

ASSEMBLY, No. 2746

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 13, 2010

Sponsored by:

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District 22 (Middlesex, Somerset and Union)

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District 19 (Middlesex)

SYNOPSIS

Revises the statutes concerning oaths and affidavits.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning oaths and affidavits, enacting a new title known
2 as Title 41A, and repealing parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. An additional title, Title 41A, is added to the Revised
8 Statutes as follows:

9

10

TITLE 41A

11

OATHS AND AFFIDAVITS

12

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36

37 41A:1-1. Oath of Office, Form.

38 If no oath of office is specially prescribed by law for a particular
39 office, the form of the oath of office shall be as follows:

40 "I,, do solemnly swear (or affirm) that I will
41 faithfully, impartially and justly perform all the duties of the office
42 of to the best of my ability."

43 Any person taking the oath of office may add the phrase "So help
44 me God."

45 The taking of an oath of office by affirmation shall have the
46 same effect as a sworn oath of office.

47 Source: R.S.41:1-3, R.S.41:1-4, R.S.41:1-5, R.S.41:2A-6

1 41A:1-2. Oath of Allegiance; Form.

2 The oath of allegiance shall be as follows:

3 “I,, do solemnly swear (or affirm) that I will support
4 the Constitution of the United States and the Constitution of the
5 State of New Jersey, and that I will bear true faith and allegiance to
6 the same and to the Governments established in the United States
7 and in this State, under the authority of the people.”

8 Any person taking the oath of allegiance may add the phrase “So
9 help me God.”

10 The taking of an oath of allegiance by affirmation shall have the
11 same effect as a sworn oath of allegiance.

12 Source: R.S.41:1-1

13

14 41A:1-3. Official Oaths, Persons Required to Take.

15 Each of the following, prior to undertaking the duties of office,
16 shall take and sign the oath of office and the oath of allegiance set
17 forth in 41A:1-1 et seq., unless another form of Oath is specially
18 prescribed by law:

19 a. Every person elected or appointed to any public office in the
20 Executive, Legislative or Judicial branch of this State, including:

21 (1) The Governor and Lieutenant Governor;

22 (2) The Chief Justice and each Associate Justice of the Supreme
23 Court;

24 (3) Every judge of the Superior Court and the Tax Court; and

25 (4) Every judge of the Office of Administrative Law and the
26 Division of Workers' Compensation.

27 b. Every judge of a municipal court.

28 c. Every surrogate, deputy surrogate, and special deputy
29 surrogate.

30 d. Every person elected or appointed to a public office in this
31 State in any county, municipality or special district, or in any
32 department, board, commission, agency or instrumentality of any of
33 them.

34 e. Every person appointed to any office in the militia of the
35 State.

36 f. Every attorney-at-law of the State.

37 Source: R.S.41:1-2, R.S.41:1-3, R.S.41:2A-1, R.S.41:2A-4,
38 R.S.41:2A-6

39

40 41A:1-4. Solemnities of Official Oaths.

41 Any person taking the oath of allegiance or oath of office
42 prescribed by this Title may do so by uplifting a hand or by placing
43 a hand on religious scriptures. Failure to uplift a hand or to place a
44 hand on religious scriptures shall not affect the validity of the oath.

45 Source: R.S.41:1-4 and R.S.41:1-5

46

47 41A:1-5. Official Oaths, Who May Administer.

- 1 a. The oath of office and oath of allegiance of the Governor
2 and the Lieutenant Governor, elect or acting, shall be administered
3 by the Chief Justice or an Associate Justice of the Supreme Court,
4 or a member of the Senate. If the Legislature is in session, the oaths
5 shall be administered in the presence of the Senate and General
6 Assembly at the place they designate.
- 7 b. The oath of office and oath of allegiance of a member of the
8 Senate or of the General Assembly shall be administered by a
9 fellow member of the same house.
- 10 c. The oath of office and oath of allegiance of the Clerk of the
11 Supreme Court, Clerk of the Superior Court, Secretary of State or
12 Attorney General, shall be administered by the Chief Justice or an
13 Associate Justice of the Supreme Court, or by a judge of the
14 Superior Court or the Tax Court.
- 15 d. The oath of office and oath of allegiance of the Chief Justice
16 or an Associate Justice of the Supreme Court shall be administered
17 by a Justice of the Supreme Court;
- 18 e. The oath of office and oath of allegiance of a judge of the
19 Superior Court or Tax Court shall be administered by a Justice of
20 the Supreme Court or by a judge of the Superior Court or Tax
21 Court;
- 22 f. The oath of office and oath of allegiance of a judge of a
23 municipal court or any surrogate, deputy surrogate or special deputy
24 surrogate shall be administered by a judge of the Superior Court or
25 the Tax Court.
- 26 g. If no other provision is made by law for the administration
27 of the oath of office or the oath of allegiance for any State elective
28 or appointive office, the oaths may be administered by:
- 29 (1) The Governor or Lieutenant Governor;
30 (2) A member of the Legislature;
31 (3) The Chief Justice or any Associate Justice of the Supreme
32 Court;
33 (4) A judge of the Superior Court or Tax Court;
34 (5) A judge of the Office of Administrative Law or the Division
35 of Workers' Compensation;
36 (6) The county clerk of any county.
37 (7) A commissioned officer of the United States Armed Forces,
38 provided that the signed oath contains a recital that the oath was
39 administered by a commissioned officer, a specification of the
40 officer's rank and official designation, and a statement that the
41 officer taking the oath is a commissioned officer in the United
42 States Armed Forces.
- 43 h. If no other provision is made by law for the administration
44 of the oath of office or the oath of allegiance for any elective or
45 appointive office in any county, municipality, school district, or
46 other local government agency, board, committee, commission or
47 other entity, these oaths may be administered by any of the
48 following officers:

- 1 (1) Any of the officers enumerated in subsection g. of this
2 section;
- 3 (2) Judges of municipal court;
- 4 (3) Mayors and other elected municipal officers;
- 5 (4) Surrogates, registers of deeds and mortgages, county clerks
6 and their deputies;
- 7 (5) Municipal clerks and clerks of boards of chosen freeholders;
- 8 (6) Sheriffs of any county;
- 9 (7) County Executives, members of the Board of Chosen
10 Freeholders, and other elected county officials;
- 11 (8) Clerks of all courts;
- 12 (9) Notaries public;
- 13 (10) Commissioners of deeds;
- 14 (11) Attorneys-at-law of this State;
- 15 (12) Certified court reporters, as defined in section 10 of
16 P.L.1940, c.175 (C.45:15B-10).

17 Source: R.S.41:2-4, R.S.41:2-5, R.S.41:2-6, R.S.41:2-7, R.S.41:2-8,
18 R.S.41:2-10, R.S.41:2-14, R.S.41:2-15, Section 3 of P.L.1948,
19 c.335 (C.41:2A-3).

20

21 41A:1-6. Signing and Filing of Judicial Oaths.

22 The signed oaths of every Supreme Court Justice, judge of the
23 Superior Court and judge of the Tax Court shall be filed in the
24 office of the Secretary of State.

25 Source: Section 4 of P.L.1948, c.335 (C.41:2A-4)

26

27 41A:1-7. Enrollment by County Clerk.

28 Upon taking the oath of allegiance and oath of office, the county
29 clerk shall enroll his own name and the time of his being sworn into
30 office, and transmit a copy of the enrollment to the Secretary of
31 State for filing.

32 Source: R.S.41:2-15, R.S.41:2-12

33

34 41A:2-1. Who May Administer Oaths, Affirmations, and Take
35 Affidavits.

36 a. All ordinary oaths, affirmations and affidavits, other than
37 oaths, affirmations and affidavits required to be taken or made in
38 open court, may be taken by or made before any of the following:

- 39 (1) the Governor or Lieutenant Governor;
- 40 (2) a Chief Justice or an Associate Justice of the Supreme Court;
- 41 (3) a member of the Legislature;
- 42 (4) a judge of the Superior Court or the Tax Court;
- 43 (5) Judges of municipal court;
- 44 (6) Mayors and other elected municipal officers;
- 45 (7) Surrogates, registers of deeds and mortgages, county clerks,
46 and their deputies;
- 47 (8) Municipal clerks, clerks of boards of chosen freeholders;
- 48 (9) Sheriffs of any county;

1 (10) County Executives, members of the board of chosen
2 freeholders, and other elected county officials;

3 (11) Clerks of all courts;

4 (12) Notaries public;

5 (13) Commissioners of deeds;

6 (14) Attorneys-at-law of this State;

7 (15) Certified court reporters, as defined in section 10 of
8 P.L.1940, c.175 (C.45:15B-10); and

9 (16) a commissioned officer of the United States Armed Forces,
10 provided that the signed oath contains a recital that the oath was
11 administered by a commissioned officer, a specification of the
12 officer's rank and official designation, and a statement that the
13 officer taking the oath is a commissioned officer in the United
14 States Armed Forces.

15 b. State investigators attached to the Division of Criminal
16 Justice and county detectives and investigators attached to the
17 office of a county prosecutor may administer oaths or take
18 affirmations and affidavits only in relation to a matter involving a
19 violation of the criminal laws of this State.

20 Source: R.S.41:2-1, R.S.41:2-3, Section 1 of P.L.1939, c. 276
21 (C.41:2-3.1), Section1 of P.L.1982, c. 221 (C.41:2-3.2)

22

23 41A:2-2. Formalities of Oaths, Affirmations and Affidavits.

24 a. Any person required or permitted by law to take an oath or
25 to make an affidavit may instead make a solemn affirmation in the
26 following form or its equivalent:

27 "I,, do solemnly affirm the truth of what I say."

28 b. Any person taking an oath or making an affirmation or
29 affidavit required or permitted by law may do so by uplifting a hand
30 or by placing a hand on religious scriptures. The failure to uplift a
31 hand or to place a hand on religious scriptures shall not affect the
32 validity of the oath.

33 c. It shall not be necessary to the validity or sufficiency of any
34 oath, affirmation, declaration or affidavit that it is certified under
35 the official seal of the officer before whom it is made.

36 Source: R.S.41:1-6, R.S.41:1-7

37

38 41A:2-3. Oaths, Affirmations and Affidavits Taken Out of State.

39 a. Any oath, affirmation, or affidavit required or permitted by
40 the law of this State to be made, when made outside of the State,
41 may be administered or taken by the following:

42 (1) By any notary public of the State, territory, or country in
43 which the oath, affirmation or affidavit is made; or

44 (2) By any officer authorized by the laws of this State to take an
45 acknowledgment of deeds in the State, territory, or country in which
46 the acknowledgment is being taken.

47 b. The jurat or certificate of an oath, affirmation or affidavit
48 made outside the State shall contain:

1 (1) the officer's official designation annexed to his signature;
2 and

3 (2) a statement that the notary or officer is authorized by the law
4 of that jurisdiction to administer an oath or take an affirmation or
5 affidavit; and

6 (3) the officer's official seal, if the affixation of a seal is
7 required by the law of the officer's jurisdiction.

8 The inclusion of these recitals in the jurat or certificate shall be
9 sufficient proof that the person before whom the oath, affirmation
10 or affidavit was made is a notary or officer.

11 Source: R.S.41:2-17

12

13 41A:2-4. Certification in Place of Oath, Affidavit, Affirmation or
14 Declaration.

15 Any person required or permitted by law to take an oath or to
16 make an affirmation or affidavit before an administering officer,
17 may instead make a written certification in the following form:

18 "I,....., hereby certify that the foregoing statements
19 made by me are true. I am aware that if any of the foregoing
20 statements made by me are willfully false, I am subject to
21 punishment."

22 The certification shall include the person's signature and the date
23 the certification was made.

24 Source: New (See R.1:4-4)

25

26 41A:2-5. Oaths to Witnesses in Examinations Before Legislature
27 or Committees; Perjury.

28 The President of the Senate, the Speaker of the General
29 Assembly and the chairman of a committee of the whole, or of any
30 select or standing committee of either house of the Legislature, are
31 respectively empowered to administer oaths and affirmations to
32 witnesses, in any matter or case under their examination. Any
33 person who willfully makes a false statement under oath or
34 affirmation shall be guilty of perjury or false swearing under
35 N.J.S.2C:28-1 or N.J.S.2C:28-2.

36 Source: R.S.41:2-2

37

38 41A:2-6. Oaths Administered by Notaries Public in Financial
39 Institutions Matters.

40 a. A notary public who is a stockholder, director, officer,
41 employee or agent of a financial institution or other corporation
42 may administer an oath to any other stockholder, director, officer,
43 employee or agent of the corporation.

44 b. A notary public employed by a financial institution may
45 follow directions or policies of the employer which provide that
46 during the hours of the notary public's employment by the financial
47 institution the notary public shall not administer oaths except in the
48 course of the business of the employer.

1 As used in this section, "financial institution" means a State or
2 federally chartered bank, savings bank, savings and loan association
3 or credit union.

4 Source: R.S.41:2-3

5
6 2. To the extent this act contains provisions not inconsistent
7 with those of prior laws it shall be construed as a continuation of
8 such prior laws and relevant case law interpreting or applying those
9 provisions shall be preserved.

10
11 3. The following are repealed:

12 Revised Statutes:

13 R.S.41:1-1 through R.S.41:1-7 both inclusive;

14 R.S.41:2-1 through R.S.41:2-3 both inclusive;

15 R.S.41:2-4 through R.S.41:2-8 both inclusive;

16 R.S.41:2-10 through R.S.41:2-15 both inclusive;

17 R.S.41:2-17 through R.S.41:2-20 both inclusive;

18 R.S.41:3-1;

19 R.S.41:3-2.

20 Pamphlet Laws:

21 Section 1 of P.L.1939, c. 276 (C.41:2-3.1);

22 Section 1 of P.L.1982, c. 221 (C.41:2-3.2);

23 Section 1 of P.L.1948, c.335 (C.41:2A-1);

24 Section 3 of P.L.1948, c.335 (C.41:2A-3);

25 Section 4 of P.L.1948, c.335 (C.41:2A-4);

26 Section 1 of P.L.1951, c.351 (C.41:2A-6).

27
28 4. This act shall take effect on the 90th day following enactment
29 and shall apply to all oaths or affidavits taken or administered on or
30 after the effective date.

31
32
33 STATEMENT

34
35 This bill would clarify and reorganize the statutes concerning
36 oaths and affidavits set out in Title 41 of the Revised Statutes. The
37 bill would replace the current Title 41 with a new title, Title 41A.
38 The bill was recommended by the New Jersey Law Revision
39 Commission, which has found the current statutes on oaths and
40 affidavits to be repetitive and confusing.

41 The bill concerns two types of oaths: (1) *official oaths* (oaths of
42 office taken by public officials), set out in chapter 1 of the new
43 Title, and (2) "*ordinary*" *oaths and affidavits* (asserting
44 truthfulness), set out in chapter 2.

45
46 Chapter 1: Official Oaths

47 Chapter 1 of the new Title 41A concerns official oaths. Under
48 the New Jersey Constitution, "every State officer" before taking

1 office must “take and subscribe an oath or affirmation to support
2 the Constitution of this State and of the United States and to
3 perform the duties of his office faithfully, impartially and justly to
4 the best of his ability.” (N.J. Const., Art. VII, sec. 1, para. 1.) The
5 statutes have historically separated this requirement into two
6 components: an “oath of office” encompassing the provision
7 concerning performance of the duties of the office, and an “oath of
8 allegiance” encompassing the provision to support the State and
9 United States constitutions. This bill continues this separation.

10 Currently, several separate statutes in chapters 1 and 2 of Title
11 41 govern official oaths for various State officers. For example,
12 R.S.41:1-2 concerns the governor and persons appointed or elected
13 legislative, executive or judicial office; R.S.41:2A-1 concerns
14 Justices of the Supreme Court and judges of the Superior Court and
15 Tax Court.

16 Section 41A:1-1 of this bill would combine the provisions of the
17 source laws into a single section pertaining to the oath of office.
18 This language tracks the language established in the New Jersey
19 Constitution. However, this new section would clarify that the
20 words “so help me God,” which are not included in the
21 constitutional text, would be optional.

22 Section 41A:1-2 of the bill would largely continue what is
23 currently N.J.S.A.41:1-1, pertaining to the oath of allegiance. Like
24 section 41A:1-1, this section would also clarify that the words “so
25 help me God,” which are not included in the constitutional text,
26 would be optional. The section also provides that taking an oath of
27 office by affirmation would have the same effect as a sworn oath of
28 office.

29 Section 41A:1-3 of the bill would consolidate into one statutory
30 section all officials who are required to take official oaths. The bill
31 refers to these officials as follows:

32 “Every person elected or appointed to any public office in the
33 Executive, Legislative or Judicial branch of this State, including:

- 34 (1) The Governor and Lieutenant Governor;
35 (2) The Chief Justice and each Associate Justice of the Supreme
36 Court;
37 (3) Every judge of the Superior Court and the Tax Court; and
38 (4) Every judge of the Office of Administrative Law and the
39 Division of Workers' Compensation.
40 b. Every judge of a municipal court.
41 c. Every surrogate, deputy surrogate, and special deputy
42 surrogate.
43 d. Every person elected or appointed to a public office in this
44 State in any county, municipality or special district, or in any
45 department, board, commission, agency or instrumentality of any of
46 them.
47 e. Every person appointed to any office in the militia of the
48 State.

1 f. Every attorney-at-law of the State.”

2 Section 41A:1-4 of the bill, concerning the solemnity of the oath,
3 clarifies that raising a hand or placing a hand on religious scriptures
4 is not required.

5 Section 41A:1-5 consolidates into one section the various
6 officials who may administer official oaths to particular persons.
7 This section provides, among others, that the Governor’s official
8 oath shall be administered by a Justice of the Supreme Court or a
9 member of the Senate; the oath of a member of the Legislature shall
10 be administered by a fellow member of the same house; the oath of
11 the Secretary of State or Attorney General shall be administered by
12 a Justice of the Supreme Court or a judge of the Superior Court or
13 the Tax Court; the oath of the Chief Justice or an Associate Justice
14 of the Supreme Court shall be administered by a Justice of the
15 Supreme Court; the oath of a Superior Court or Tax Court judge by
16 a Justice of the Supreme Court or a Superior Court or Tax Court
17 judge; and the oath of a municipal court judge by a Superior Court
18 or Tax Court judge. The section also provides that if no other
19 provision of law specifies the person who will administer an official
20 oath for State office, the oaths may be administered by the
21 Governor, Lieutenant Governor, a member of the Legislature, a
22 Supreme Court Justice, Superior Court or Tax Court Judge, a judge
23 of the Office of Administrative Law or the Division of Workers’
24 Compensation, the county clerk of any county or a commissioned
25 officer of the United States Armed Forces.

26 In addition, section 41A:1-5 provides that in the case of county
27 and local officials, if no other provision of law specifies the person
28 who will administer the oath, it may be administered by any of the
29 persons authorized to administer oaths for State offices or by certain
30 other persons, including municipal court judges, mayors, surrogates,
31 county clerks, notaries public and attorneys.

32

33 Chapter 2: “Ordinary” Oaths and Affidavits

34 This bill would also create a chapter 2 of Title 41A, which would
35 govern “ordinary” oaths and affidavits. (those that assert
36 truthfulness).

37 Section 41A:2-1 of the chapter would consolidate the lists of
38 individuals authorized to administer “ordinary” oaths and affidavits.
39 Currently these individuals are listed in several different sections of
40 law.

41 Section 41A:2-1 lists those individuals who would be authorized
42 to administer an “ordinary” oath or affidavit, which is an identical
43 list to those individuals who are authorized to administer an official
44 oath found in section 41A:1-5. This would be a clarification of
45 current law. According to the Commission report, “the list of
46 authorized officials in the source sections overlapped and caused
47 confusion. There does not appear to be any reason why an official

1 authorized to administer an official oath may not also administer an
2 ordinary oath.”

3 The Commission report notes that this section is not an exclusive
4 list of officials specifically authorized to administer oaths and
5 affidavits, and that statutes outside of Title 41 which authorize other
6 officials under certain circumstances are still valid. For example,
7 the Commissioner of Banking and Insurance is authorized to
8 examine under oath the officers of foreign banks (N.J.S.A.17:9A-
9 325), and the Secretary of Higher Education is authorized to
10 administer oaths with regard to any matter pertaining to higher
11 education (N.J.S.A.18A:3B-34). This bill would not alter these
12 other statutory provisions.

13 Section 41A:2-2 clarifies that a person may make an affirmation
14 instead of an oath. It also eliminates the provision in R.S.41:1-6
15 that refers to a “declaration.” The Commission’s report states that
16 “there does not appear to be any difference between an affirmation
17 and declaration.”

18 Section 41A:2-3 continues the source section N.J.S.A.41:2-17.
19 The section provides the manner in which any oath, affirmation, or
20 affidavit required or permitted by the law of this State to be made
21 may be administered or taken out of State.

22 Section 41A:2-4 adds a new provision authorizing a
23 “certification in lieu of oath.” This provision is modeled on R.1:4-
24 4(b) of the Rules Governing the Courts of the State of New Jersey.
25 This section provides that any person who takes an oath or makes
26 an affirmation or affidavit before an administering officer may
27 instead make a written certification in the following form:

28 “I,....., hereby certify that the foregoing statements
29 made by me are true. I am aware that if any of the foregoing
30 statements made by me are willfully false, I am subject to
31 punishment.”

32 Section 41A:2-5 of the bill would continue N.J.S.A.41:2-2 which
33 provides that the President of the Senate, the Speaker of the General
34 Assembly and the chairman of a committee of the whole, or of any
35 select or standing committee of either house of the Legislature, are
36 respectively empowered to administer oaths and affirmations to
37 witnesses, in any matter or case under their examination. This
38 section also provides that any person who willfully makes a false
39 statement under oath or affirmation shall be guilty of perjury or
40 false swearing under N.J.S.2C:28-1 or N.J.S.2C:28-2.

41 Under the bill, section 41A:2-6 would continue N.J.S.A.41:2-3,
42 which provides that a notary public who is a stockholder, director,
43 officer, employee or agent of a financial institution or other
44 corporation may administer an oath to any other stockholder,
45 director, officer, employee or agent of the corporation. The section
46 also provides that a notary public employed by a financial
47 institution may follow directions or policies of the employer which
48 provide that during the hours of the notary public's employment by

1 the financial institution the notary public would not be permitted to
2 administer oaths except in the course of the business of the
3 employer.

4 Section 2 of the bill provides that to the extent the bill contains
5 provisions not inconsistent with those of prior laws it shall be
6 construed as a continuation of such prior laws. This provision is
7 intended to clarify that existing case law, common practices and
8 interpretations pertaining to oaths and affidavits, to the extent they
9 are not inconsistent with this bill, would still be lawful and
10 permissible after the enactment of this bill.

11 Section 3 of the bill repeals Title 41, which in addition to those
12 statutes replaced by the provisions of this bill includes obsolete
13 provisions regarding the Board of Proprietors of the Western
14 Division of New Jersey, provisions concerning perjury and false
15 swearing which have been obviated by the enactment of the
16 Criminal Code (Title 2C), and provisions concerning coroners (an
17 office which no longer exists).