LEGISLATURE OF NEBRASKA ONE HUNDRED FOURTH LEGISLATURE FIRST SESSION

LEGISLATIVE BILL 254

Introduced by Morfeld, 46. Read first time January 14, 2015 Committee:

1	A BILL FOR AN ACT relating to unsworn declarations; to amend section
2	28-915, Reissue Revised Statutes of Nebraska, and section 28-915.01,
3	Revised Statutes Cumulative Supplement, 2014; to adopt the Uniform
4	Unsworn Foreign Declarations Act; to change provisions relating to
5	perjury; to harmonize provisions; and to repeal the original
6	sections.

7 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 official proceeding, or in any unsworn declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act, 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. <u>Perjury is a</u> <u>Class III felony.</u>

(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. <u>Subornation of perjury is a Class III felony.</u>

(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, or any unsworn declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act, shall be deemed to have been duly sworn or affirmed.

(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.

31 (6) When the defendant made inconsistent statements under oath or

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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.

8 (7) No person shall be convicted of an offense under this section 9 when proof of falsity rests solely upon contradiction by testimony of a 10 single person other than the defendant.

Sec. 2. Section 28-915.01, Revised Statutes Cumulative Supplement, 2014, is amended to read:

13 28-915.01 (1) A person who makes a false statement under oath or 14 equivalent affirmation, or swears or affirms the truth of such a 15 statement previously made, <u>including an oath or affirmation made that</u> 16 <u>meets the requirements of the Uniform Unsworn Foreign Declarations Act,</u> 17 when he or she does not believe the statement to be true, is guilty of a 18 Class I misdemeanor if the falsification:

19 (a) Occurs in an official proceeding; or

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

22 (2) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement 23 previously made, including an oath or affirmation made that meets the 24 requirements of the Uniform Unsworn Foreign Declarations Act, when he or 25 she does not believe the statement to be true, is guilty of a Class II 26 27 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 28 oaths. 29

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

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(4) This section shall not apply to reports, statements, affidavits, 1 2 or other documents made or filed pursuant to the Nebraska Political 3 Accountability and Disclosure Act. Sec. 3. Sections 3 to 10 of this act shall be known and may be 4 cited as the Uniform Unsworn Foreign Declarations Act. 5 6 Sec. 4. In the Uniform Unsworn Foreign Declarations Act: 7 (1) Boundaries of the United States means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and 8 any territory or insular possession subject to the jurisdiction of the 9 10 United States. (2) Law includes the federal or a state constitution, a federal or 11 state statute, a judicial decision or order, a rule of court, an 12 executive order, and an administrative rule, regulation, or order. 13 (3) Record means information that is inscribed on a tangible medium 14 or that is stored in an electronic or other medium and is retrievable in 15 16 perceivable form. 17 (4) Sign means, with present intent to authenticate or adopt a 18 record: (A) to execute or adopt a tangible symbol; or 19 (B) to attach to or logically associate with the record an 20 electronic symbol, sound, or process. 21 22 (5) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory 23 24 or insular possession subject to the jurisdiction of the United States. 25 (6) Sworn declaration means a declaration in a signed record given under oath. The term includes a sworn statement, verification, 26 certificate, and affidavit. 27 28 (7) Unsworn declaration means a declaration in a signed record that is not given under oath, but is given under penalty of perjury. 29 30 The Uniform Unsworn Foreign Declarations Act applies to an Sec. 5. unsworn declaration by a declarant who at the time of making the 31

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1	declaration is physically located outside the boundaries of the United
2	States whether or not the location is subject to the jurisdiction of the
3	<u>United States. The act does not apply to a declaration by a declarant who</u>
4	is physically located on property that is within the boundaries of the
5	<u>United States and subject to the jurisdiction of another country or a</u>
6	federally recognized Indian tribe.
7	Sec. 6. (a) Except as otherwise provided in subsection (b) of this
8	<u>section, if a law of this state requires or permits use of a sworn</u>
9	declaration, an unsworn declaration meeting the requirements of the
10	<u>Uniform Unsworn Foreign Declarations Act has the same effect as a sworn</u>
11	declaration.
12	(b) The act does not apply to:
13	<u>(1) a deposition;</u>
14	<u>(2) an oath of office;</u>
15	(3) an oath required to be given before a specified official other
16	<u>than a notary public;</u>
17	<u>(4) a declaration to be recorded pursuant to a filing of a lien on</u>
18	<u>real estate; or</u>
19	<u>(5) an oath required by section 30-2329.</u>
20	Sec. 7. If a law of this state requires that a sworn declaration be
21	presented in a particular medium, an unsworn declaration must be
22	presented in that medium.
23	Sec. 8. <u>An unsworn declaration under the Uniform Unsworn Foreign</u>
24	Declarations Act must be in substantially the following form:
25	<u>I declare under penalty of perjury under the law of the State of</u>
26	Nebraska that the foregoing is true and correct, and that I am physically
27	located outside the geographic boundaries of the United States, Puerto
28	<u>Rico, the United States Virgin Islands, and any territory or insular</u>
29	possession subject to the jurisdiction of the United States.
30	Executed on the day of
31	(date) (month) (year)

1	<u></u> <u></u>
2	(city or other location, and state) (country)
3	<u></u>
4	<u>(printed name)</u>
5	<u></u>
6	<u>(signature)</u>
7	Sec. 9. In applying and construing this uniform act, consideration
8	<u>must be given to the need to promote uniformity of the law with respect</u>
9	to its subject matter among states that enact it.
10	Sec. 10. <u>The Uniform Unsworn Foreign Declarations Act modifies,</u>
11	limits, and supersedes the federal Electronic Signatures in Global and
12	National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on
13	<u>January 1, 2015, but does not modify, limit, or supersede section 101(c)</u>
14	<u>of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any</u>
15	of the notices described in section 103(b) of that act, 15 U.S.C.
16	<u>7003(b).</u>
17	Sec. 11. Original section 28-915, Reissue Revised Statutes of
18	Nebraska, and section 28-915.01, Revised Statutes Cumulative Supplement,
19	2014, are repealed.