

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 106

Introduced by Lathrop, 12.

Read first time January 10, 2013

Committee: Judiciary

A BILL

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

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

3 28-915 (1) A person is guilty of perjury, ~~a Class III~~
4 ~~felony~~, if, in any official proceeding, or in any unsworn declaration
5 meeting the requirements of the Uniform Unsworn Foreign Declarations
6 Act, he or she makes a false statement under oath or equivalent
7 affirmation, or swears or affirms the truth of a statement previously
8 made, when the statement is material and he or she does not believe
9 it to be true. Perjury is a Class III felony.

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

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

20 (4) It shall not be a defense to prosecution under this
21 section that the oath or affirmation was administered or taken in an
22 irregular manner or that the declarant was not competent to make the
23 statement. A document purporting to be made upon oath or affirmation
24 at any time when the actor presents it as being so verified, or any
25 unsworn declaration meeting the requirements of the Uniform Unsworn

1 Foreign Declarations Act, shall be deemed to have been duly sworn or
2 affirmed.

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

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

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

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

21 28-915.01 (1) A person who makes a false statement under
22 oath or equivalent affirmation, or swears or affirms the truth of
23 such a statement previously made, including an oath or affirmation
24 made that meets the requirements of the Uniform Unsworn Foreign
25 Declarations Act, when he or she does not believe the statement to be

1 true, is guilty of a Class I misdemeanor if the falsification:

2 (a) Occurs in an official proceeding; or

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

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

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

15 (4) This section shall not apply to reports, statements,
16 affidavits, or other documents made or filed pursuant to the Campaign
17 Finance Limitation Act or the Nebraska Political Accountability and
18 Disclosure Act.

19 Sec. 3. Sections 3 to 10 of this act shall be known and
20 may be cited as the Uniform Unsworn Foreign Declarations Act.

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

22 (1) Boundaries of the United States means the geographic
23 boundaries of the United States, Puerto Rico, the United States
24 Virgin Islands, and any territory or insular possession subject to
25 the jurisdiction of the United States.

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

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

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

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

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

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

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

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

23 Sec. 5. The Uniform Unsworn Foreign Declarations Act
24 applies to an unsworn declaration by a declarant who at the time of
25 making the declaration is physically located outside the boundaries

1 of the United States whether or not the location is subject to the
2 jurisdiction of the United States. The act does not apply to a
3 declaration by a declarant who is physically located on property that
4 is within the boundaries of the United States and subject to the
5 jurisdiction of another country or a federally recognized Indian
6 tribe.

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

12 (b) The act does not apply to:

13 (1) a deposition;

14 (2) an oath of office;

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

17 (4) a declaration to be recorded pursuant to a filing of
18 a lien on real estate; or

19 (5) an oath required by section 30-2329.

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

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

25 I declare under penalty of perjury under the law of the

1 State of Nebraska that the foregoing is true and correct, and that I
 2 am physically located outside the geographic boundaries of the United
 3 States, Puerto Rico, the United States Virgin Islands, and any
 4 territory or insular possession subject to the jurisdiction of the
 5 United States.

6 Executed on the day of,, at
 7 (date) (month) (year)
 8,
 9 (city or other location, and state) (country)

10
 11 (printed name)

12
 13 (signature)

14 Sec. 9. In applying and construing this uniform act,
 15 consideration must be given to the need to promote uniformity of the
 16 law with respect to its subject matter among states that enact it.

17 Sec. 10. The Uniform Unsworn Foreign Declarations Act
 18 modifies, limits, and supersedes the federal Electronic Signatures in
 19 Global and National Commerce Act, 15 U.S.C. section 7001, et seq., as
 20 the act existed on January 1, 2013, but does not modify, limit, or
 21 supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or
 22 authorize electronic delivery of any of the notices described in
 23 section 103(b) of that act, 15 U.S.C. section 7003(b).

24 Sec. 11. Original sections 28-915 and 28-915.01, Reissue

1 Revised Statutes of Nebraska, are repealed.