

2009 DRAFTING REQUEST

Bill

Received: **02/09/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Terry**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Courts - notaries**
Courts - miscellaneous

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Risser@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Uniform Unsworn Foreign Declarations Act

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			Crime
/P1	phurley 03/16/2009	bkraft 03/26/2009	mduchek 03/26/2009	_____	cduerst 03/26/2009		Crime
	phurley 10/02/2009	bkraft 10/02/2009		_____			
/1			phenry 10/02/2009	_____	cduerst 10/02/2009	mbarman 10/02/2009	

FE Sent For: **NONE**

<END>

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FE Sent For:

1 bjk 10/2



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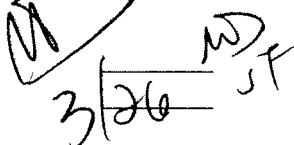
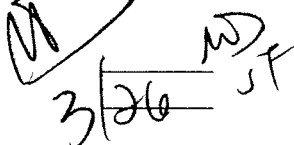
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1/2	phurley	1/11 bjk 3/19					

FE Sent For:

<END>

ULC Acts (and amendments to ULC Acts) completed in 2008

The Revised Uniform Unincorporated Nonprofit Association Act

The Uniform Unincorporated Nonprofit Association Act (originally promulgated in 1996), addressed a key problem in common law: that an unincorporated association was not a separate entity, but rather was an aggregate of individuals with many characteristics of a business partnership. The 1996 Uniform Act reformed the common law in three basic areas: authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.

The Revised Act (RUUNAA) improves upon its predecessor by providing additional guidance, incorporating a number of modern practices, and by eliminating potential conflicts with other bodies of law. The revised act extends the nature of unincorporated nonprofit associations as distinct entities by allowing qualified associations to exist in perpetuity where necessary or convenient to carry out its purposes.

The RUUNAA distinguishes itself from its predecessor in that it provides greater guidance with respect to a number of member and manager issues (meetings, duties, resignation of members and managers, quorum and notice rules, etc.). Also, the RUUNAA addresses a number of financial issues such as prohibited distributions, compensation and other payments, reimbursement and indemnification, and advancement of expenses, as well as dissolution, winding up, and termination of an association.

In short, the RUUNAA modernizes the 1996 Uniform Act by addressing popular internal and external issues that would face an unincorporated nonprofit association today. Significantly, the project was executed in close coordination with similar efforts by the Uniform Law Conferences of Canada and Mexico, so widespread adoption of the Revised Act will have the added benefit of functional cross-border harmonization.

Uniform Unsworn Foreign Declarations Act

The Uniform Unsworn Foreign Declarations Act, promulgated by the Uniform Law Commission in 2008, 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.

2008 Amendments to the Uniform Probate Code

The Uniform Probate Code (UPC), which is fully adopted in 18 states (and partially adopted as various stand-alone acts in many others) provides an integrated statutory system for all sorts of probate and estate law matters. The UPC, along with its constituent stand-alone acts, has been frequently updated since its inception in 1969. The 2008 amendments to the UPC are designed to address four key issues. First, several sections having to do with cost-of-living adjustments have been updated for the first time since 1990. Second, definitions have been added to make the UPC consistent with the use of electronic signatures and records, and to allow for the option of notarized wills (as an alternative to attestation by two witnesses). Third, Article II of the UPC dealing with intestate succession has been reorganized and expanded to extend intestate

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR
IN BIG SKY, MONTANA
JULY 18 – 25, 2008

WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

November 8, 2008

ABOUT ULC

The **Uniform Law Commission (ULC)**, also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 117th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

**DRAFTING COMMITTEE ON UNIFORM UNSWORN FOREIGN
DECLARATIONS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

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UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

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UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

PREFATORY NOTE

Declarations of persons abroad are routinely received in state and federal courts and agencies. Many of the declarations are affidavits and other documents sworn to by declarants before authorized officials in United States embassies and consulate offices. Affiants in foreign countries with information relevant to U.S. proceedings or transactions could visit the U.S. consular office to finalize their affidavit or statement in a manner similar to a person within the U.S. visiting a notary public.

In recent years, though, particularly after the September 11, 2001 terrorist attacks, access to U.S. embassies and consulates has become more difficult because of closings or added security. Thus, obtaining appropriately sworn foreign declarations for court or agency use is much more difficult in the post-9/11 environment.

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 legal 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 United States to be recognized and valid as the equivalent of a sworn affidavit if it contained an affirmation substantially in the form set forth in the federal act.

Several states also allow the use of foreign declarations (e.g., Cal. Civ. Proc. Code § 2015.5), 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 the 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 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 proceedings in the U.S. It should be enacted in every state.

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Unsworn Foreign Declarations Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) "Law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) "Unsworn declaration" means a declaration in a signed record that is not given under

oath, but is given under penalty of perjury.

Comment

1. The District of Columbia is included in the definition of “boundaries of the United States” to eliminate any potential ambiguity.

2. The definition of “law” is drafted in an open-ended manner to give it the widest possible application. The term is not ordinarily defined in uniform acts but in this context it is important that judges applying the act be in no doubt about its breadth. The wording is taken from the definition contained in the Revised Model State Administrative Procedure Act.

3. A “record” includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

4. The definition of “sign” is broad enough to cover any writing containing a traditional signature and any record containing an electronic signature. It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

SECTION 3. APPLICABILITY. This [act] applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This [act] does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Comment

In keeping with the limited scope of the act, an unsworn declaration made within the geographical boundaries of the United States, even if the location is under the control of another sovereign, such as foreign embassies or consulates or federally recognized Indian lands, should not be deemed “outside the boundaries of the United States” for the purposes of this act. The act, so limited, meets the immediate needs addressed by the act. Moreover, notaries and officials authorized to administer oaths are more readily available in the United States.

SECTION 4. VALIDITY OF UNSWORN DECLARATION.

(a) Except as otherwise provided in subsection (b), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this [act] has the same effect as a sworn declaration.

(b) This [act] does not apply to:

- (1) a deposition;
- (2) an oath of office;
- (3) an oath required to be given before a specified official other than a notary public;
- (4) a declaration to be recorded pursuant to [insert appropriate section of state's real estate law]; or
- (5) an oath required by [insert appropriate section of state's law relating to self-proved wills].

Legislative Note: Enacting states will need to ensure that the perjury laws of the enacting state include unsworn declarations.

Comment

The use of unsworn declarations is not limited to litigation. Unsworn declarations would be usable in civil, criminal, and regulatory proceedings and settings. However, there are certain contexts in which unsworn declarations should not be used, and these contexts are listed in this section.

Except as provided in section 4 of this act, pursuant to this section, an unsworn declaration meeting the requirements of this act may be used in a state proceeding or transaction whenever other state law authorizes the use of a sworn declaration. Thus, if other state law, permits the use of either sworn testimony or an affidavit, an unsworn declaration meeting the requirements of this act would also suffice. Additionally, if other state law authorizes other substitutes for a sworn declaration, such as an affirmation, then as provided in subsection (a) of this section, an unsworn declaration meeting the requirements of this act could serve as a substitute for an affirmation.

946.43
946.31
946.32

SECTION 5. REQUIRED MEDIUM. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

Comment

Courts and agencies often restrict the medium in which pleadings, motions, and other documents may be filed. This section recognizes that such a restriction is binding on a person seeking to introduce a foreign unsworn declaration.

SECTION 6. FORM OF UNSWORN DECLARATION. An unsworn declaration under this [act] must be in substantially the following form:

I declare under penalty of perjury under the law of [insert name of enacting state] that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ___ day of _____, _____, at _____,
(date) (month) (year) (city or other location, and state)

(country)

(printed name)

(signature)

Legislative Note: Enacting states will need to ensure that the perjury laws of the enacting state include unsworn declarations.

Comment

Section 3 of this act authorizes the use of unsworn declarations made outside the boundaries of the United States as defined in Section 2(1). The formal declaration in this section recites the areas defined as within the boundaries and does not rely on the definition in Section 2(1) because the person making the formal declaration might believe, and therefore declare that he or she is outside the boundaries of the United States even though at the time of the declaration the person making the declaration is in the Virgin Islands, Puerto Rico, or one of the other territories or insular possessions of the United States. The form of the declaration lessens the opportunity for mistake or fraud.

SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

This section recites the importance of uniformity among the adopting states when applying and construing the act.

SECTION 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

This section responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

SECTION 9. REPEALS. The following are repealed: _____.

Comment

Any state enacting the Uniform Unsworn Foreign Declarations Act likely will need to amend the state's laws by repealing any conflicting statutory provisions. This Section was added based on comments at the National Conference.

SECTION 10. EFFECTIVE DATE. This [act] takes effect [date].

Comment

This act will become effective in the enacting jurisdiction on the designated date.



l bjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
X-ref

Insert

3-16-09
d-note

and providing a penalty

1

AN ACT ^{gen.} relating to: ~~The Uniform Unsworn Foreign Declarations Act~~

Analysis by the Legislative Reference Bureau

Under current law, a person may be required to swear to or affirm the truth of
> a statement he or she has given or will give. A sworn or affirmed statement may be
> required in court proceedings, administrative proceedings, real estate or probate
> matters, and other legal matters.

Under current law, a person who gives a sworn or affirmed statement that the
> person does not believe to be true is guilty of false swearing and is subject to a fine
not to exceed \$10,000 and, depending on the circumstances, imprisonment not to
exceed nine months or imprisonment not to exceed six years, or both the fine and a
period of imprisonment. A person who gives a sworn or affirmed statement that is
inconsistent with another statement he or she gave under oath or affirmation is also
> guilty of false swearing and is subject to a fine not to exceed \$10,000, imprisonment
not to exceed six years, or both.

Under this bill, a statement that is unsworn and not affirmed may be given the
same effect as a sworn or affirmed statement if the person making the statement is
outside the geographic boundaries of the United States and ^{if} that is he or she signs
a statement declaring, under penalty of false swearing, that his or her statement is
true and correct. Under the bill, a statement that is unsworn and not affirmed may
not be used in place of a sworn or affirmed statement in a deposition, an oath of office,
an oath that is required to be given before a specific official (except a notary public),

a document required to record a real estate transfer, or an oath or affirmation required for certain wills. *AA*

change →

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 887.015 of the statutes is created to read:

2 **887.015 Uniform unsworn foreign declarations act.** (1) SHORT TITLE. This
3 section may be cited as the Uniform Unsworn Foreign Declarations Act.

4 (2) (intro.) DEFINITIONS. In this section:

5 (a) "Boundaries of the United States" means the geographic boundaries of the
6 United States, Puerto Rico, the United States Virgin Islands, and any territory or
7 insular possession subject to the jurisdiction of the United States.

8 (b) "Law" includes the federal or a state constitution, a federal or state statute,
9 a judicial decision or order, a rule of court, an executive order, or an administrative
10 rule, regulation, or order. *AA*

11 (c) "Record" means information that is inscribed on a tangible medium or that
12 is stored in an electronic or other medium and is retrievable in perceivable form.

13 (d) "Sign" means, with present intent to authenticate or adopt a record, either
14 of the following:

- 15 1. To execute or adopt a tangible symbol.
- 16 2. To attach to or logically associate with the record an electronic symbol, sound,
17 or process.

18 (e) "State" means a state of the United States, the District of Columbia, Puerto
19 Rico, the United States Virgin Islands, or any territory or insular possession subject
20 to the jurisdiction of the United States.

1 (f) "Sworn declaration" means a declaration in a signed record given under oath
2 or affirmation. Sworn declaration includes a sworn or affirmed statement,
3 verification, certificate, or affidavit. *A*

4 (g) "Unsworn declaration" means a declaration in a signed record that is not
5 given under oath, but is given under penalty of false swearing.

6 (3) APPLICABILITY. This section applies to an unsworn declaration by a
7 declarant who at the time of making the declaration is physically located outside the
8 boundaries of the United States, whether or not the location is subject to the
9 jurisdiction of the United States. This section does not apply to a declaration by a
10 declarant who is physically located on property that is within the boundaries of the
11 United States and subject to the jurisdiction of another country or a federally
12 recognized American Indian tribe. *AA*

13 (4) VALIDITY OF UNSWORN DECLARATIONS. (a) Except as provided in sub. (b), and
14 notwithstanding s. 906.03, if a law of this state requires or permits use of a sworn
15 declaration, an unsworn declaration meeting the requirements of this section has the
16 same effect as a sworn declaration.

17 (b) This section does not apply to any of the following:

- 18 1. A deposition.
- 19 2. An oath of office.
- 20 3. An oath required to be given before a specified official other than a notary
21 public.
- 22 4. A declaration to be recorded pursuant to s. 706.06, 706.07, or 706.25.
- 23 5. An oath required under s. 853.04.

1 (5) ^ΔREQUIRED MEDIUM. If a law of this state requires that a sworn declaration
2 be presented in a particular medium, an unsworn declaration must be presented in
3 that medium.

4 (6) ^ΔFORM OF UNSWORN DECLARATION An unsworn declaration under this section
5 must be in substantially the following form:

6 I declare under penalty of false swearing under the law of Wisconsin that the
7 foregoing is true and correct, and that I am physically located outside the geographic
8 boundaries of the United States, Puerto Rico, the United States Virgin Islands, and
9 any territory or insular possession subject to the jurisdiction of the United States.

INSERT
4-9

10 Executed on the ____ day of _____, _____, at _____,
11 _____ .
12
13

14 (7) ^ΔUNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing
15 this uniform act, consideration must be given to the need to promote uniformity of
16 the law with respect to its subject matter among the states that enact it. ^{Δ Δ}

17 (8) ^ΔRELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. ^Δ

18 (a) Except as provided in par. (b), this section modifies, limits, and supersedes the
19 federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001,
20 et seq.

21 (b) This section does not modify, limit, or supersede 15 USC 7001 (c) or
22 authorize electronic delivery of any of the notices described in 15 USC 7003 (b). ^Δ

23 SECTION 2. 946.32 (1) (a) of the statutes is amended to read:

24 946.32 (1) (a) Under oath or affirmation or upon signing a statement pursuant
25 to s. 887.015 makes or subscribes a false statement which he or she does not believe

1 is true, when such oath ~~or~~, affirmation, or statement is authorized or required by law
2 or is required by any public officer or governmental agency as a prerequisite to such
3 officer or agency taking some official action.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

4 **SECTION 3.** 946.32 (1) (b) of the statutes is amended to read:

5 946.32 (1) (b) Makes or subscribes 2 inconsistent statements under oath or
6 affirmation or upon signing a statement pursuant to s. 887.015 in regard to any
7 matter respecting which an oath ~~or~~, affirmation, or statement is, in each case,
8 authorized or required by law or required by any public officer or governmental
9 agency as a prerequisite to such officer or agency taking some official action, under
10 circumstances which demonstrate that the witness or subscriber knew at least one
11 of the statements to be false when made. The period of limitations within which
12 prosecution may be commenced runs from the time of the first statement.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

13 **SECTION 4.** 946.32 (2) of the statutes is amended to read:

14 946.32 (2) Whoever under oath or affirmation or upon signing a statement
15 pursuant to s. 887.015 makes or subscribes a false statement which the person does
16 not believe is true is guilty of a Class A misdemeanor.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

17 (END)

D-note

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2052/P1bkins
PJH:bjk:...

Insert 4-9

1

2

Executed on the day of,(year), at(city or other location, and state),

3

....(country).

4

....(printed name)

5

....(signature)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-20520dn

PJH:.....

epi
Lbjk

Date

Senator Risser:

Please note that under this draft, an unsworn foreign declaration is made under the penalty of false swearing, not of perjury. Under s. 946.31 of the statutes, perjury is reserved for oral statements. Please let me know if you have any questions about, or would like to discuss, the draft.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2052/P1dn
PJH:bjk:md

March 26, 2009

Senator Risser:

Please note that under this draft, an unsworn foreign declaration is made under the penalty of false swearing, not of perjury. Under s. 946.31 of the statutes, perjury is reserved for oral statements. Please let me know if you have any questions about, or would like to discuss, the draft.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2052/P1

PJH:bjk:md

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA

reg.

1 AN ACT to amend 946.32 (1) (a), 946.32 (1) (b) and 946.32 (2); and to create
2 887.015 of the statutes; relating to: the Uniform Unsworn Foreign
3 Declarations Act and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person may be required to swear to or affirm the truth of a statement he or she has given or will give. A sworn or affirmed statement may be required in court proceedings, administrative proceedings, real estate or probate matters, and other legal matters.

Under current law, a person who gives a sworn or affirmed statement that the person does not believe to be true is guilty of false swearing and is subject to a fine not to exceed \$10,000 and, depending on the circumstances, imprisonment not to exceed nine months or imprisonment not to exceed six years, or both the fine and a period of imprisonment. A person who gives a sworn or affirmed statement that is inconsistent with another statement he or she gave under oath or affirmation is also guilty of false swearing and is subject to a fine not to exceed \$10,000, imprisonment not to exceed six years, or both.

Under this bill, a statement that is unsworn and not affirmed may be given the same effect as a sworn or affirmed statement if the person making the statement is outside the geographic boundaries of the United States and if he or she signs a statement declaring, under penalty of false swearing, that his or her statement is true and correct. Under the bill, a statement that is unsworn and not affirmed may not be used in place of a sworn or affirmed statement in a deposition, an oath of office, an oath that is required to be given before a specific official (except a notary public),

a document required to record a real estate transfer, or an oath or affirmation required for certain wills.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 887.015 of the statutes is created to read:

2 **887.015 Uniform unsworn foreign declarations act. (1) SHORT TITLE.** This
3 section may be cited as the Uniform Unsworn Foreign Declarations Act.

4 **(2) DEFINITIONS.** In this section:

5 (a) "Boundaries of the United States" means the geographic boundaries of the
6 United States, Puerto Rico, the United States Virgin Islands, and any territory or
7 insular possession subject to the jurisdiction of the United States.

8 (b) "Law" includes the federal or a state constitution, a federal or state statute,
9 a judicial decision or order, a rule of court, an executive order, or an administrative
10 rule, regulation, or order.

11 (c) "Record" means information that is inscribed on a tangible medium or that
12 is stored in an electronic or other medium and is retrievable in perceivable form.

13 (d) "Sign" means, with present intent to authenticate or adopt a record, either
14 of the following:

15 1. To execute or adopt a tangible symbol.

16 2. To attach to or logically associate with the record an electronic symbol, sound,
17 or process.

1 (e) "State" means a state of the United States, the District of Columbia, Puerto
2 Rico, the United States Virgin Islands, or any territory or insular possession subject
3 to the jurisdiction of the United States.

4 (f) "Sworn declaration" means a declaration in a signed record given under oath
5 or affirmation. Sworn declaration includes a sworn or affirmed statement,
6 verification, certificate, or affidavit.

7 (g) "Unsworn declaration" means a declaration in a signed record that is not
8 given under oath, but is given under penalty of false swearing.

9 (3) APPLICABILITY. This section applies to an unsworn declaration by a
10 declarant who at the time of making the declaration is physically located outside the
11 boundaries of the United States, whether or not the location is subject to the
12 jurisdiction of the United States. This section does not apply to a declaration by a
13 declarant who is physically located on property that is within the boundaries of the
14 United States and subject to the jurisdiction of another country or a federally
15 recognized American Indian tribe.

para

16 (4) VALIDITY OF UNSWORN DECLARATIONS. (a) Except as provided in sub.(b), and
17 notwithstanding s. 906.03, if a law of this state requires or permits use of a sworn
18 declaration, an unsworn declaration meeting the requirements of this section has the
19 same effect as a sworn declaration.

20 (b) This section does not apply to any of the following:

- 21 1. A deposition.
- 22 2. An oath of office.
- 23 3. An oath required to be given before a specified official other than a notary
24 public.
- 25 4. A declaration to be recorded pursuant to s. 706.06, 706.07, or 706.25.

1 5. An oath required under s. 853.04.

2 **(5) REQUIRED MEDIUM.** If a law of this state requires that a sworn declaration
3 be presented in a particular medium, an unsworn declaration must be presented in
4 that medium.

5 **(6) FORM OF UNSWORN DECLARATION.** An unsworn declaration under this section
6 must be in substantially the following form:

7 I declare under penalty of false swearing under the law of Wisconsin that the
8 foregoing is true and correct, and that I am physically located outside the geographic
9 boundaries of the United States, Puerto Rico, the United States Virgin Islands, and
10 any territory or insular possession subject to the jurisdiction of the United States.

11 Executed on the day of,(year), at(city or other location, and state),

12 (country).

13 (printed name)

14 (signature)

15 **(7) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing
16 this uniform act, consideration must be given to the need to promote uniformity of
17 the law with respect to its subject matter among the states that enact it.

18 **(8) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.**

19 (a) Except as provided in par. (b), this section modifies, limits, and supersedes the
20 federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001,
21 et seq.

22 (b) This section does not modify, limit, or supersede 15 USC 7001 (c) or
23 authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

24 **SECTION 2.** 946.32 (1) (a) of the statutes is amended to read:

Duerst, Christina

From: Tuschen, Terry
Sent: Friday, October 02, 2009 2:17 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-2052/1 Topic: Uniform Unworn Foreign Declarations Act

Please Jacket LRB 09-2052/1 for the SENATE.