

Memorandum in Support

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

CPLR #11

January 9, 2008

S. 4215

By: Senator Volker

Senate Committee: Codes

Effective Date: First day of January next succeeding the date on which it shall have become a law

AN ACT to amend the civil practice law and rules and the penal law, in relation to unsworn affirmation of truth of statement under penalty of perjury

LAW AND SECTION REFERRED TO: Rule 2106 of the civil practice law and rules, as amended by judicial conference proposal number 3 for the year 1973.

THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES SUPPORTS THIS LEGISLATION

The proposed bill would replace the use of an affidavit for all purposes in a civil action by the use of an affirmation. The proposal provided is being modeled upon the federal declaration procedure (see 28 USCA § 1746). Currently CPLR 2106 permits only New York licensed attorneys, physicians, osteopaths or dentists (who are not parties to an action) to affirm a statement to be true under the penalties of perjury to be "filed in the action in lieu of and with the same force and effect as an affidavit." Such unsworn declarations made by any "person" have been permitted in federal court since 1976. See 28 U.S.C. §1746. The purpose of the bill is to eliminate the inconvenience of having to appear before a notary public in order to submit a sworn statement to the court.

The sponsors memo points out the following, among other, perceived difficulties with the current system:

1. The difficulty in finding a notary in certain places in the state outside of central business districts.
2. Notaries in banks often refuse to notarize for anyone not known to the branch officer.
3. Notary services may be necessary outside business hours.
4. Lack of a notary in the era of electronic filing, can result in an absurd impediment.
5. Notarial fees have increased.
6. Some persons have religious objections to swearing, but not to affirming.

With respect to a more modest prior bill seeking to extend to other healthcare practitioners the privilege of substituting an affirmation, this Committee opined that the more productive approach would be the adoption of legislation which would permit all persons to substitute an affirmation for an affidavit in civil proceedings, (Report No 27, March 2003, A5589). The report recommended that certain language be included in the affirmation. That language and our further suggestion that the penal code be amended to make the false affirmation a Class E felony have all been integrated into the present legislation.

For the foregoing reasons, the Committee on Civil Practice Law and Rules **SUPPORTS** this legislation.

Person who prepared the memorandum: David L. Ferstendig, Esq.

Chair of the Committee: David L. Ferstendig, Esq.