

# HOUSE BILL No. 5007

June 27, 1991, Introduced by Reps. Gubow and DeMars and referred to the Committee on Judiciary.

A bill to amend section 1440 of Act No. 236 of the Public Acts of 1961, entitled as amended  
"Revised judicature act of 1961,"  
as amended by Act No. 44 of the Public Acts of 1990, being section 600.1440 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1440 of Act No. 236 of the Public Acts  
2 of 1961, as amended by Act No. 44 of the Public Acts of 1990,  
3 being section 600.1440 of the Michigan Compiled Laws, is amended  
4 to read as follows:

5 Sec. 1440. (1) An oath or affidavit other than an oath  
6 taken by a witness or a juror in a trial, or an oath required by  
7 law to be taken before a particular officer, may be taken before  
8 a justice, judge, or clerk of a court, or before a notary  
9 public.

1       (2) ~~If the person making the oath, affidavit, or an~~  
2 ~~affirmation is serving in or with the armed forces of the United~~  
3 ~~States, or is a civilian employee of the armed forces, or is a~~  
4 ~~dependent of a person serving in or with the armed forces or of a~~  
5 ~~civilian employee thereof, whether serving in or outside of the~~  
6 ~~territorial limits of the United States, such oath or affirmation~~  
7 ~~may be administered by any commissioned officer in active service~~  
8 ~~of the armed forces of the United States.~~ EACH OF THE FOLLOWING  
9 PERSONS ON ACTIVE DUTY OR PERFORMING INACTIVE-DUTY TRAINING WITH  
10 THE ARMED FORCES OF THE UNITED STATES MAY ADMINISTER OATHS NECES-  
11 SARY IN THE PERFORMANCE OF HIS OR HER DUTIES:

12       (A) THE PRESIDENT, MILITARY JUDGE, TRIAL COUNSEL, OR ASSIST-  
13 ANT TRIAL COUNSEL FOR A GENERAL OR SPECIAL COURT-MARTIAL.

14       (B) THE PRESIDENT OR THE COUNSEL FOR THE COURT OF A COURT OF  
15 INQUIRY.

16       (C) AN OFFICER DESIGNATED TO TAKE A DEPOSITION.

17       (D) A PERSON DETAILED TO CONDUCT AN INVESTIGATION.

18       (E) A RECRUITING OFFICER.

19       (F) ANY OTHER PERSON DESIGNATED BY REGULATION OF THE ARMED  
20 FORCES OR BY STATUTE.

21       (3) EACH OF THE FOLLOWING PERSONS ON ACTIVE DUTY OR PERFORM-  
22 ING INACTIVE-DUTY TRAINING WITH THE ARMED FORCES OF THE UNITED  
23 STATES MAY ADMINISTER OATHS FOR THE PURPOSES OF MILITARY ADMINIS-  
24 TRATION, INCLUDING MILITARY JUSTICE, AND SHALL HAVE THE GENERAL  
25 POWERS OF A NOTARY PUBLIC AND OF A CONSUL OF THE UNITED STATES,  
26 IN THE PERFORMANCE OF ANY NOTARIAL ACT TO BE EXECUTED BY A MEMBER  
27 OF ANY OF THE ARMED FORCES, WHETHER SERVING IN OR OUTSIDE OF THE

1 TERRITORIAL LIMITS OF THE UNITED STATES; BY A PERSON SERVING  
 2 WITH, EMPLOYED BY, OR ACCOMPANYING THE ARMED FORCES OUTSIDE THE  
 3 UNITED STATES AND OUTSIDE THE CANAL ZONE, PUERTO RICO, GUAM, AND  
 4 THE VIRGIN ISLANDS; OR BY ANY OTHER PERSON SUBJECT TO CHAPTER 47  
 5 OF PART I OF SUBTITLE A OF TITLE 10 OF THE UNITED STATES CODE, 10  
 6 U.S.C. 801 TO 950, OUTSIDE OF THE UNITED STATES:

7 (A) A JUDGE ADVOCATE.

8 (B) A SUMMARY COURT-MARTIAL.

9 (C) AN ADJUTANT, ASSISTANT ADJUTANT, ACTING ADJUTANT, OR  
 10 PERSONNEL ADJUTANT.

11 (D) A COMMANDING OFFICER OF THE NAVY, MARINE CORPS, OR COAST  
 12 GUARD.

13 (E) A STAFF JUDGE ADVOCATE OR LEGAL OFFICER, OR AN ACTING OR  
 14 ASSISTANT STAFF JUDGE ADVOCATE OR LEGAL OFFICER.

15 (F) ANY OTHER PERSON DESIGNATED BY REGULATION OF THE ARMED  
 16 FORCES OR BY STATUTE.

17 (4) A FEE SHALL NOT BE PAID TO OR RECEIVED BY A PERSON  
 18 DESCRIBED IN SUBSECTION (2) OR (3) FOR THE PERFORMANCE OF A  
 19 NOTARIAL ACT AUTHORIZED IN SUBSECTION (2) OR (3).

20 (5) ~~(3)~~ An instrument sworn or affirmed before a ~~military~~  
 21 ~~officer~~ PERSON DESCRIBED IN SUBSECTION (2) OR (3) pursuant to  
 22 this section is not invalid because the instrument fails to state  
 23 the place where the oath or affirmation was taken. ~~An authenti-~~  
 24 ~~cation of a military officer's authority to administer the oath~~  
 25 ~~or affirmation is not required, but the officer administering the~~  
 26 ~~oath or affirmation shall indorse and attach to the instrument a~~  
 27 ~~certificate containing all of the following:~~ THE SIGNATURE

1 WITHOUT SEAL OF A PERSON DESCRIBED IN SUBSECTION (2) OR (3)  
 2 ACTING AS NOTARY, TOGETHER WITH THE TITLE OF THE PERSON'S OFFICE,  
 3 IS PRIMA FACIE EVIDENCE OF THE PERSON'S AUTHORITY TO PERFORM THE  
 4 NOTARIAL ACT.

5 ~~(a) A statement that the affiant or affirmant is known to~~  
 6 ~~be, or has satisfactorily proved to the officer that he or she~~  
 7 ~~is, a member of the armed forces of the United States or the~~  
 8 ~~dependent of a member, or a civilian employee of the armed forces~~  
 9 ~~or the dependent of a civilian employee.~~

10 ~~(b) A statement that the officer is a commissioned officer~~  
 11 ~~in active service with the armed forces.~~

12 ~~(c) A statement of the officer's rank, and the command to~~  
 13 ~~which he or she is attached.~~

14 ~~(4) An instrument sworn or affirmed before a military offi-~~  
 15 ~~cer pursuant to this section has the same force and effect as an~~  
 16 ~~instrument sworn or affirmed before any officer authorized by law~~  
 17 ~~to administer an oath or affirmation.~~

18 ~~(5) If an acknowledgment is taken before a military officer,~~  
 19 ~~the certificate shall be substantially in the following form:~~

20 ~~On this, the.....day of ....., 19...., before me,~~  
 21 ~~....., the undersigned officer, personally appeared .....,~~  
 22 ~~known to me (or satisfactorily proved) to be serving in or with~~  
 23 ~~the armed forces of the United States, or who is known to be or~~  
 24 ~~has satisfactorily proved that he or she is the dependent of a~~  
 25 ~~member, a civilian employee of the armed forces or the dependent~~  
 26 ~~of a civilian employee, and who is the person whose name is~~  
 27 ~~subscribed to the foregoing ..... and made oath that he or she~~

1 ~~knows the contents of the foregoing, and the foregoing is true to~~  
 2 ~~the best of his or her knowledge, except as to matters stated to~~  
 3 ~~be of information and belief, and as to those matters ..... he~~  
 4 ~~or she ..... believes them to be true. I am a commissioned~~  
 5 ~~officer of the rank stated below, and I am a member of the armed~~  
 6 ~~forces of the United States.~~

7

8

.....  
 Signature of officer

9

10

.....  
 Rank of officer, and command to which

11

attached-

12 (6) If an oath or affirmation is administered by electronic  
 13 or electromagnetic means of communication pursuant to section 1  
 14 of Act No. 189 of the Public Acts of 1966, being section 780.651  
 15 of the Michigan Compiled Laws, or pursuant to section 1 of chap-  
 16 ter IV of the code of criminal procedure, Act No. 175 of the  
 17 Public Acts of 1927, being section 764.1 of the Michigan Compiled  
 18 Laws, the oath or affirmation is considered to be administered  
 19 before the justice, judge, or district court magistrate.

20 Section 2. This amendatory act shall not take effect unless  
 21 Senate Bill No. \_\_\_\_\_ or House Bill No. 5008 (request  
 22 no. 02306'91 a) of the 86th Legislature is enacted into law.