

PA10-033

HB5377

House	1081-1085	5
Judiciary	3822-3823	2
Senate	1590-1606	17
		24

H – 1076

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2010**

**VOL.53
PART 4
895– 1168**

On page 25, Calendar 350, House Bill Number 5377,
AN ACT ADOPTING THE UNIFORM UNSWORN FOREIGN
DECLARATIONS ACT, favorable report of the Committee on
Judiciary.

SPEAKER ALTOBELLO:

Representative Fox of the 146th, you have the
floor, sir.

REP. FOX (146th):

Thank you, Mr. Speaker.

I move for the acceptance of the Joint
Committee's favorable report and passage the bill.

SPEAKER ALTOBELLO:

The question before the Chamber is acceptance of
the Joint Committee's favorable report and passage of
the bill.

Please proceed, sir.

REP. FOX (146th):

Thank you, Mr. Speaker.

Many of us are aware that when we execute a
document in Connecticut that's required to be done
under oath it has to be done before a notary public or
a commissioner of the Superior Court and that is the
-- the mechanism that we use here in Connecticut when
attesting to certain legal documents. What this bill

does is it addresses the situation where individuals are out of the country, not just out of state, but out of the -- the jurisdiction of the United States and they need to execute documents that are sworn to. And what this bill does is it establishes -- or adopts the uniform procedure that has been established to execute sworn testimony or -- unsworn testimony but legally execute testimony that will be acceptable here in the State of Connecticut.

And what this does is it makes it easier for those individuals who are located outside of the jurisdiction of the United States to execute those documents. Currently, when an individual has to get a document sworn to, they would have to go and the procedure as -- as it was testified during the public hearing was, you would need an apostle under the Hague Convention which abolishes the requirement of legalization for foreign public documents.

It's a very complicated procedure. It can be difficult. It would require access to an embassy. And it's something that, in many cases, would not be necessary and can be unduly cumbersome.

Mr. Speaker, the Clerk has an amendment, LCO Number 3555. I ask that that be called and I be

ch/gdm/gbr
HOUSE OF REPRESENTATIVES

85
April 20, 2010

permitted to summarize.

SPEAKER ALTOBELLO:

Will the Clerk please call LCO 3555, which shall be designated House Amendment Schedule A.

THE CLERK:

LCO Number 3555, House "A", offered by Representative Lawlor.

SPEAKER ALTOBELLO:

Representative Fox asks leave of the chamber to summarize. Is there objection? Seeing none, please proceed sir.

REP. FOX (146th):

Thank you, Mr. Speaker.

This bill makes several very technical changes to the bill that came out of the Judiciary Committee and I would ask -- urge adoption of the amendment.

SPEAKER ALTOBELLO:

The question before the Chamber is adoption of House A.

Will you remark further on House A?

Representative O'Neill of the 69th, you have the floor, sir.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

I would join in urging adoption of House A. It is about the most technical thing I've seen in a while.

Thank you, Mr. Speaker.

SPEAKER ALTOBELLO:

Thank you for your remarks, Representative O'Neill.

Further on House A? Further on House A?

If not, I'll try your minds, all those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER ALTOBELLO:

Opposed?

The ayes have it.

House A is adopted.

Further on the bill as amended? Further on the bill as amended?

If not, staff and guests please return to the well. House members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting by

roll call. Members to the chamber.

SPEAKER ALTOBELLO:

Have all the members from Meriden voted? Have all the members from the silver city voted? Have all members voted? Have all members voted? Please check the board to make sure your vote has been properly cast.

If all the members have voted, the machine will be locked. Would the Clerk please take a tally and would the Clerk please announce the tally?

THE CLERK:

House Bill Number 5377 as amended by House A.

Total Number voting 144

Necessary for adoption 73

Those voting Yea 144

Those voting Nay 0

Those absent and not voting 7

SPEAKER ALTOBELLO:

The bill as amended is passed.

Would the Clerk please call Calendar 363?

THE CLERK:

On page 27, Calendar 363, House Bill Number 5542,
AN ACT MAKING MINOR, TECHNICAL AND CONFORMING CHANGES
TO CERTAIN STATUTES CONCERNING CRIMINAL AND CIVIL LAW

S - 602

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2010**

**VOL. 53
PART 5
1267 - 1608**

cd
SENATE

88
April 28, 2010

chamber is Senate Amendment Schedule "A."

All in favor please indicate by saying aye.

SENATORS:

Aye.

THE CHAIR:

All those opposed say nay.

The ayes have it. Senate "A" is adopted.

Will you remark further on the bill as amended?

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, now if there's no objection, might this item be placed on the consent calendar?

THE CHAIR:

Is there objection to place this item on consent calendar? Is there objection? Seeing none, so ordered. This item may be placed on the consent calendar.

Mr. Clerk.

THE CLERK:

Calendar page 13, Calendar Number 439, Files Number 561 and 625, House Bill 5377, AN ACT

ADOPTING THE UNIFORM UNSWORN FOREIGN DECLARATIONS

cd
SENATE

89
April 28, 2010

ACT, as amended by House Amendment Schedule "A,"
favorable report of the Committee on Judiciary.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, I move acceptance of the joint
committee's favorable report and passage of the
bill in concurrence with the House.

THE CHAIR:

The question before the chamber is acceptance
and passage in concurrence. E

Will you remark further?

SENATOR MCDONALD:

Yes, Mr. President.

Mr. President, this legislation comes to us as
a proposal from the Connecticut Bar Association,
and, in particular, from its International Law and
Practice section. Mr. President, this is a model
uniform act that has been adopted by a few states
and is intended to deal with circumstances where
individuals need to provide information that would
be executed or signed under oath in a foreign
jurisdiction but that they would not be otherwise

cd
SENATE

90
April 28, 2010

able to have it done by a notary public and this provides a protocol adopted by the Uniform State Laws Commission of the National Conference of Law Commissioners to come up with a situa -- a solution to that problem and, in particular, we were told in the public hearing that this situation, though rare, does result as a -- as a consequence of certain embassies and consular offices not having ready access to individuals as a result of security concerns and tightened security that has resulted in those consulates and embassies after the disaster of 9/11. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

A few questions, through you to the proponent of the bill.

THE CHAIR:

Please proceed.

SENATOR KISSEL:

Unsworn foreign declarations, is what we're talking about here documents where, if they were

cd
SENATE

91
April 28, 2010

in Connecticut, what we would typically require is the certification by a notary public or by practicing attorney? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Yes, through you, Mr. President, yes.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you. And I recall somewhere in the recesses of my mind this notion in the Secretary of State's Office that comes up every once in a while, apostilles. And I'm wondering if -- if what we're about with this bill has anything to do with the Law of apostilles? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you, I don't know the answer to that, Senator Kissel. I certainly don't consider myself an expert on the Law of apostilles.

cd
SENATE

92
April 28, 2010

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

All -- the only reason I raise that is occasionally in the Judiciary Committee we get a proposal by the Secretary of State regarding modifying our laws regarding apostilles every once in a while, and I had asked several years ago what apostilles was about, and I think it had something to do with documents executed in a foreign country being recognized in our state. And it struck me that perhaps there was some relationship between that and unsworn foreign declarations being recognized in our state. I remember when Robert Farr, who's currently the chairman of the Board of Pardons and Paroles, and I served as ranking members on the Judiciary Committee. One of his nuggets of truth -- and I followed through and he tends to be correct -- is that whenever we're dealing with a uniform act, it is only uniform in that it is not uniform from state to state to state. Essentially, what he indicated takes place is that there's the promulgation of a uniform act,

cd
SENATE

93
April 28, 2010

but then each state takes that and carves into it some variations to make it more particularized for the purposes of that individual state.

What is basically being proposed through this uniform act, in other words, what are some of the indicia of authenticity that would be required for foreign documents being sworn to outside the ambits of the State of Connecticut? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you to Senator Kissel, under the legislation, an individual who would be filing such a declaration would have to do it in conformity with Section 6 which would require that the individual acknowledge the execution of the document, would be under penalty of perjury under the law of this state, and even though the individual is not located without -- within the jurisdiction of the state that the individual would be subject to prosecution for perjury in the state if -- if anything in the document, so

executed, was found to be incorrect and known to be untrue at the time that it was executed. I should also just mention briefly that though I don't express any expertise in the laws relating to apostilles, it is something that is pursued under the Hague Convention. And, in particular, there's a specific Hague Convention that abolishes the requirement of legalization of foreign documents but that typically requires an individual to administer an oath under the Hague Convention provisions. This would not require the administration of an oath because in some circumstances there -- there's nobody who is available to administer that oath. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

So we're sort of cra -- sort of grafting on to our current set of laws a penalty and that penalty is the crime of perjury. And an individual is subjecting themselves to possible prosecution for perjury if outside the territorial boundaries of

cd
SENATE

95
April 28, 2010

the state of Connecticut they swear to a person's signature. And I know here, in Connecticut, we have certain safeguards above and beyond an individual taking a lit -- a test and being qualified as a notary public or being a -- an attorney. What safeguards would there be, if any, required of an individual, for example, in the Hague, in the Netherlands, taking an oath or -- or -- or certifying to someone's signature, does -- does this require them to check for identification? Some kind of proof from the individual that they -- he or she is who they are? Because perjury the way you've defined it -- and I believe it's the way it is in the statutes -- brings with it a certain scienter or mens rea that one at least knew or should have known, and if we're going to rely on knew or should have known, what would be reasonable activities on the part of the person who's acknowledging the signature that they should have at least looked -- I mean it -- should they at least ask for identification? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

cd
SENATE

96
April 28, 2010

SENATOR MCDONALD:

Through you, Mr. President, to Senator Kissel, if I wasn't clear, this is an unsworn foreign declaration, meaning that the individual is not physically located within the boundaries of the United States or any of its territories or insular possessions. And the -- under this act, the individual would be executing a document without provide -- without doing so in front of another individual. It would essentially be a self-proving authentication acknowledging that the individual is outside of the jurisdiction of the United States and is ex -- executing the document for use within this state and with the full knowledge that they would be subject to a charge of perjury under the laws of the state if any of the information is not correct or true.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you.

There's a -- there -- I'm just wondering, there's a term that Doc Gunther used to use all the time, "paper tiger," saying that it looks good

cd
SENATE

97
April 28, 2010

on paper but it has no teeth. I'm wondering if someone's outside the jurisdiction of the State of Connecticut, their acknowledgement that they might be subject to perjury, but we would have no ability to extradite them to Connecticut, would we? In other words, let's say that clearly they have nefarious intentions, and that someone's out there doing this, flaunting the law, do we have an ability to haul them over to -- to the State of Connecticut and charge them with perjury, or would they have to do something else for us to be able to obtain jurisdiction over them? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you, such an individual would be subject to a charge of perjury and could be extradited under a different Hague Convention -- Convention for an extradition from a foreign country to the United States. So I don't think that's -- there may be some interesting legal issues relating to this legislation, but I don't

cd
SENATE

98
April 28, 2010

believe that should be too much of a concern. We would still have the ability to extradite somebody if they perjured themselves.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

Just one last question, through you to the proponent of the bill. What kind of business transactions does this particularly involve itself with if Senator McDonald knows?

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, this would apply to any situation where a document required that it be sworn to for purposes of its use in the state of Connecticut but that individual was physically located outside of the country.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. No further questions.

cd
SENATE

99
April 28, 2010

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

Thank -- thank you, Mr. President.

I have concerns that I've addressed briefly with Senator McDonald about this bill. In my former law practice, I used, as lawyers do, foreign affidavits and declarations quite frequently in business transactions between companies located in different countries and, also with respect to family practice, child custody agreements would be signed. And there are a whole variety of places in which -- situations in which a document, particularly an affidavit, will -- will be signed in another country. And the protection that we've had for those has been that the person in the other country must have the document signed in front of an American consulate or a member of the embassy team, the American Embassy team. And so you have the authentication through that kind of process.

This bill presumes -- and this is what I'm sure its benefit is that the person who's signing a declaration or an affidavit is located nowhere

cd
SENATE

100
April 28, 2010

near an embassy or consulate, way out in the woods someplace or the desert or someplace where it'd be highly inconvenient to -- to get that kind of a notarization by the American Consulate or Embassy. I -- I think that an unsworn declaration by a person in another country over whom we have no jurisdiction in Connecticut is inherently dangerous, and so I think, on balance, I'm going to vote no on this bill subject to any further dialogue or further comments by Senator McDonald. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Are there any further remarks? Any further remarks?

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

I would urge Senator Meyer to reconsider his position. The issue that is addressed by this legislation is the result of -- the direct result of -- individuals not being able to gain access to embassies or consuls because of heightened security in many foreign countries where the

cd
SENATE

101
April 28, 2010

access of individuals into an American embassy or consulate is precluded because of security reasons. That's also to presume that a embassy or consulate was nearby, and, certainly, that is not true in many parts of the world. Embassies and consulates are located typically in -- in either capitals or major metropolitan areas of a country. And certainly that is not true in many foreign countries where individuals might be located. So this is an issue that has been addressed on a national level by the National Conference of Commissioners on Uniform State Laws and was adopted by them to address what has become apparently a more pressing legal need for the -- for the -- some workable solution to a very difficult problem. So with all due respect to the issues that are raised by Senator Meyer, I would urge adoption of the -- of the bill. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Senator Kissel.

SENATOR KISSEL:

Thank -- thank you very much for the second

cd
SENATE

102
April 28, 2010

time. And along the lines of what Senator McDonald indicated, although I do respect the views of Senator Meyer, especially given the great wealth of legal experience he's had regarding this, while I'm not familiar with the embassy situation either in New York City or in Washington, I have it on good account that in the city of London that Embassy Row which is located next to Kensington Gardens that in -- there's high, high security. You cannot walk along that street with a camera. There are individuals stationed on either end with submachine guns, and I believe that that might be an impediment to obtaining documents being signed by individuals in those embassies. Granted that's not where the American embassy is located but, certainly, there's a sense of heightened security throughout foreign capitals where we do an awful lot of business relations, business enterprise. My guess is that it probably would be similar in South American nations, as well.

Unfortunately, the world has changed, not only since 9/11, but indeed, in Great Britain after the tube bombings that occurred just one or two days

cd
SENATE

103
April 28, 2010

after the determination that London would be the next spot for the Summer Olympics. So they've gone through an awful lot of terrorism recently and have taken precautions.

United States has gone through an awful lot of terrorism and are taking precautions. My guess is that other foreign capitals are as well and that probably is -- is probably a real impediment to the way of life that Senator Meyer was able to practice law and probably not that long ago. Through you, Mr. President.

THE CHAIR:

Will you remark further? Will you remark further? If not, the Chair will ask the Clerk to announce that a roll call vote is in progress in the Senate.

THE CLERK:

Immediate roll call has been ordered in the Senate. Will all Senators please return to the chamber. Immediate roll call has been ordered in the Senate. Will all Senators please return to the chamber.

THE CHAIR:

Thank you, Mr. Clerk.

The machine is opened.

Have all Senators voted? Please check the board to make certain that your vote is properly recorded. If all Senators have voted, the machine will be closed. And would the Clerk please take a tally.

THE CLERK:

Motion is on passage of House Bill 5377, in concurrence with the House.

Total Number Voting	35
Those voting Yea	34
Those voting Nay	1
Those absent and not voting	1

THE CHAIR:

The bill has passed.

Mr. Clerk.

THE CLERK:

Calendar page 15, Calendar Number 452, File Number 533, Substitute for House Bill 5376, AN ACT CONCERNING THE REVISOR'S TECHNICAL CORRECTIONS TO THE GENERAL STATUTES, favorable report of the Committee on Judiciary.

THE CHAIR:

Senator McDonald.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 12
3696 – 4026**

2010



30 Bank Street
 PO Box 350
 New Britain, CT 06050-0350
 06051 for 30 Bank Street
 (860)223-4400
 fax (860)223-4488

Testimony of Houston Putnam Lowry
 Chair of the
 International Law & Practice Section of the Connecticut Bar Association
House Bill 5377 - An Act Adopting The Uniform Unsworn Foreign Declarations Act
 Judiciary Committee
 March 26, 2010

My name is Houston Putnam Lowry¹. I am the chair of the International Law & Practice Section of the Connecticut Bar Association, which supports House Bill 5377, An Act Adopting The Uniform Unsworn Foreign Declarations Act. The section supports enactment of this statute because it will promote international commerce.

The National Conference of Commissioners on Uniform State Laws adopted this act in July 2008. It has been adopted in Colorado, New Mexico and Utah. It has been introduced in the District of Columbia, Indiana, Minnesota, Tennessee, and Wisconsin legislatures this year.

Statements often have to be given under oath. Within the United States, this is easily done by taking an oath before a notary public (or a commissioner of Superior Court within Connecticut). Outside the United States, this is more difficult. An Apostille under the Hague Convention Abolishing The Requirement Of Legalisation For Foreign Public Documents is required to prove the authority of the person administering the oath. This can be difficult to obtain and imposes unnecessary extra costs. While United States consular officials will administer oaths, increased security caused by the September 11 incidents often makes it difficult to get access to embassies and consulates.

This bill adopted the federal solution used in 28 U.S.C. §1746,² namely the insertion of a specific clause will allow a document to qualify as a sworn document. The text required under this bill is:

¹ A member of Brown & Welsh, P.C.

² § 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

Testimony of Houston Putnam Lowry
Senate Bill 708 - An Act Adopting The Uniform Unsworn Foreign Declarations Act
March 26, 2009
Page 2

I declare under penalty of perjury under the law of Connecticut 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 (date) day of (month) , (year) , at
 (location)

It would be good practice to recite in the document that the signer is aware intentionally making a false statement is a class D felony under Connecticut law.

Some courts have ruled the federal statute does not apply to state court proceedings. While a number of states have adopted analogues, Connecticut has not. This act will address the issue in a uniform manner.

For these reasons, the Connecticut Bar Association's Section of International Law requests the Judiciary Committee favorably report House Bill 5377.

-
- (1) If executed without the United States: "I 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)".
 - (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".