

Legislative Analysis



UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

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Senate Bill 688 with committee amendments

Senate Bill 689 (Substitute H-1)

Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 11-25-12

A SUMMARY OF SENATE BILLS 688 & 689 AS REPORTED BY HOUSE COMMITTEE

Senate Bill 689 would adopt the Uniform Unsworn Foreign Declarations Act, which would establish a procedure by which a person living or traveling outside of the United States who must sign a sworn statement could make that statement under penalty of perjury without having to take an oath before a U.S. consular officer.

The Uniform Unsworn Foreign Declarations Act is a model act proposed by the Uniform Law Commission (also known as the National Council of Commissioners on Uniform State Laws). Commentary from the Commission says that under the uniform 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.

Senate Bill 688 would make a complementary amendment to the Michigan Penal Code. It would provide a felony penalty for any person making a false declaration in a record that he or she signed that was given under penalty of perjury.

The bills are tie-barred to each other, meaning that neither can take effect unless both are enacted. Both bills and Chapter 21A would take effect April 1, 2013.

Uniform Unsworn Foreign Declarations Act

Senate 689 (H-1) would amend Section 2102 of the Revised Judicature Act and add the new model act as Chapter 21A. An "unsworn declaration" would mean a declaration or other affirmation of truth in a signed record that was not given under oath, but was given under penalty of perjury. (MCL 600.2102 et al.) The bill would eliminate current provisions requiring an affidavit be certified by a U.S. consular officer if the person was residing in another country or by an appointed commissioner if taken in another state or US jurisdiction, and instead would require the affidavit be authenticated under the model act or be an unsworn declaration executed under Chapter 21A.

The bill would apply to an unsworn declaration by a declarant who at the time of making the declaration was physically located outside the boundaries of the U.S., whether or not the location was subject to U.S. jurisdiction. The bill would not apply to a declaration by a declarant who was physically located on property within the boundaries of the U.S. that

was subject to the jurisdiction of another country (such as a consulate or embassy) or a federally recognized Indian Tribe.

The bill would do all of the following:

- Specify that an unsworn declaration meeting the requirements of Chapter 21A would have the same effect as a sworn declaration.
- Provide that Chapter 21A would not apply to a deposition, oath of office, an oath required to be given before a specified official other than a notary public; a declaration to be recorded with a register of deeds; an oath required by Section 2504 of the Estates and Protected Individuals Code; or a declaration in a document filed with the court in the course of administering the estate of a decedent.
- Require an unsworn declaration to be presented in the same medium required for a sworn declaration.
- Require an unsworn declaration to be in substantially the form specified in the bill.
- When applying and construing Chapter 21A, give consideration to the need to promote uniformity of the law with respect to its subject matter among the states that enact the model act.
- Specify that Chapter 21A would modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, except for certain purposes.
- Define terms such as "boundaries of the United States," "law," "record," "sign," "sworn declaration," and "state."

Felony Provision

Senate Bill 688 would amend the Michigan Penal Code (750.423). Currently, a person authorized under state law to take an oath or required to do so, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury punishable by imprisonment for up to 15 years.

The bill would apply the above provision and penalty to a person who willfully makes a false declaration in a record that is signed by the person and given under penalty of perjury (such as in a record made under Senate Bill 689). "Record" would mean information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form. "Signed" means the person did either of the following to authenticate or adopt the record: (1) executed or adopted a tangible symbol, or (2) attached to or logically associated with the record an electronic symbol, sound, or process.

FISCAL IMPACT:

By authorizing the use of certain unsworn statements (as defined in the bills) in state courts, the bills have the potential to affect the number of persons convicted of different criminal offenses. As such, they have the potential to affect state and local correctional costs. However, any impacts should be negligible relative to overall costs.

POSITIONS:

The State Bar of Michigan indicated support for the bills. (10-18-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.