

HOUSE BILL REPORT

SB 6039

As Reported by House Committee On:
Judiciary

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

Brief Description: Concerning the uniform unsworn declarations act.

Sponsors: Senators Fain and Pedersen; by request of Uniform Law Commission.

Brief History:

Committee Activity:

Judiciary: 2/21/18, 2/22/18 [DPA].

Brief Summary of Bill
(As Amended by Committee)

- Creates the Uniform Unsworn Declarations Act, which applies to unsworn declarations by declarants who at the time of making the declaration are physically located either within or outside the boundaries of the United States.
- Amends and renames the Uniform Unsworn Foreign Declarations Act, repeals an existing law regarding unsworn declarations, and conforms other statutes that refer to the statute being repealed.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Muri, Orwall and Valdez.

Minority Report: Do not pass. Signed by 2 members: Representatives Klippert and Shea.

Staff: Cece Clynch (786-7195).

Background:

Declarations of persons are routinely received in courts and agencies across the country, including in Washington. In some cases, these declarations take the form of affidavits which

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are voluntary, written declarations of fact that are sworn to by the declarant before a notary public or other official. In other cases, these are unsworn declarations.

RCW 9A.72.085 provides that whenever any law, rule, order, or requirement requires or permits a sworn, written declaration, the matter may also be supported or evidenced by an unsworn declaration, and sets forth the format, as well as the requirements, that an unsworn declaration must meet. Such a declaration must state that it is certified or declared by the person to be true under penalty of perjury, be subscribed 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; depositions; oaths of office; or oaths required to be taken before a special official other than a notary public.

For purposes of RCW 9A.72.085, what it means to "subscribe" varies somewhat depending upon the person. To subscribe to an unsworn written statement, declaration, verification, or certificate is accomplished by:

- affixing or placing his or her signature as required by RCW 9A.04.110. ("Signature" includes any memorandum, mark, or sign made with intent to authenticate.);
- attaching or logically associating his or her digital or electronic signature as defined in RCW 19.34.020. ("Electronic signature" includes "digital signature" and means a signature in electronic form attached to or logically associated with an electronic record.);
- affixing or logically associating his or her signature in the manner described in General Rule 30 if he or she is a licensed attorney. ("Attorney signature" includes name and bar number, as well as contact information); or
- affixing or logically associating his or her full name, department or agency, and badge or personnel number to any document that is electronically submitted to a court, a prosecutor, or a magistrate from an electronic device that is owned, issued, or maintained by a criminal justice agency if he or she is a law enforcement officer.

In 2008 the National Conference of Commissioners on Uniform State Laws (NCCUSL) issued the Uniform Unsworn Foreign Declarations Act (UUFDA), which explicitly allows persons physically located outside the geographic boundaries of the United States (U.S.), Puerto Rico, the U.S. Virgin Islands, and territories or possessions subject to U.S. jurisdiction to submit unsworn declarations in lieu of other sworn statements. The UUFDA parallels a longstanding federal law.

In 2011 Washington adopted the UUFDA. Under the UUFDA, a person must declare under penalty of perjury under the law of Washington that the statements made therein are true and correct. An unsworn declaration must be signed by the person and indicate the date and place of execution. The UUFDA does not apply to a deposition, oath of office, or an oath required to be given before a specified official other than a notary public.

The UUFDA 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 related to wills. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration under the UUFDA must be presented in that medium also. In interpreting the UUFDA, courts must consider the need to promote uniformity of the law regarding unsworn declarations among the states that adopt it.

In 2016 the NCCUSL issued the Uniform Unsworn Declarations Act (UUDA), the purpose of which is to permit the use of unsworn declarations made under penalty of perjury in state courts. The UUDA builds upon the UUFDA, and applies to persons physically located within or outside the boundaries of the U.S., and whether or not the location is subject to the jurisdiction of the U.S.

Summary of Amended Bill:

The Uniform Unsworn Foreign Declarations Act (UUFDA) is amended to apply to an unsworn declaration by a declarant who at the time of making the declaration is physically located within *or* outside the boundaries of the United States. The name of the act is changed from the UUFDA to the Uniform Unsworn Declarations Act (UUDA).

RCW 9A.72.085 is repealed. A number of other statutes that refer to this statute are amended to strike the reference to the statute being repealed and refer to the UUDA.

Amended Bill Compared to Original Bill:

The amended bill retains all of the underlying bill, and also brings in and conforms a number of other statutes that refer to the statute being repealed. These statutes are amended to strike the reference to the statute being repealed and refer instead to the Uniform Unsworn Declarations Act (UUDA).

One of the sections that is conformed to refer to the UUDA is also amended to strike language which was stricken and severed several years ago, in a 2008 Washington Supreme Court opinion, as unconstitutional and violative of the right to trial by jury because it provides that the court, as a matter of law, is to determine materiality rather than a jury.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 22, relating to making technical and conforming changes, which takes effect January 1, 2019.

Staff Summary of Public Testimony:

(In support) This is a pretty simple bill. The statute governing unsworn declarations is currently buried in the criminal code. This bill will make it more accessible. The amendment just brings in and amends a number of cross-references to the statute being repealed.

(Opposed) None.

Persons Testifying: Jaime Pedersen, Uniform Law Commission.

Persons Signed In To Testify But Not Testifying: None.