

LEGISLATIVE BILL 57

Approved by the Governor March 29, 2017

Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to unsworn declarations; to amend sections 28-915 and 28-915.01, Reissue Revised Statutes of Nebraska; to adopt the Uniform Unsworn Foreign Declarations Act; to change provisions relating to perjury; to harmonize provisions; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-915, Reissue Revised Statutes of Nebraska, is amended to read:

28-915 (1) A person is guilty of perjury, ~~a Class III felony~~, if, in any (a) official proceeding he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true or (b) official proceeding in the State of Nebraska he or she makes a false statement in any unsworn declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act under penalty of perjury when the statement is material and he or she does not believe it to be true. Perjury is a Class III felony.

(2) A person is guilty of subornation of perjury, ~~a Class III felony~~, if he or she persuades, procures, or suborns any other person to commit perjury. Subornation of perjury is a Class III felony.

(3) A falsification shall be material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It shall not be a defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation shall be a question of law.

(4) It shall not be a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed. A document purporting to meet the requirements of the Uniform Unsworn Foreign Declarations Act shall be deemed to have been made under penalty of perjury.

(5) No person shall be guilty of an offense under this section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) When the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section when proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

Sec. 2. Section 28-915.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-915.01 (1) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, or makes a false statement in an unsworn declaration that meets the requirements of the Uniform Unsworn Foreign Declarations Act, when he or she does not believe the statement to be true, is guilty of a Class I misdemeanor if the falsification:

(a) Occurs in an official proceeding; or

(b) Is intended to mislead a public servant in performing his or her official function.

(2) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, or makes a false statement in an unsworn declaration that meets the requirements of the Uniform Unsworn Foreign Declarations Act, when he or she does not believe the statement to be true, is guilty of a Class II misdemeanor if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(3) Subsections (4) through (7) of section 28-915 shall apply to subsections (1) and (2) of this section.

(4) This section shall not apply to reports, statements, affidavits, or other documents made or filed pursuant to the Nebraska Political Accountability and Disclosure Act.

Sec. 3. Sections 3 to 9 of this act shall be known and may be cited as the Uniform Unsworn Foreign Declarations Act.

Sec. 4. In the Uniform Unsworn Foreign Declarations Act:

(1) Boundaries of the United States means the geographic boundaries of the

United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) Law includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) Sign means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) Sworn declaration means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) Unsworn declaration means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

Sec. 5. The Uniform Unsworn Foreign Declarations Act applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States.

Sec. 6. (a) Except as otherwise provided in subsection (b) of this section, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act has the same effect as a sworn declaration.

(b) The act does not apply to:

(1) a deposition;

(2) an oath of office;

(3) an oath required to be given before a specified official other than a notary public;

(4) a declaration to be recorded pursuant to a filing of a conveyance of or a lien on any interest in real estate;

(5) a power of attorney; or

(6) an oath required by section 30-2329.

Sec. 7. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

Sec. 8. An unsworn declaration under the Uniform Unsworn Foreign Declarations Act must be in substantially the following form:

I declare under penalty of perjury under the law of the State of Nebraska that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the day of at
(date) (month) (year)

.....
(city or other location, and state) (country)

.....
(printed name)

.....
(signature)

Sec. 9. The Uniform Unsworn Foreign Declarations Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on January 1, 2017, but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Sec. 10. Original sections 28-915 and 28-915.01, Reissue Revised Statutes of Nebraska, are repealed.