

# MAINE STATE LEGISLATURE

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L.D. 953

DATE: 5-7-01

(Filing No. H-335)

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
120TH LEGISLATURE  
FIRST REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 733, L.D. 953, Bill, "An Act Relating to Discovery Procedures under the Maine Unfair Trade Practices Act"

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Amend the bill by striking out all of section 2 and inserting in its place the following:

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Sec. 2. 5 MRSA §211, sub-§§4 to 8 are enacted to read:

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4. Disclosure of documentary material. Documentary material demanded pursuant to this section must be produced for inspection, reproduction and copying during normal business hours at the principal office or place of business of the person served, in the county where that person resides or has a place of business, 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, unless otherwise ordered by a court of this State for good cause shown, may not 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, except that such material or information may be disclosed by the Attorney General in court pleadings or other papers filed in court.

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5. Motion for additional time, to modify or set aside or grant protective order. At any time prior to the date specified

COMMITTEE AMENDMENT

2 in the notice or within 21 days after the notice has been served,  
3 whichever period is shorter, the court upon motion for good cause  
4 shown may extend that reporting date or modify or set aside that  
5 demand or grant a protective order in accordance with the  
6 standards set forth in the Maine Rules of Civil Procedure, Rule  
7 26(c). The motion may be filed in the Superior Court of the  
8 county in which the person served resides or has a usual place of  
9 business or in Kennebec County.

10 6. Information not to be used in criminal proceeding. A  
11 person is not excused from attending and testifying or from  
12 producing documentary material in compliance with this section on  
13 the ground or for the reason that the testimony or other  
14 information, documentary or otherwise, may tend to incriminate  
15 that person or subject that person to a penalty or forfeiture.  
16 Testimony and other information obtained under the authority of  
17 this section and information directly or indirectly derived from  
18 such testimony or other information may not be used against a  
19 natural person who has testified or produced information under  
20 oath in compliance with this section in any criminal case except  
21 a prosecution for perjury, giving a false statement or otherwise  
22 failing to comply with a notice served upon that person under  
23 this section.

24 7. Cost of court reporter. At the request of the person  
25 under investigation or that person's attorney, any testimony  
26 taken pursuant to a demand or notice under this section must be  
27 recorded on a recording device or taken before a court reporter  
28 authorized to serve as such under the laws of the State. Upon  
29 request of either party, all such testimony taken or recorded  
30 must be transcribed by an authorized court reporter, and in that  
31 case the original transcript of that testimony must be preserved  
32 by the Attorney General. The cost of the taking or recording and  
33 transcription must be paid by the State. In the event the  
34 Attorney General or some other party obtains judgment against the  
35 party whose testimony is taken for a violation of section 207,  
36 the cost of the court reporter or recording and transcription may  
37 be recovered by the State in such a judgment.

38 8. Authority not applicable in criminal proceedings. This  
39 section is not applicable to any criminal proceeding brought  
40 under the laws of this State.'  
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42 Further amend the bill by striking out all of section 6.  
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## 44 SUMMARY

45 This amendment deletes the provisions expanding the Attorney  
46 General's authority to use in a criminal proceeding information  
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COMMITTEE AMENDMENT "A" to H.P. 733, L.D. 953

2 acquired during a civil investigation under the Unfair Trade  
Practices Act. Under current law, information obtained by the  
4 Attorney General under the criminal investigative demand process  
may not be used in any criminal proceeding, other than a  
6 prosecution for perjury, giving a false statement or failing to  
comply with the investigative demand. The bill would have  
8 allowed use of the information in any criminal prosecution other  
than one for a transaction substantially identical to the one at  
10 issue in the Unfair Trade Practices investigation. The amendment  
returns the language to its original form, allowing use only for  
12 perjury, false statements and failure to comply with the demand.  
It also returns the language prohibiting a person from refusing  
14 to give information on the grounds that it may incriminate the  
person or subject the person to a penalty or forfeiture.