

2013 HOUSE JUDICIARY

HB 1406

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1406
January 28, 2013
Job 17816

☐ Conference Committee

Kristie Helmer

Explanation or reason for introduction of bill/resolution:

Affidavits; and to provide a penalty.

Minutes:

Testimony 1,2

Chairman Koppelman: Opens.

Rep Hogan: Introduces bill, hands out proposed amendments (testimony 1).

Joel Boon: (testimony 2)

Rep Klemin: Why would we want to do this?

Joel: It can be for some people, my office comes across it a lot. The costs of notary, individuals have to take off work.

Rep Klemin: The Amendment. The bill right now applies to rule, regulation, order requirement, are you saying that right now the bill applies to interrogatories that have to be notarized. Are you responsible for the amendments?

Joel: No

Rep Klemin: Line 21 refers to rules? Supreme Court interference?

Joel: I do understand that the joint committee for the Supreme Court is meeting later this week and this item is on their agenda. Included with the handouts is a copy of the Uniform Unsworn Foreign Declarations Act that was passed two years ago and if you read the definition 31-14-01.

Rep Klemin: The amendment seems to take out the issue I was referring to?

Joel: It seems to, yes. I did recommend a further amendment as well which would allow for exceptions that track the foreign one.

Chairman Koppelman: Can you give an idea how this play out, what difference it make in a practical sense. Would the defendants be disadvantaged if the bill were to pass?

Joel: I think all parties would benefit. Exchange of necessary documents between lawyers and clients would be much easier and quicker to turn around.

Chairman Koppelman: What problem does it cause now? What the solution now?

Joel: Delays, and clients turning in insufficient documents.

Bill Newman, Executive Director of the ND State Bar Association: We do not oppose it, at least not yet. I would ask the committee to hold the hearing open until Wednesday morning, my legislative committee meets late this afternoon, my board of governors meets tomorrow, and they may want to take a position on this.

Chairman Koppelman: Yes, we will hold on HB 1406. Recessed this hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1406
1/30/2013
Job # 17969

☐ Conference Committee

Committee Clerk Signature

Marlys Kienle

Explanation or reason for introduction of bill/resolution:

This bill is related to affidavits ad to provide a penalty.

Minutes:

attached testimony #1

Chairman Koppelman: Opened the meeting with the hearing for HB 1406.

Bill Neumann, State Bar Association of North Dakota: Attachment # 1

Rep Larsen: Asked what the notaries' position is?

Bill Neumann: Exactly what should be done when something gets notarized, depends on what we call the juror act, which is the little thing on the end of document that sometimes says a person personally appeared before me and acknowledged that she indeed sign that document or sometimes it says subscribed and sworn too before me as a known notary republic. So it depends on what the Juror act says.

Rep Klemin: made a motion for a DO NOT PASS on HB 1406.

Rep Boehing: second the motion.

Do not Pass Vote Yes12 No 2 Absent 0 Carrier Rep K. Koppelman.

Date: 1-30-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1406

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore		/
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan		/
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. K. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1406: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1406 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HB 1406

13.0744.01001
Title.

Prepared by the Legislative Council staff for
Representative Hogan
January 24, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1406

Page 1, line 2, remove "and"

Page 1, line 20, remove "or under"

Page 1, line 21, remove "any rule, regulation, order, or requirement made under the law of this state"

Renumber accordingly

Chairman Koppelman and members of the House Judiciary Committee,

My name is Joel Boon, and I am an attorney with the Rodenburg Law Firm, with offices in Bismarck and Fargo. I am testifying in support of HB 1406, which would allow for the use of unsworn declarations under penalty of perjury as an alternative to requiring that an affidavit be notarized. This bill would provide for greater convenience in legal processes without undermining the integrity of the judicial process.

Two years ago, this committee and the Senate Judiciary Committee unanimously voted in favor of SB 2123, which created Chapter 31-14, the Uniform Unsworn Foreign Declarations Act. That bill later passed both the full House and Senate unanimously. The Uniform Unsworn Foreign Declarations Act allows for a declarant who is outside the boundaries of the United States to make an unsworn declaration under penalty of perjury, and that declaration would have the same effect as a sworn declaration in a state court proceeding.

According to the legislative history of SB 2123, one basis for that law was a federal law that had been in place for over thirty years. That federal law, 28 USCS § 1746, also allows for unsworn declarations under penalty of perjury when made inside the United States. The law, passed in 1976, was supported by both the American Bar Association and the Department of Justice.

The federal law only applies to federal court proceedings. However, roughly half of U.S. states allow for the use of unsworn declarations under penalty of perjury in their own state court proceedings, including Montana, and HB 1406 closely tracks Montana's law on this matter.

If I were to suggest an amendment to the current bill, it would be to create two additional exceptions which would mirror the Uniform Unsworn Foreign Declarations Act.¹ Such an amendment would allow for consistent treatment of unsworn declarations in North Dakota.

Currently, someone could be in Canada and sign an unsworn declaration under penalty of perjury, and that document would be admissible in a North Dakota state court proceeding. N.D. CENT. CODE §§ 31-14-02, -03. Someone could be in North Dakota and sign an unsworn declaration under penalty of perjury, and that document could be used in a federal court

¹ "2. This chapter does not apply to:

- a. A deposition;
- b. An oath of office;
- c. An oath required to be given before a specified official other than a notary public;
- d. A document intended for recording in the real estate records in the office of county recorder; or
- e. An oath required by section 30.1-08-04."

proceeding. 28 USCS § 1746. Someone could also be in North Dakota and sign an unsworn declaration under penalty of perjury under the laws of Montana, and that document could be used in a Montana state court proceeding. MONT. CODE ANN. §§ 1-1-203, 1-6-105. But someone could not be in North Dakota, sign an unsworn declaration under penalty of perjury under the laws of North Dakota, and have that document be allowed in a North Dakota state court proceeding. House Bill 1406 makes uniform the treatment of unsworn declarations and extends to North Dakotans the ability to use unsworn declarations under penalty of perjury in North Dakota state court proceedings. I am requesting that you vote in favor of this bill. Thank you.

Enclosures:

- Appendix: Other U.S. jurisdictions that make use of unsworn declarations under penalty of perjury.
- 28 USCS § 1746.
- Legislative history for 28 USCS § 1746.
- Montana Code Annotated § 1-1-203
- Montana Code Annotated § 1-6-105
- North Dakota Century Code Chapter 31-14, Uniform Unsworn Foreign Declarations Act.

APPENDIX

Other U.S. jurisdictions which allow for a version of unsworn declarations under penalty of perjury include the following:

- Alaska (ALASKA STAT. § 09.63.020)
- Arizona (ARIZ. R. CIV. P. 80(i))
- California (CAL. CODE CIV. PROC. § 2015.5)
- District of Columbia (D.C. SCR-Civil Rule 9-I(e))
- Florida (FLA. STAT. § 92.525)
- Guam (6 GCA § 4308)
- Hawaii (HAW. R. CIRCUIT CTS. RULE 7)
- Illinois (735 ILL. COMP. STAT. 5/1-109)
- Indiana (IND. R. TRIAL P. 11(B))
- Iowa (IOWA CODE § 622.1)
- Kansas (KAN. STAT. ANN. § 53-601)
- Maryland (MD. RULE 1-202(b))
- Massachusetts (MASS. GEN. LAWS ch. 268, § 1A; MASS. SUP. JUD. CT. RULE 2:06; MASS. SUPER. CT. RULE 15)
- Missouri (MO. REV. STAT. § 509.030)
- Montana (MONT. CODE ANN. §§ 1-1-203, 1-6-105)
- Nevada (NEV. REV. STAT. ANN. § 53.045)
- New Jersey (N.J. COURT RULES § 1:4-4)
- New York (N.Y. C.P.L.R. 2106)
- Oklahoma (OKLA. STAT. tit. 12, § 426)
- Pennsylvania (PA. R.C.P. RULE 76)
- Tennessee (TENN. R. CIV. P. RULE 72)
- Texas (TEX. CIV. PRAC. & REM. CODE ANN. § 132.001)
- Utah (UTAH CODE ANN. § 78B-5-705)
- Virgin Islands (V.I. SUPER. CT. RULE 18)
- Virginia (VA. CODE ANN. § 8.01-4.3)
- Washington (WASH. REV. CODE § 9A.72.085)
- West Virginia (W. VA. CODE § 39-1-10a)



UNITED STATES CODE SERVICE
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*** Current through PL 112-263, with a gap of 112-239, approved 1/14/13 ***

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART V. PROCEDURE
CHAPTER 115. EVIDENCE; DOCUMENTARY

Go to the [United States Code Service Archive Directory](#)

28 USCS § 1746

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

HISTORY:

(Added Oct. 18, 1976, P.L. 94-550, § 1(a), 90 Stat. 2534.)

NOTES:

Code of Federal Regulations:

Department of Homeland Security--Executive Office for Immigration Review, *8 CFR 3.0* et seq.

Executive Office for Immigration Review, Department of Justice--Executive Office for Immigration Review, *8 CFR 1003.0* et seq.

LEGISLATIVE HISTORY

P.L. 94-549

the lakeshore, and by increasing the amount authorized to be appropriated for land acquisition. An increase of \$1,080,000 is needed to acquire the approximately 20½ acres we recommend be added to the lakeshore immediately.

The draft substitute bill further amends the 1966 Act to add a member to the Advisory Commission to be appointed from recommendations submitted by the Mayor of Portage. In addition, because public use of the expanded lakeshore will have a substantial impact on the City of Gary in providing roads, sewers, and other municipal services, the draft bill also provides for a member of the Commission to be appointed from recommendations of the Mayor of Gary. It therefore expands the existing membership of the Commission from seven to nine. The bill also makes a technical amendment providing for rotation of the Commission member chosen from recommendations submitted by the seven towns referred to in section 8(b) (3) of the 1966 Act.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of S. 3329 and H.R. 11455 would not be consistent with the program of the President.

Sincerely yours,

NATHANIEL REED,
Assistant Secretary of the Interior.

Enclosure.

* * * * *

UNSWORN DECLARATIONS—PERJURY

P.L. 94-550, see page 90 Stat. 2534

House Report (Judiciary Committee) No. 94-1616,
Sept. 20, 1976 [To accompany H.R. 15531]

Cong. Record Vol. 122 (1976)

DATES OF CONSIDERATION AND PASSAGE

House September 27, 1976

Senate October 1, 1976

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 94-1616

[page 1]

The Committee on the Judiciary, to whom was referred the bill (H.R. 15531) to permit the use of unsworn declarations under penalty of perjury as evidence in Federal proceedings, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of this legislation is to permit the use in Federal proceedings of unsworn declarations given under penalty of perjury in lieu of affidavits.

5644

UNSWORN DECLARATIONS—PERJURY

P.L. 94-550

BACKGROUND

An affidavit or other written document that requires verification by the person signing it currently must be subscribed to under oath. This requires that the person signing the affidavit or document must be taken before someone legally authorized to administer oaths (usually a notary public). A person who falsely states something in a document he subscribed to under oath is subject to the penalty imposed by law for perjury.

The requirement that the person who signs an affidavit must appear before a notary and be sworn can be inconvenient. For example, it may be necessary for the document to be executed during other than normal business hours. Further, the document may have to be executed in another country for use in the United States. This generally will require, in addition to the document subscribed to under oath, additional certifications and documents to prove such things as the authority of the officer who administers the oath and the authenticity of his seal.

The legislation provides an alternative to affidavits and sworn documents when it is necessary to require verification of the truthfulness

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of what the document contains. The legislation will permit the signer to subscribe to a document that expressly provides that it is being executed subject to the penalties of perjury—a procedure already in use with the federal income tax return form 1040.¹

On the State level, California has for some 19 years permitted the use of unsworn declarations, given subject to the penalty of perjury.² The experience under the California statutes has been positive. The State Bar of California, whose members have practiced under those statutes, has endorsed the purpose of the legislation. The purpose of the legislation has also been endorsed by the American Bar Association and the Department of Justice. The Committee is aware of no opposition to it.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 of H.R. 15531 amends title 28 of the United States Code by adding a new section (1746) to authorize the use of unsworn statements subscribed to under penalty of perjury. Section 1746 will permit the use of such a statement in lieu of an affidavit or sworn declaration, with 3 exceptions. An unsworn written declaration given under penalty of perjury may not be substituted for (1) deposition, (2) an oath of office, or (3) a document required to be signed before a specified official other than a notary.

Section 1746 also sets forth the language that must appear in the document in order for it to qualify as an unsworn declaration under penalty of perjury. If the document is executed within the United States, it must be subscribed to as follows:

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)

5645

LEGISLATIVE HISTORY

P.L. 94-550

SECTION 2

Section 2 of the bill amends section 1621 of title 18, United States Code. Section 1621, the general perjury statute, provides felony penalties for someone who, under oath, "willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true . . ." The legislation amends section 1746 to include within its coverage an unsworn declaration under penalty of perjury. The legislation in no way changes the elements of the offense defined in section 1746.

SECTION 3

Section 3 of H.R. 15531 amends a specific perjury statute in the same manner that section 2 of the bill amends the general perjury statute. The specific perjury statute involved is section 931 of title 10, United States Code, which relates to perjury in certain military proceedings.

¹ 28 U.S.C. §§ 6085, 7206(1). The United States Patent Office has promulgated regulations permitting the use of declarations subscribed to under penalty of 18 U.S.C. § 1001. See 37 C.F.R. §§ 1.18, 3.11a, 3.12a, 3.13a, 3.14a, 3.16a, 3.17a, 3.18a, 3.20a, 3.32a. Section 1001 of title 18, United States Code provides felony penalties when someone in any matter before a department or agency of the United States, makes a false writing or document knowing that it contains a false, fraudulent or fictitious statement.

² California Penal Code § 118; California Code of Civil Procedure § 2013.5.

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SECTION 4

Section 4 of the bill amends a specific perjury statute in the same manner as section 2 amends the general perjury statute. The specific perjury statute involved in section 152 of title 18, United States Code, which relates to bankruptcy proceedings.

SECTION 5

Section 5 of H.R. 15531 amends a specific perjury statute in the same manner as section 2 amends the general perjury statute. The specific perjury statute involved is section 1546, of title 18, United States Code, which relates to making false statements in connection with passports, visas or immigration documents.

SECTION 6

Section 6 of the bill amends a specific perjury statute in the same manner that section 2 amends the general perjury statute. The specific perjury statute involved is section 1623(a) of title 18, United States Code, which relates to false declarations before a grand jury or court.

SECTION 7

Section 7 of H.R. 15531 amends a specific perjury statute in the same manner that section 2 amends the general perjury statute. The specific perjury statute involved is section 287(b) of the Immigration and Nationality Act (8 U.S.C. § 1357(b)), which relates to the taking of evidence by immigration officers.

SECTION 8

Section 8 of the bill amends a specific perjury statute in the same manner that section 2 amends the general perjury statute. The specific

UNSWORN DECLARATIONS—PERJURY

P.L. 94-550

statute involved is section 5 of the Act entitled "An Act to provide for the licensing of marine radiotelegraph operators as ship radio officers, and for other purposes," approved May 12, 1948 (46 U.S.C. § 229e).

SECTION 9

Section 9 of H.R. 15531 amends a specific perjury statute in the same manner that section 2 amends the general perjury statute. The specific perjury statute involved is section 445 of the Revised Statutes of the United States (46 U.S.C. § 231), which relates to certificates filed by licensed masters, chief mates, engineers or pilots of ships.

SECTION 10

Section 10 of the bill amends a specific perjury statute in the same manner that section 2 of the bill amends the general perjury statute. The specific perjury statute involved is section 26 of the Act entitled "An Act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal

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year ending June 30, 1920," approved June 30, 1919 (25 U.S.C. § 399), which relates to the filing of certain information with the Secretary of the Interior by lessees of unallotted mineral lands withdrawn from entry under mining laws.

COST

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, the Committee estimates that no new cost to the United States is entailed by H.R. 15531.

NEW BUDGET AUTHORITY

This legislation creates no new budget authority.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

No statement on this legislation has been received from the House Committee on Government Operations.

INFLATION IMPACT STATEMENT

H.R. 15531 will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

OVERSIGHT

The Committee makes no oversight findings.

COMMITTEE VOTE

H.R. 15531 was reported out of Committee on Wednesday, September 15, 1976, by a vote of 30-0.

* * * * *



1 of 18 DOCUMENTS

LexisNexis (R) Montana Code Annotated

*** This document is current through the 2011 regular and special sessions ***

*** Annotations current through August 21, 2012 ***

TITLE 1 GENERAL LAWS AND DEFINITIONS
CHAPTER 1 GENERAL PROVISIONS
PART 2 GENERAL DEFINITIONS OF TERMS USED IN CODE

Go to the Montana Code Archive Directory

Mont. Code Anno., § 1-1-203 (2012)

1-1-203 Terms relating to instruments and other writings.

Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Affidavit" means a sworn written declaration made before an officer authorized to administer oaths or an unsworn written declaration made under penalty of perjury as provided in 1-6-105.

(2) "Execution" of an instrument means subscribing and delivering it, with or without affixing a seal.

(3) "Folio", when used as a measure for computing fees, means 100 words, counting every two letters or numbers necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

(4) "Printing" means the act of reproducing a design on a surface by any process.

(5) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs that person's own name as a witness.

(6) "Subscribing witness" means a person who sees a writing executed or hears it acknowledged and at the request of the party signs the person's name as a witness.

(7) "Writing" includes printing.

HISTORY:

Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3224, C. Civ. Proc. 1895; re-en. Sec. 7937, Rev. C. 1907; re-en. Sec. 10581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1933; re-en. Sec. 10581, R.C.M. 1935; Sec. 93-1101-5, R.C.M. 1947; (2)En. Sec. 4618, Pol. C. 1895; re-en. Sec. 3151, Rev. C. 1907; re-en. Sec. 4899, R.C.M.

1921; re-en. Sec. 4899, R.C.M. 1935; Sec. 25-215, R.C.M. 1947; (3)En. Sec. 1, Ch. 267, L. 1969; amd. Sec. 11, Ch. 100, L. 1973; Sec. 19-103.1, R.C.M. 1947; (5)En. Sec. 3226, C. Civ. Proc. 1895; re-en. Sec. 7939, Rev. C. 1907; re-en. Sec. 10583, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1935; re-en. Sec. 10583, R.C.M. 1935; Sec. 93-1101-7, R.C.M. 1947; R.C.M. 1947, 19-103(part), (28), (32), 19-103.1, 25-215, 93-1101-5, 93-1101-7; amd. Sec. 4, Ch. 61, L. 2007; amd. Sec. 1, Ch. 238, L. 2011.

NOTES: Part Cross-References

See "Words and Phrases Defined in Code", MCA General Index.

Cross-References

Printing and legal notices, Title 18, ch. 7.

Compiler's Comments

2011 Amendment: Chapter 238 inserted definition of affidavit; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 11, Ch. 238, L. 2011, was a saving clause.

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Case Notes

"Fees" Defined: The term "fees", as used in this section, refers to costs of publications. *St. v. Story*, 53 M 573, 165 P 748 (1917).

NOTES:

Attorney General's Opinions

Definition of Printing-- List of Registered Voters -- Test: The reproduction of the list of registered voters required by election statute is "printing", which is determined on a case-by-case basis, and reproduction must be done by the county printing contractor. 36 A.G. Op. 82 (1976).

Case Notes

"Fees" Defined: The term "fees", as used in this section, refers to costs of publications. *St. v. Story*, 53 M 573, 165 P 748 (1917).



LexisNexis (R) Montana Code Annotated

*** This document is current through the 2011 regular and special sessions ***

*** Annotations current through August 21, 2012 ***

TITLE 1 GENERAL LAWS AND DEFINITIONS
CHAPTER 6 OATHS
PART 1 GENERAL PROVISIONS

Go to the Montana Code Archive Directory

Mont. Code Anno., § 1-6-105 (2012)

1-6-105 Unsworn declarations -- penalty of perjury.

(1) Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by a person's sworn written declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved by an unsworn written declaration, certificate, verification, or statement that is subscribed by the person as true under penalty of perjury in substantially the following form:

(a) If executed within the state:

"I declare under penalty of perjury that the foregoing is true and correct.

.....

Date and place Signature"

(b) If executed in any place outside the state:

"I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

.....

Date and place Signature"

(2) A deliberate falsification in any declaration pursuant to this section constitutes the offense of perjury as provided in 45-7-201 and is punishable as the offense of false swearing as provided in 45-7-202. A declaration under penalty of perjury executed in accordance with any provision of this code is not limited to the official proceedings referenced in 45-7-201.

(3) This section does not apply to writings requiring an acknowledgment, deposition, oath of office, or oath required to be taken before a special official other than a notary public.

HISTORY:

En. Sec. 2, Ch. 238, L. 2011.

NOTES: Part Cross-References

Oath of public office, *Art. III, sec. 3, Mont. Const.*

Filing of county officers' oaths of office, *7-4-101*.

Oath of Superintendent of Public Instruction, *20-3-102*.

Oath of County Superintendent of Schools, *20-3-202*.

Oath of school trustee, *20-3-307*.

Oath of teacher, *20-4-104*.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Saving Clause: Section 11, Ch. 238, L. 2011, was a saving clause.

CHAPTER 31-14

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

31-14-01. Definitions.

In this chapter:

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.

31-14-02. Applicability.

This chapter 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. This chapter does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

31-14-03. Validity of unsworn declaration.

1. Except as otherwise provided in subsection 2, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration.
2. This chapter does not apply to:
 - a. A deposition;
 - b. An oath of office;
 - c. An oath required to be given before a specified official other than a notary public;
 - d. A document intended for recording in the real estate records in the office of county recorder; or
 - e. An oath required by section 30.1-08-04.

31-14-04. Required medium.

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.

31-14-05. Form of unsworn declaration.

An unsworn declaration under this chapter must be in substantially the following form:

I declare under penalty of perjury under the law of North Dakota 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)

31-14-06. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] 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)].

#1

January 30, 2013

House Judiciary Committee

House Bill No. 1406

CHAIRMAN KOPPELMAN AND COMMITTEE MEMBERS:

I am Bill Neumann, appearing for the State Bar Association of North Dakota. The Bar Association opposes H.B. 1406.

The Bar Association has two problems with H. B. 1406. First, our Legislative Committee and our Board of Governors are not convinced it is good policy to make it even easier to submit as evidence a written statement that may be questionable. Our members already see some sworn affidavits that bend, shade or truncate the truth. We are opposed to the idea of making it even easier to do these things with unsworn statements. There is no shortage of notaries public in North Dakota; there should be no problem getting an affidavit sworn before a notary.

Second, the Bar shares the concerns expressed by Representative Klemin on Monday. The statutes from other jurisdictions regarding unsworn statements are fine for jurisdictions where authority over court procedure is vested in the legislative branch, as the U.S. Constitution does with the U.S. Congress. However, in North Dakota, Article VI, Section 3 of our state Constitution explicitly gives authority over all procedural rules for our courts to the North Dakota Supreme Court. That includes the Rules of Evidence. Even though the proponents of this bill were advised of this fact two weeks ago, before they sought sponsors for this bill, they chose to go ahead with this bill anyway. In doing so, they have invited the Legislative Assembly to pass a bill encroaching on the Court's constitutional authority.

If this bill's proponents believe the changes sought in this bill are good policy, they know how to petition the Supreme Court to change the Rules of Evidence. That is the route they should have taken. I urge the Committee to give this bill a "do not pass" recommendation.

If you have any questions, I will try to answer them.