

2011 SENATE JUDICIARY

SB 2123

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2123
1/11/11
Job #12765

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Uniform Unsworn Foreign Declarations Act, Relating to the crime of perjury

Minutes:

There is attached testimony

Senator Nething – Chairman

Judge Gail Hagerty – Uniform Law Commissioner for ND and District Judge from Bismarck.

See written testimony.

Senator Nething asks for an explanation on sections.

Judge Hagerty – Explains the changes made to the sections of the bill. She mentions it has been in Federal law for 30 years, it is just a new provision to our state.

Senator Nething – Reads that it replaces something that has to be notarized.

Judge Hagerty – Adds you can only use it if you are outside the United States and if you can't get to a notary.

Senator Nething – Asks if this can be used on a will.

Judge Hagerty – Said there are specific requirements for signing a will and it isn't notarization that is witnessing. That would be a different provision. You would have to comply with the provisions with regard to a will.

Senator Nelson – Asks if you could use this to file a financial report with the Secretary of State while overseas.

Judge Hagerty – Replies yes you could.

Senator Olafson – Asks how this applies to permanent residents as compared to a citizen.

Judge Hagerty – Said it doesn't matter who is signing the document, your citizenship doesn't matter when you go to a notary and sign a document. The key is that you would be outside the US or its territories.

Close the hearing on SB2123

Senator Nelson moves for a do pass

Senator Sitte seconds

Roll call vote – 6 yes, 0 no

Senator Nelson will carry

Date: 1/11/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2123

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nelson Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2123: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2123 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2123


2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2123
March 7, 2011
15008

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2123.

Gail Hagerty, District Judge, South Central Judicial District: Support, explained the bill (see attached 1).

Rep. Delmore: How many other states did you say that had already enacted them on page.

Gail Hagerty: On page 2 lists the enactments and also the places where it was introduced in 2011.

Rep. Koppelman: It certainly seems reasonable from a practical standpoint, but doesn't it also create a lesser standard for people on foreign soil then our own citizens have to follow.

Gail Hagerty: I don't believe so, because the penalty for falsely signing would be the same. The same type of penalties would attach.

Rep. Koppelman: But the difference here is that we have to go out and search for a notary and maybe even have to pay for that service, depending on the scenario.

Gail Hagerty: That's true, there are certain documents that are exempted, but there are other documents where it seems reasonable if someone signs under penalty of perjury to allow the signature and to accept it. The State Bar Association is in support of UUFDA, and I believe he signed in to say that.

Rep. Delmore: Since it's been in effect with federal laws, has there ever been a persecution on this.

Gail Hagerty: I'm not certain of that. I know that for more than 30 years, federal courts have allowed that in other states. There have been some specific court decisions that say it doesn't apply in states, it's only federal. I'm not aware of any.

Chairman DeKrey: Thank you. Further testimony in support of SB 2123. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2123.

Rep. Klemin: I move a Do Pass.

Rep. Maragos: Second the motion.

14 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Klemin

Date: 3/7/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2123

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2123: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS**
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2123 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

SB 2123

SB2123

①



A Few Facts About The...

Uniform Unsworn Foreign Declarations Act (2008)

PURPOSE:

This act affirms the validity of unsworn foreign declarations made by a declarant who is physically outside the boundaries of the United States when making the declaration and who may not have access to a notary. Under the Act, unsworn declarations cannot be used for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary. Use of an unsworn declaration, like a sworn declaration, would be subject to penalties for perjury, and the Act provides a model form that unsworn declarations must substantially follow.

ORIGIN:

Completed by the Uniform Law Commission in 2008.

APPROVED BY:

American Bar Association

Endorsed By:

Council of State Governments (CSG) as Suggested State Legislation

STATE ADOPTIONS:

Colorado
Connecticut
District of Columbia
Indiana
Minnesota
New Mexico
Tennessee
Utah
Wisconsin

2010 INTRODUCTIONS:

Delaware

For any further information regarding this Act, please contact
Kieran Marion or Katie Robinson at 312-450-6600.

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111 N. Wabash Ave., Suite 1010



SUMMARY

Uniform Unsworn Foreign Declarations Act

Prior to the September 11, 2001 terrorist attacks, access to U.S. consular offices was far less restricted and difficult than it is today. Foreign affiants with information relevant to U.S. proceedings or transactions and willing to provide assistance could visit the U.S. consular office to finalize their affidavit or statement, in very similar fashion to a person within the U.S. visiting a notary public at a local bank. Due to increased security measures, this relatively routine process became more burdensome and time consuming. Even greater hurdles exist for persons seeking statements from individuals who do not reside near a U.S. consular office. The American Bar Association (ABA) raised these issues and referred them to the Uniform Law Commission in an official report, adopted by the ABA House of Delegates in 2006. The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

UUFDA affirms the use in state law proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used as an equivalent of a sworn declaration. The UUFDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUFDA will extend to state proceedings the same flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language: declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)

Several states have procedures for allowing unsworn declarations, but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of UUFDA harmonizes state and federal treatment of unsworn declarations. The act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing U.S. consular officials to increase focus on core responsibilities. Further, UUFDA will reduce aspects of confusion abroad regarding differences in federal and state litigation practice and help prevent potential negative connotations about cumbersome and inconsistent legal procedure in U.S. court proceedings. It should be enacted in every state.

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/

Testimony in Support of SB 2123
House Judiciary Committee
March 7, 2010

Chairman DeKrey and members of the Committee:

I'm Gail Hagerty, a district judge in Bismarck, and a uniform law commissioner.

I'm urging your support of Senate Bill 2123. Despite what Lloyd Omdahl might say, the bill is a relatively simple and straight forward bill. It would allow people outside of the United States to sign documents under penalty of perjury and their signatures would be considered as valid as if they had been notarized.

Allowing signatures made under penalty of perjury would allow individuals to avoid having to sign documents at a U.S. consular office, which is very difficult in these post 9-11 times in which strict security is required.

Federal courts have allowed signatures such as would be authorized under UUFDA for more than 30 years.

UUFDA would not be used for "depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary." (See attached summary.)




Legislative Fact Sheet - Unsworn Foreign Declarations Act (2008)

Origin: Completed by the Uniform Law Commission in 2008.

Description: This act will permit, in state court proceedings, unsworn declarations under penalty of perjury to be executed by witnesses physically located outside the United States in lieu of affidavits, verifications, or other sworn court filings.


Endorsements: Council of State Governments (CSG) as Suggested State Legislation

(Approved by the American Bar Association)



Enactments: Colorado, Connecticut, Delaware, District of Columbia, Indiana, Minnesota, New Mexico, Tennessee, Utah, Wisconsin

2011 Introductions: Alabama, Montana, Nevada, North Dakota, Rhode Island, Washington



Unsworn Foreign Declarations Act (2008)

Summary

Prior to the September 11, 2001 terrorist attacks, access to U.S. consular offices was far less restricted and difficult than it is today. Foreign affiants with information relevant to U.S. proceedings or transactions and willing to provide assistance could visit the U.S. consular office to finalize their affidavit or statement, in very similar fashion to a person within the U.S. visiting a notary public at a local bank. Due to increased security measures, this relatively routine process became more burdensome and time consuming. Even greater hurdles exist for persons seeking statements from individuals who do not reside near a U.S. consular office. The American Bar Association (ABA) raised these issues and referred them to the Uniform Law Commission in an official report, adopted by the ABA House of Delegates in 2006. The Uniform Unsworn Foreign Declarations Act (UUFDA), was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

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AGWEEK

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Published December 27, 2010, 10:00 AM

Omdahl: UUFDA measure changed

As they say in Trondheim, the lutefisk is out of the barrel. An anonymous source close to the National Conference of Commissioners on Uniform State Laws has disclosed that the upcoming Legislature will be taking up an UUFDA* bill, and this without holding hearings in Bergen, Olga, Fort Ransom or any other North Dakota community known to boast of a large number of bona fide Norwegians.

By Lloyd Omdahl, INFORM

As they say in Trondheim, the lutefisk is out of the barrel.

An anonymous source close to the National Conference of Commissioners on Uniform State Laws has disclosed that the upcoming Legislature will be taking up an UUFDA* bill, and this without holding hearings in Bergen, Olga, Fort Ransom or any other North Dakota community known to boast of a large number of bona fide Norwegians.

Nevertheless, the Norwegian community has thrown the krokspjot (spear) across the bow of the ship of state. This bill will not be passed without amendment because it does not include many things that Norwegians demand in any legislation called UUFDA. The Sons of Norway lodges across the state have been alerted, and suggestions are pouring in.

First, Norwegians insist that lufse, lutefisk and torsk be included in school lunch programs three times a week. They expect that the Anti-Lutefisk Society, headquartered in Wishek, will put great pressure on legislators to exempt students in McIntosh and Logan counties, but, Norwegians argue, it is time for the Legislature to stand up and do the right thing. If not, they will organize Rommegrot Parties all across the state and throw lutefisk in city water supplies.

Second, Norwegians want students to remember their heritage by learning the Norwegian national anthem as soon as the words can be found. They were lost in 1028 when Canute the Great conquered Norway and used them to wallpaper his chamber. They weren't missed until 1814 when someone suggested that the national anthem be sung upon the adoption of the new Norwegian constitution. They had to hum through the ceremony. (It is obvious that Norwegians don't sing a lot. And when they do, they wish they hadn't.)

Third, they also want textbooks used in North Dakota schools to delete Christopher Columbus as discoverer of America and insert the fact that Leif Erikson discovered the New World 500 years before the Santa Maria left port. That means replacing Columbus Day with Leif Erikson Day and making it an official holiday with pay.

Fourth, some want the University of North Dakota School of Aerospace Sciences to recognize Norway's contribution to aviation that started in 1912 with great adversity because of the 10,000 fjords. Of the six pilots licensed that year, the first five crashed trying to take off between fjords at Trondheim. The sixth one learned that they had to go to Denmark to get airborne.

The Swenson brothers were actually ahead of the Wright Brothers in developing heavier-than-air flying machines, but they ended up with a glider when Oscar forgot to put the engine in. By the time they figured out the problem, the Wright brothers were off the ground.

The Norwegians-from-Denmark Club in Tagus proposed an amendment calling for money to build a Norwegian Hall of Fame in Minot that would include all of those enshrined by the Hostfest, except those not having at least one-half Scandinavian blood before transfusions. (Inductee Karl Rove would have required two quarts to qualify. Even then, he would still be a pint low.)

The Danes and Swedes won't be testifying on the UUFDA bill as long as "don't ask, don't tell" is in effect.

*Uniform Unsworn Foreign Declarations Act.

Omdahl is former N.D. lieutenant governor and retired University of North Dakota political science teacher.

E-mail ndmatters@q.com.

Tags: opinion, letters, columns