

HOUSE BILL REPORT

HB 1345

As Reported by House Committee On:
Judiciary

Title: An act relating to the uniform unsworn foreign declarations act.

Brief Description: Regarding the uniform unsworn foreign declarations act.

Sponsors: Representatives Rivers, Pedersen and Rodne; by request of Uniform Laws Commission.

Brief History:

Committee Activity:

Judiciary: 1/24/11, 1/27/11 [DP].

Brief Summary of Bill

- Allows people located outside the United States to submit unsworn written declarations in lieu of affidavits, which require administration of an oath and certification by a public official, and other sworn statements as part of state legal proceedings, subject to certain exceptions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Parker Howell (786-5793) and Kelly Pfundheller (786-7289).

Background:

Participants in legal proceedings before Washington courts and agencies generally can attest that certain statements are true through affidavits, which are voluntary, written declarations of facts that are sworn to by the declarant before a government officer and certified by that officer. For example, affidavits are often used to admit evidence in court.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Washington Law.

A Washington statute permits unsworn written declarations to be used in lieu of affidavits and other sworn statements, so long as the declarations follow a prescribed form. A declaration must state that it is certified or declared by the person to be true under penalty of perjury, be signed by the person, state the date and place of execution, and state that it is declared under Washington law. The law does not apply to: written statements requiring an acknowledgement (a means of authenticating an instrument by showing that it was the voluntary act of the person executing it, requiring an oral declaration and notarization); depositions; oaths of office; or oaths required to be taken before a special official other than a notary public. In addition, a state court rule permits the use of unsworn declarations when a statute calls for use of sworn affidavits, subject to the exceptions in the statute.

Uniform Act.

In 2008 the National Conference of Commissioners on Uniform State Laws (NCCUSL) issued the Uniform Unsworn Foreign Declarations Act (Act), which allows people outside the geographic boundaries of the United States to submit unsworn written declarations in the place of affidavits and other sworn statements. The NCCUSL cited as impetus for the Act difficulties experienced by people trying to obtain affidavits abroad in accessing authorized officials at United States embassies and consulates because of post-September 11 security precautions.

The Act parallels a federal law in place since 1976. At least nine states and the District of Columbia have enacted the Act, according to the NCCUSL.

Summary of Bill:

The Uniform Unsworn Foreign Declarations Act (Act) is adopted. The act closely resembles the current law governing unsworn declarations, except that it specifies that people who are physically located outside the boundaries of the United States, Puerto Rico, the United States Virgin Islands, and territories or possessions subject to United States jurisdiction may submit unsworn declarations in lieu of other sworn statements.

The Act maintains exceptions from current Washington law. In addition, the Act does not allow unsworn declarations to be used in place of declarations to be recorded pursuant to certain real estate and business partnership laws and certain oaths required by statute relating to proving wills.

Unsworn declarations must be made in the same medium as required by Washington laws for sworn declarations.

The Act supersedes certain requirements of the federal Electronic Signatures in Global and National Commerce Act, but does not affect certain parts of the federal law or authorize electronic delivery of notices describes elsewhere in that law.

In interpreting the Act, courts must consider the need to promote uniformity of the law regarding unsworn declaration among states that enact the Act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill brings Washington law into alignment with federal law. The Uniform Unsworn Foreign Declarations Act is intended to provide predictability and credibility in the law on unsworn declarations. People already use a similar form for declarations when submitting unsworn declarations under federal law. However, when a person submits an unsworn declaration in a legal proceeding involving multiple states, it is uncertain which law applies. Some states do not allow use of unsworn foreign declarations. Legislators may want to cross-reference the bill to the current statute on unsworn declarations, but they do not necessarily need to. Legislators could delete "of the State of Washington" from the current statute in order to cover foreign unsworn declarations. This will make it easier to try to resolve disputes from abroad because consulates will not be besieged by requests for affidavits.

(Opposed) None.

Persons Testifying: Representative Rivers, prime sponsor; and Marlin Appelwick, Washington Uniform Law Commission.

Persons Signed In To Testify But Not Testifying: None.