

HOUSE REPORT 381

Introduced by Hoffman, et al.

1/24	Introduced
1/24	Referred to Judiciary
1/24	First Reading
2/04	Hearing
2/06	Committee Report--Bill Passed as Amended
2/08	Rereferred to Judiciary Died in Committee

1 HOUSE BILL NO. 381  
 2 INTRODUCED BY Hoffman Van Valkenburg  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE DEFINITION  
 5 OF THE OFFENSE OF PERJURY BY DELETING THE REQUIREMENT THAT  
 6 WHEN INCONSISTENT STATEMENTS ARE MADE, BOTH MUST BE MADE  
 7 WITHIN THE PERIOD OF THE STATUTE OF LIMITATIONS;  
 8 IMPLEMENTING THE DECISION OF THE MONTANA SUPREME COURT IN  
 9 STATE V. STILLINGS, 778 P.2D 406, 46 ST. REP. 1431 (1989);  
 10 AND AMENDING SECTION 45-7-201, MCA."  
 11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 45-7-201, MCA, is amended to read:

14 "45-7-201. Perjury. (1) A person commits the offense of  
 15 perjury if in any official proceeding he knowingly makes a  
 16 false statement under oath or equivalent affirmation or  
 17 swears or affirms the truth of a statement previously made,  
 18 when the statement is material.

19 (2) A person convicted of perjury shall be punished by  
 20 imprisonment in the state prison for any term not to exceed  
 21 10 years or shall be punished by a fine of not more than  
 22 \$50,000, or by both such fine and imprisonment.

23 (3) Falsification is material, regardless of the  
 24 admissibility of the statement under rules of evidence, if  
 25 it could have affected the course or outcome of the

1 proceeding. It is no defense that the declarant mistakenly  
 2 believed the falsification to be immaterial. Whether a  
 3 falsification is material in a given factual situation is a  
 4 question of law.

5 (4) It is not a defense to prosecution under this  
 6 section that the oath or affirmation was administered or  
 7 taken in an irregular manner or that the declarant was not  
 8 competent to make the statement. A document purporting to be  
 9 made upon oath or affirmation at any time when the offender  
 10 presents it as being so verified shall be deemed to have  
 11 been duly sworn or affirmed.

12 (5) No person shall be guilty of an offense under this  
 13 section if he retracted the falsification in the course of  
 14 the proceeding in which it was made before it became  
 15 manifest that the falsification was or would be exposed and  
 16 before the falsification substantially affected the  
 17 proceeding.

18 (6) Where the defendant made inconsistent statements  
 19 under oath or equivalent affirmation, ~~both having been made~~  
 20 ~~within the period of the statute of limitations,~~ the  
 21 prosecution may proceed by setting forth the inconsistent  
 22 statements in a single count alleging in the alternative  
 23 that one or the other was false and not believed by the  
 24 defendant. In such case it shall not be necessary for the  
 25 prosecution to prove which statement was false but only that



LC 0407/01

1 one or the other was false and not believed by the defendant  
2 to be true.

3 (7) No person shall be convicted of an offense under  
4 this section where proof of falsity rests solely upon the  
5 testimony of a single person other than the defendant."

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 381

INTRODUCED BY HOFFMAN, VAN VALKENBURG

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE DEFINITION OF THE OFFENSE OF PERJURY BY DELETING THE REQUIREMENT THAT WHEN INCONSISTENT STATEMENTS ARE MADE, BOTH MUST BE MADE WITHIN THE PERIOD OF THE STATUTE OF LIMITATIONS; TO DELETE OTHER PROVISIONS RELATING TO PERJURY THROUGH INCONSISTENT STATEMENTS; IMPLEMENTING TO IMPLEMENT THE DECISION OF THE MONTANA SUPREME COURT IN STATE V. STILLINGS, 778 P.2D 406, 46 ST. REP. 1431 (1989); AND AMENDING SECTION 45-7-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 45-7-201, MCA, is amended to read:

"45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding he knowingly 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.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or shall be punished by a fine of not more than \$50,000, or by both such fine and imprisonment.

(3) Falsification is 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 is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not 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 offender 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 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) Where 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~~



HB 0381/02

1 ~~defendant---in--such--case-it-shall-not-be-necessary-for-the~~  
2 ~~prosecution-to-prove-which-statement-was-false-but-only-that~~  
3 ~~one-or-the-other-was-false-and-not-believed-by-the-defendant~~  
4 ~~to-be-true.~~

5       †7†(6) No person shall be convicted of an offense under  
6 this section where proof of falsity rests solely upon the  
7 testimony of a single person other than the defendant."

-End-