

SENATE BILL REPORT

HB 1345

As of March 8, 2011

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: Passed House: 2/14/11, 93-0.

Committee Activity: Judiciary: 3/08/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Kim Johnson (786-7472)

Background: The National Conference of Commissioners on Uniform State Laws (NCCUSL) is a non-profit association that drafts model uniform state laws on subjects where consistency from state to state is desirable. The Washington Uniform Legislation Commission was created in 1905 and analyzes whether uniform laws recommended by NCCUSL and others are appropriate for incorporation into Washington laws.

NCCUSL issued the Uniform Unsworn Foreign Declarations Act (Act) in 2008, and at least nine states and the District of Columbia have adopted the Act. The Act allows people outside the United States to submit unsworn written declarations in place of affidavits and other sworn statements.

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. Currently, Washington law permits unsworn written declarations to be used in lieu of affidavits and other sworn statements, so long as the declarations follow a prescribed form. An unsworn 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. However, unsworn declarations may not be used in depositions, oaths of office, or oaths required to be taken before a special official other than a notary public or with writings requiring an acknowledgment.

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.

Summary of Bill: The Uniform Unsworn Foreign Declarations Act is adopted. 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 the United States jurisdiction may submit unsworn declarations in lieu of other sworn statements. An unsworn declaration is a signed record that is not given under oath, but is given under penalty of perjury.

Exemptions for unsworn declarations under current Washington law are maintained. Additionally, unsworn declarations are prohibited from being 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.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: This bill will extend to state proceedings the same flexibility that federal courts have had for sometime to accept unsworn documents that meet certain criteria and are submitted under penalty of perjury. Several states also allow the use of an unsworn declaration if it follows the form of the Uniform Act. By adopting the Uniform Act, we harmonize Washington law with federal and some other states practices, so those abroad will have a consistent process to submit evidence into our court system. Affiants abroad will not have to go to the consulates to have a sworn document produced which will relieve some pressure on our consulate officials who are very busy with the duties of their core missions.

Persons Testifying: Representative Rivers, prime sponsor; Dennis Cooper, Uniform Law Commission.