

LEGISLATIVE BILL 451

Approved by the Governor May 29, 1987

Introduced by Wesely, 26; McFarland, 28

AN ACT relating to crimes and punishments; to amend section 28-915, Reissue Revised Statutes of Nebraska, 1943, and section 28-101, Revised Statutes Supplement, 1986; to define terms; to change provisions relating to perjury; to provide penalties for false statements as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-101, Revised Statutes Supplement, 1986, be amended to read as follows:

28-101. Sections 28-101 to 28-1348 and sections 2 and 4 of this act shall be known as the Nebraska Criminal Code.

Sec. 2. As used in sections 28-915 and 28-919 and sections 2 and 4 of this act, unless the context otherwise requires:

(1) Administrative proceeding shall mean any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals;

(2) Benefit shall mean gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he or she is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(3) Government shall include any branch, subdivision, or agency of the government of the state or any locality within it;

(4) Harm shall mean loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare he or she is interested;

(5) Pecuniary benefit shall mean benefit in

the form of money, property, commercial interests, or anything else the primary significance of which is economic gain;

(6) Public servant shall mean any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term shall not include witnesses;

(7) Official proceeding shall mean a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding; and

(8) Statement shall mean any representation, but shall include a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

Sec. 3. That section 28-915, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-915. (1) A person is guilty of commits perjury, a Class III felony, if, having given his oath or affirmation in any judicial official proceeding or to any affidavit on undertakings, bonds, or recognizances or in any other matter where an oath or affirmation is required by law, he deposes, affirms or declares any matter to be fact, knowing the same to be false, or denies any matter to be fact, knowing the same 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.

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

(3) Perjury and subornation of perjury are Class III felonies. 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.

(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. 4. (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, 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, 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) to (7) of section 28-915 shall apply to this section.

Sec. 5. That original section 28-915, Reissue Revised Statutes of Nebraska, 1943, and section 28-101, Revised Statutes Supplement, 1986, are repealed.

Sec. 6. Since an emergency exists, this act

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shall be in full force and take effect, from and after
its passage and approval, according to law.