision contained in the inland fisheries and  
25 wildlife laws. Use immunity in proceedings involving  
26 the inland fisheries and wildlife laws will be  
27 obtained only under the general immunity procedures  
28 set forth in section 4.

29 Section 3 repeals the general transactional  
30 immunity provision for compelling testimony in  
31 criminal proceedings.

32 Section 4 provides for the granting of use  
33 immunity in any proceeding before or ancillary to a  
34 court or grand jury, the Legislature or a house or  
35 committee of the Legislature.

36 Section 4 also sets forth the procedure for  
37 obtaining use immunity in any proceeding before or  
38 ancillary to a court or grand jury.

1 Section 4 sets forth the procedure for obtaining  
2 use immunity in any proceeding before or ancillary to  
3 the Legislature or a house or committee of the  
4 Legislature.

5 Section 5 repeals the automatic use immunity  
6 provision for defendants in criminal and certain kinds  
7 of civil proceedings who choose to testify in those  
8 proceedings. One immunity will be obtained only under  
9 the general use immunity procedures set forth in  
10 section 4.

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