



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 688 and 689 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 1-7-13

PUBLIC ACTS 360 & 361 of 2012

CONTENT

Senate Bill 688 amends the Michigan Penal Code to specify that the penalty for perjury for willfully swearing falsely in an oath will apply to a person who willfully makes a false declaration in a signed record.

Senate Bill 689 adds Chapter 21A, the "Uniform Unsworn Foreign Declarations Act", to the Revised Judicature Act (RJA). Chapter 21A will apply to an unsworn declaration by a declarant who is physically located outside the boundaries of the United States and its territories or insular possessions, whether or not the location is subject to U.S. jurisdiction. The chapter does all of the following:

- Specifies that an unsworn declaration meeting the requirements of Chapter 21A will have the same effect as a sworn declaration.
- Provides that the chapter will not apply to a deposition or certain oaths or declarations.
- Describes the form required of an unsworn declaration under the chapter.
- Requires an unsworn declaration to be in the particular medium, if any, required for a sworn declaration under Michigan law.
- Specifies that Chapter 21A modifies, limits, and supersedes the Federal Electronic Signature in Global and National Commerce Act, except for certain purposes.

The bill also amends Chapter 21 (Evidence) of the RJA to delete provisions for authentication and certification of an affidavit taken outside of the United States, and require instead that such an affidavit be authenticated under the Uniform Recognition of Acknowledgments Act or be an unsworn declaration executed under Chapter 21A.

The bills were tie-barred and will take effect on April 1, 2013.

Senate Bill 688

The Penal Code provides that any person authorized by a Michigan statute to take an oath, or any person of whom an oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required, is guilty of perjury. The felony is punishable by up to 15 years' imprisonment.

Under the bill, the prohibition and penalty also will apply to a person who willfully makes a false declaration in a record that is signed by the person and given under penalty of perjury.

The bill defines "record" as information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. "Signed" means the person did either of the following to authenticate or adopt the record:

- Executed or adopted a tangible symbol.

- Attached to or logically associated with the record an electronic symbol, sound, or process.

Senate Bill 689

Uniform Unsworn Foreign Declarations Act

Chapter 21A will apply 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 U.S. jurisdiction. The chapter will 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.

"Boundaries of the United States" means the geographic boundaries of the U.S., Puerto Rico, the U.S. Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

If a Michigan law requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of Chapter 21A will have the same effect as a sworn declaration. "Unsworn declaration" means a declaration or other affirmation of truth in a signed record that is not given under oath, but is given under penalty of perjury.

If a Michigan law requires that a sworn declaration be presented in a particular medium, an unsworn declaration will have to be presented in that medium.

An unsworn declaration under Chapter 21A will have to be in substantially the form outlined in the bill.

Chapter 21A will not apply to any of the following:

- A deposition.
- An oath of office.
- An oath required to be given before a specified official other than a notary public.
- A declaration to be recorded with a register of deeds.
- An oath required by Section 2504 of the Estates and Protected Individuals Code (which governs self-proved wills).

- A declaration in a document filed with the court in the course of administering a decedent's estate.

In applying and construing Chapter 21A, consideration will have to be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact the Uniform Unsworn Foreign Declarations Act.

Chapter 21A will modify, limit, and supersede the Federal Electronic Signature in Global and National Commerce Act. It will not modify, limit, or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of the Act. (Section 101(c) deals with consumer disclosures and rights in the use of electronic records and signatures in commerce. Section 103(b) provides that the use of electronic records and signatures in commerce does not apply to certain court orders or notices; the cancellation or termination of utility services; certain actions under a credit agreement including default, repossession, foreclosure, or eviction; the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); product recalls; or any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.)

Authentication of Affidavit

Under the RJA, if by law the affidavit of a person residing in another state or in any foreign country is required or may be received in judicial proceedings in Michigan, in order to entitle the affidavit to be read, it must be authenticated either by a judge as having been taken and subscribed before him or her, or by the consul general, deputy consul general, or some consul or deputy consul of the United States resident in the foreign country, to have been taken and subscribed before him or her.

The bill will require instead that authentication be accomplished under the Uniform Recognition of Acknowledgments Act or be an unsworn declaration executed under Chapter 21A.

MCL 750.423 (S.B. 688)
600.2102 et al. (S.B. 689)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.