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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/09

SPONSOR Alcon LAST UPDATED _____ HB 792

SHORT TITLE Uniform Unsworn Foreign Declarations Act SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Public Defender Department (PDD)

No Response

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 792 would adopt the National Conference of Commissioners on Uniform State Laws (NCCUSL) version of the Uniform Unsworn Foreign Declarations Act (UUFDA), and would also amend the Section 30-25-1 NMSA 1978 definition of perjury.

House Bill 792 addresses the following issues on unsworn declarations: the applicability of the act; the validity of an unsworn declaration; the required medium for an unsworn declaration; the requirements of a "form of unsworn declaration"; uniformity of application and construction; and the UUFDA's relation to the Electronic Signatures in Global and National commerce Act. The commissioners provide the following information in a prefatory note:

The 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 commissioners also state that enactment of the UUFDA harmonizes state and federal treatment of unsworn declarations. (See 28 U.S.C. Section 1746)

House Bill 792 also amends the Section 30-25-1 NMSA 1978 definition of the fourth degree felony crime of perjury to include making a false statement under penalty of perjury.

The effective date of the Act is July 1, 2009.

FISCAL IMPLICATIONS

House Bill 792 makes no appropriations.

The Public Defender Department notes that there is always a potential of increased workload for the when new crimes are created; however, this bill is not likely to result in a large increase in litigation and any additional caseload would be absorbed in the Department's ordinary course of business. It may have some discernible fiscal impact on the courts: there may be some additional work in adjudging unsworn foreign declarations or in acquiring personal jurisdiction over foreign nationals committing perjury in an unsworn declaration. It is likely that any minimal potential impact would be absorbed in the ordinary course of business.

SIGNIFICANT ISSUES

The AGO contributed the following information.

According to the NCCUSL, 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. However, in recent years, 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. Obtaining appropriately sworn foreign declarations for court or agency use is much more difficult in the post-9/11 environment.

The act 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 act, 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, subject to the exceptions described above.

Federal law (28 U.S.C. § 1746) allows an unsworn declaration executed outside the United States to be recognized and valid as the equivalent of a sworn affidavit in federal courts if it contains an affirmation substantially in the form set forth in that law. This bill will grant state courts and state agencies the same flexibility.

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The NCCUSL recommends that enacting states make sure that their perjury laws include unsworn affidavits. The amendments to NMSA Section 30-25-1, which confers criminal felony penalties on persons committing perjury, conform New Mexico law to that act by providing that “perjury” also consists of making a false statement under penalty of perjury, which includes the unsworn affidavits provided in this bill.

CH/svb:mc