



Van H. Wanggaard

Wisconsin State Senator

March 7, 2023

Testimony on Senate Bill 29

Thank you committee members, for this hearing today on Senate Bill 29, the Uniform Unsworn Declarations Act.

Simply, this bill will allow a Wisconsinite to make an unsworn declaration in lieu of signing an affidavit.

If you're like me the first time I heard the term, "unsworn declaration," right now you're wondering, "what the heck is an unsworn declaration?" An unsworn declaration is a written statement signed under the penalty of perjury but without a notary present.

Your next question is probably, "why would anyone need to make an unsworn declaration?" At times, obtaining an affidavit can be difficult, adding time and expense to our already cumbersome legal process. An affidavit requires an individual to find a notary to attest in person that they have sworn to tell the truth. Affidavits are useful when writing a will, or when someone is unavailable or unable to find a notary.

On the other hand, unsworn declarations are used when a witness is unavailable. Current Wisconsin law allows for a person to submit an unsworn declaration in lieu of an affidavit only if they are outside of the United States' jurisdiction. This bill simply eliminates that restriction so that any Wisconsinite can submit an unsworn declaration no matter where they are.

Federal courts have utilized them since the 1970's without problems. Wisconsin has authorized unsworn declarations for people located outside the country since 2009 without problems.

I believe the time has come to expand the use of unsworn declarations in Wisconsin to alleviate burdens on our court system, and I urge you to support SB 29.

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RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

Testimony on Senate Bill 29
Uniform Unsworn Declarations Act
Senate Committee on Judiciary & Public Safety
March 4, 2023

Chairman Wanggaard and Members of the Senate Judiciary Committee:

Thank you for the opportunity to speak in support of SB 29, the Uniform Unsworn Declarations Act (UUDA). I'd also like to thank Senator Wanggaard for being the lead author on this important legislation.

In 2010, Wisconsin adopted the Uniform Unsworn *Foreign* Declarations Act (2009 Act 166), which applied to declarations made outside the boundaries and jurisdiction of the United States. Existing law allows the use of unsworn declarations in certain circumstances, but it only applies to declarations made in a foreign country.

This bill replaces the Uniform Unsworn *Foreign* Declarations Act and aligns it with existing federal law. Federal courts have allowed sworn and unsworn declarations made inside or outside the United States since the late 1970s. (28 U.S.C. § 1746). Under federal law, an unsworn declaration is treated the same as a sworn declaration if the declaration was made under penalty of perjury and contains substantially the same language set out in the federal statute. SB 29 uses the same procedure and removes the requirement that the declarant is outside the jurisdiction of the United States.

When talking about this proposed bill, it is important to differentiate between a "sworn" declaration and an "unsworn" declaration. A "sworn" declaration is a statement of facts sworn to by the individual in front of a notary public or other authorized official. Sworn declarations are often required for court proceedings and administrative agency proceedings. However, sometimes it is difficult for an individual to meet the formalities required to "swear" to a declaration. For example, if an individual is in a foreign country, the individual may have to go to a U.S. embassy to find a notary public or other authorized official. The purpose of the uniform law is to make it easier for individuals to make declarations by allowing the use of "unsworn" declarations.



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To make an "unsworn" declaration, an individual signs a statement that the facts in the declaration are true and correct under penalty of perjury. The new uniform act expands current law to also allow the use of unsworn declarations made by an individual who is physically located in the United States but outside of Wisconsin. An unsworn declaration is treated the same as a sworn declaration if the declaration was made under penalty of perjury and contains substantially the same language set out in the federal statute.

It is important to note that this proposed legislation does not change any other aspects of current Wisconsin law and continues to include exceptions for unsworn declarations in certain circumstances such as depositions, oaths of office, and real estate transfers.

SB 29 will align state and federal law, alleviate burdens on potential declarants, and provide consistency across all states. This alignment will eliminate inconsistencies and confusion between state and federal law and save time and money in litigation.

The UUDA has been adopted by the Uniform Law Commission and is supported by the Wisconsin Judicial Council.

Thank you for your consideration of this important legislation. I'm happy to take any questions that you may have.

STATEMENT OF THOMAS L. SHRINER, JR., CHAIR OF THE EVIDENCE & CIVIL
PROCEDURE COMMITTEE OF THE WISCONSIN JUDICIAL COUNCIL, ON BEHALF OF
THE JUDICIAL COUNCIL, CONCERNING 2023 SENATE BILL 29, THE UNIFORM
UNSWORN DECLARATIONS ACT

BEFORE THE SENATE JUDICIARY & PUBLIC SAFETY COMMITTEE

TUESDAY, MARCH 7, 2023

The Wisconsin Judicial Council, as part of its charge to “[r]ecommend to the legislature any changes in the . . . operation and methods of conducting the business of the courts, including statutes governing . . . practice, procedure and related matters, which can be put into effect only by legislative action,” Wis. Stat. § 758.13(20(f)), has recommended that the Legislature adopt the Uniform Unsworn Declarations Act (UUDA), which was prepared and recommended for adoption by the National Conference of Commissioners on Uniform State Laws. In furtherance of its recommendation, the Judicial Council has studied the UUDA carefully, finds it to be a decided improvement over current practice, and now urges the Committee to act favorably on 2023 SB 29, which accomplishes that goal by replacing the current, inadequate version of the law found in Wis. Stat. § 887.015 with the more widely usable and convenient UUDA.

The same policy considerations that persuaded the Judicial Council to recommend and the Legislature to adopt current § 887.015 in 2009 support the current recommendation. Those were to allow the use of an unsworn declaration, made under penalty of false swearing, in all Wisconsin legal proceedings where an affidavit under oath had previously been required. Unfortunately, the 2009 version embodied in current § 887.015 can only be used if the declarant is located overseas at the time he or she makes the declaration. The adoption of SB 29 will make it unnecessary to first locate an official authorized under the law of any jurisdiction outside Wisconsin to administer an oath to the declarant before the declaration can be used in a Wisconsin proceeding. The benefit of the UUDA is that there will no longer be any geographical limitation on the use of this inexpensive and convenient mechanism for submitting evidence in the courts and agencies of Wisconsin. Thus, with the adoption of the SB 29, the flexibility and convenience of the unsworn declaration procedure will be available to Wisconsin litigants, courts, and agencies, without regard to the location of the declarant at the time the declaration is made.

An added benefit from adoption of the UUDA is that it will promote uniformity with federal practice. Since 1976, when Congress enacted the substantially identical 28 U.S.C. § 1746 (Unsworn Declarations under Penalty of Perjury), use of this convenient, inexpensive, and time-saving mechanism has achieved wide acceptance in federal practice. The Judicial Council recommends that the Legislature now make those benefits generally available to Wisconsin courts, agencies, litigants, and attorneys by adopting the UUDA. Passage of SB 29 will make litigation less expensive and simpler for litigants.

I will be glad to answer any questions you may have about SB 29.



**Written Testimony of Kaitlin Wolff
In Support of Senate Bill 29
The Uniform Unsworn Declarations Act
Before the Senate Committee on Judiciary and Public Safety
March 7, 2023**

Chair Wanggaard, Vice-Chair Jacque, and Members of the Committee:

My name is Kaitlin Wolff and I serve as Legislative Program Director for the Uniform Law Commission. The Uniform Law Commission, or ULC, is a nonprofit, nonpartisan organization based in Chicago that is made up of volunteer attorneys appointed by their states. The ULC's mission is to draft model legislation for states in areas in which uniformity is practical and desirable. I am writing in support of SB 29, which would enact the Uniform Unsworn Declarations Act.

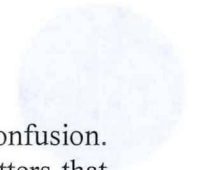
SB 29 updates existing Wisconsin law, the Uniform Unsworn Foreign Declarations Act, which was enacted in 2009. Under that law, a person who is physically located outside of the jurisdiction of the United States may make a written but unsworn declaration that meets the statute's requirements and may use that unsworn declaration in place of a sworn declaration in some circumstances. SB 29 revises the law so that a person does *not* need to be outside of the jurisdiction of the United States to make such a declaration. Essentially, SB 29 permits a person to make an unsworn declaration no matter where the person is physically located.

Being able to use an unsworn declaration provides a big time and cost savings in litigation. For instance, it means that a litigation witness will not need to search to find a notary public to notarize his or her affidavit. This is very beneficial, especially considering that some witnesses may be out of state, out of the country, live in remote areas, or have difficulty traveling for one reason or another.

Some examples of unsworn declarations include testimony given under affirmation rather than oath; an attested (or witnessed) will; statements made while under a belief of impending death; declarations made by an officer of the court; and other unsworn declarations authorized by a state's law or rules.

For litigators who practice in federal court, SB 29 will be familiar because SB 29 harmonizes federal and state law. Federal law has allowed unsworn declarations to be used in federal courts in the United States since the late 1970s. Under federal law, an unsworn declaration is treated the same as a sworn declaration if the declaration was made under penalty of perjury and contains substantially the same language set out in the federal statute. SB 29 uses the same procedure.

SB 29 also provides consistency across the states. Many states have their own statutes and procedures regarding unsworn declarations. These statutes and rules use varying language and



have different exceptions. Enacting SB 29 helps eliminate inconsistencies and confusion. Uniformity is important because often unsworn declarations will prove valuable in matters that involve more than one state or jurisdiction. SB 29 will also ease some of declarants' burdens in providing important information for state proceedings.

SB 29 does not apply to: a deposition; an oath of office; an oath required to be given before a specified official other than a notary public; a declaration to be recorded under the state's real estate law; or an oath required by the state's law relating to self-proved wills.

Thank you for your consideration of the bill, and I urge a favorable vote.

Respectfully,

Kaitlin Wolff