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# HOUSE BILL No. 1350

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-44.5; IC 34-59.

**Synopsis:** Uniform acts concerning civil procedure. Enacts the Uniform Interstate Depositions and Discovery Act. Allows litigants to present a clerk of the court located in the state where discoverable materials are sought with a subpoena issued by a court in the trial state. Provides that once the clerk receives the foreign subpoena, the clerk shall issue a subpoena for service upon the person or entity on which the original subpoena is directed. Specifies that the terms of the issued subpoena must incorporate the same terms as the original subpoena and contain the contact information for all counsel of record and any party not represented by counsel. Enacts the Uniform Unsworn Foreign Declarations Act. Affirms the use in state law proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Provides that if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, the statement may be used as an equivalent of a sworn declaration. 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.

**Effective:** July 1, 2010.

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**Foley, DeLaney**

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January 13, 2010, read first time and referred to Committee on Judiciary.

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PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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## HOUSE BILL No. 1350



A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-44.5 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2010]:

4 **ARTICLE 44.5. EVIDENCE: UNIFORM INTERSTATE**  
5 **DEPOSITIONS AND DISCOVERY ACT**

6 **Chapter 1. Uniform Interstate Depositions and Discovery Act**

7 **Sec. 1. As used in this chapter, "foreign jurisdiction" means a**  
8 **state other than Indiana.**

9 **Sec. 2. As used in this chapter, "foreign subpoena" means a**  
10 **subpoena issued under authority of a court of record of a foreign**  
11 **jurisdiction.**

12 **Sec. 3. As used in this chapter, "person" means an individual, a**  
13 **corporation, a business trust, an estate, a trust, a partnership, a**  
14 **limited liability company, an association, a joint venture, a public**  
15 **corporation, a government or governmental subdivision, agency,**  
16 **or instrumentality, or any other legal or commercial entity.**

17 **Sec. 4. As used in this chapter, "state" means any of the**



1 following:

- 2 (1) A state of the United States.  
 3 (2) The District of Columbia.  
 4 (3) Puerto Rico.  
 5 (4) The United States Virgin Islands.  
 6 (5) A federally recognized Indian tribe.  
 7 (6) Any territory or insular possession subject to the  
 8 jurisdiction of the United States.

9 Sec. 5. As used in this chapter, "subpoena" means a document,  
 10 however denominated, issued under authority of a court of record  
 11 that requires a person to:

- 12 (1) attend and give testimony at a deposition;  
 13 (2) produce and allow inspection and copying of designated:  
 14 (A) books;  
 15 (B) documents;  
 16 (C) records;  
 17 (D) electronically stored information; or  
 18 (E) other tangible things;  
 19 in the possession, custody, or control of the person; or  
 20 (3) allow inspection of premises under the control of the  
 21 person.

22 Sec. 6. (a) To request issuance of a subpoena under this chapter  
 23 that is based on a foreign subpoena, a party must submit the  
 24 foreign subpoena to the clerk of the court in the county in which  
 25 discovery is sought to be conducted in Indiana. A request for the  
 26 issuance of a subpoena under this chapter does not constitute an  
 27 appearance in a court of this state.

28 (b) When a party submits a foreign subpoena to the clerk of a  
 29 court in Indiana, the clerk, in accordance with the court's  
 30 procedure, shall promptly issue a subpoena for service upon the  
 31 person to which the foreign subpoena is directed.

32 (c) A subpoena issued under subsection (b) must:

- 33 (1) incorporate the terms used in the foreign subpoena; and  
 34 (2) contain or be accompanied by the names, addresses, and  
 35 telephone numbers of the following:  
 36 (A) All counsel of record in the proceeding to which the  
 37 subpoena relates.  
 38 (B) Any party not represented by counsel.

39 Sec. 7. A subpoena issued by a clerk of the court under section  
 40 6 of this chapter must be served in compliance with all applicable  
 41 laws concerning service of a subpoena in Indiana.

42 Sec. 8. All applicable Indiana law concerning compliance with

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subpoenas to:

- (1) attend and give testimony;
- (2) produce designated books, documents, records, electronically stored information, or other tangible things; or
- (3) allow inspection of premises;

apply to subpoenas issued under section 6 of this chapter.

Sec. 9. An application to a court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under section 6 of this chapter must:

- (1) comply with all applicable Indiana laws; and
- (2) be submitted to the court in the county in which discovery is to be conducted.

Sec. 10. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Interstate Depositions and Discovery Act.

Sec. 11. This chapter applies to requests for discovery in cases:

- (1) pending on July 1, 2010; and
- (2) filed after June 30, 2010.

SECTION 2. IC 34-59 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

**ARTICLE 59. UNIFORM UNSWORN FOREIGN DECLARATIONS ACT**

**Chapter 1. Uniform Unsworn Foreign Declarations Act**

Sec. 1. (a) This chapter 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.

(b) This chapter 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.

Sec. 2. As used in this chapter, "boundaries of the United States" means the geographic boundaries of:

- (1) the United States;
- (2) Puerto Rico;
- (3) the United States Virgin Islands; and
- (4) any territory or insular possession subject to the jurisdiction of the United States.

Sec. 3. As used in this chapter, "law" includes the following:

- (1) The federal or a state constitution.

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1           (2) A federal or state statute.  
 2           (3) A judicial decision or order.  
 3           (4) A rule of court.  
 4           (5) An executive order.  
 5           (6) An administrative rule, regulation, or order.  
 6           Sec. 4. As used in this chapter, "record" means information that  
 7 is inscribed on a tangible medium or that is stored in an electronic  
 8 or other medium and is retrievable in perceivable form.  
 9           Sec. 5. As used in this chapter, "sign" means, with present intent  
 10 to authenticate or adopt a record:  
 11           (1) to execute or adopt a tangible symbol; or  
 12           (2) to attach to or logically associate with the record an  
 13 electronic symbol, sound, or process.  
 14           Sec. 6. As used in this chapter, "state" means any of the  
 15 following:  
 16           (1) A state of the United States.  
 17           (2) The District of Columbia.  
 18           (3) Puerto Rico.  
 19           (4) The United States Virgin Islands.  
 20           (5) A federally recognized Indian tribe.  
 21           (6) Any territory or insular possession subject to the  
 22 jurisdiction of the United States.  
 23           Sec. 7. (a) As used in this chapter, "sworn declaration" means  
 24 a declaration in a signed record given under oath.  
 25           (b) The term includes a sworn statement, verification,  
 26 certificate, and affidavit.  
 27           Sec. 8. As used in this chapter, "unsworn declaration" means a  
 28 declaration in a signed record that is not given under oath but is  
 29 given under penalty of perjury.  
 30           Sec. 9. (a) Except as provided in subsection (b), if an Indiana law  
 31 requires or allows the use of a sworn declaration, an unsworn  
 32 declaration meeting the requirements of this chapter has the same  
 33 effect as a sworn declaration.  
 34           (b) This chapter does not apply to:  
 35           (1) a deposition;  
 36           (2) an oath of office;  
 37           (3) an oath required to be given before a specified official  
 38 other than a notary public;  
 39           (4) a declaration to be recorded under IC 32; or  
 40           (5) an oath required by IC 29-1-5.  
 41           Sec. 10. If an Indiana law requires that a sworn declaration be  
 42 presented in a particular medium, an unsworn declaration must be

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presented in that medium.

**Sec. 11. An unsworn declaration under this chapter must be in substantially the following form:**

**I declare under penalty of perjury under the laws of Indiana 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)**

**Sec. 12. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Unsworn Foreign Declarations Act.**

**Sec. 13. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.) but does not:**

- (1) modify, limit, or supersede 15 U.S.C. 7001(c); or**
- (2) authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).**

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