

CONSENT CALENDAR

April 14, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Judiciary to which was referred SB
297,**

**AN ACT relative to obtaining out-of-state discovery and
testimony. Having considered the same, report the
same with the recommendation that the bill OUGHT TO
PASS.**

Rep. Edward Gordon

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	SB 297
Title:	relative to obtaining out-of-state discovery and testimony.
Date:	April 14, 2022
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

Currently, litigants in this state may be required to petition the Court to appoint a commissioner when a deposition is sought to be taken in another state or jurisdiction. This legislation would provide an alternative to that process if the other state or jurisdiction has adopted a uniform act which provides for interstate discovery and depositions. This will make discovery easier and less costly while still affording statutory protections.

Vote 21-0.

Rep. Edward Gordon
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

SB 297, relative to obtaining out-of-state discovery and testimony. **OUGHT TO PASS.**

Rep. Edward Gordon for Judiciary. Currently, litigants in this state may be required to petition the Court to appoint a commissioner when a deposition is sought to be taken in another state or jurisdiction. This legislation would provide an alternative to that process if the other state or jurisdiction has adopted a uniform act which provides for interstate discovery and depositions. This will make discovery easier and less costly while still affording statutory protections.

Vote 21-0.

Original: House Clerk

Cc: Committee Bill File

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on SB 297

BILL TITLE: relative to obtaining out-of-state discovery and testimony.

DATE: April 14, 2022

LOB ROOM: 206-208

MOTIONS: OUGHT TO PASS

Moved by Rep. Gordon

Seconded by Rep. Wuelper

Vote: 21-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Kurt Wuelper, Clerk

OFFICE OF THE HOUSE CLERK



9/28/2021 10:41:09 AM
Roll Call Committee Registers
Report

2021 SESSION

Judiciary

Bill #: SB297 Motion: OTA AM #: _____ Exec Session Date: 4-14-2022

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	✓		
McLean, Mark Vice Chairman	✓		
Sylvia, Michael J.	✓		
Wuelper, Kurt F. Clerk	✓		
Alexander, Joe H.	✓		
Greene, Bob J. <i>Lascelles, Rich</i>	✓		
Notter, Jeanine M.	✓		
Merner, Troy E.	✓		
Kelley, Diane E.	✓		
Trottier, Douglas R.	✓		
Andrus, Louise	✓		
Smith, Marjorie K.	✓		
Berch, Paul S. <i>Woods, Gary</i>	✓		
Horrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.	✓		
Chase, Wendy	✓		
Kenney, Cam E. <i>Meuse, David</i>	✓		
Langley, Diane M.	✓		
McBeath, Rebecca Susan	✓		
Paige, Mark	✓		
Simpson, Alexis	✓		
<i>Kurt Wuelper</i>	21	0	

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 297

BILL TITLE: relative to obtaining out-of-state discovery and testimony.

DATE: 4/06//2022

LOB ROOM: 206-208 **Time Public Hearing Called to Order:** 10:00 AM
Time Adjourned: 10:10 AM

Committee Members: Reps. ~~Gordon~~, McLean, Wuelper, ~~Sylvia~~, ~~Alexander Jr.~~, Notter, Merner, ~~Greene~~, ~~D. Kelley~~, Andrus, Trottier, M. Smith, ~~Berch~~, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

Bill Sponsors: Sen. Carson, Dist 14; Sen. Soucy, Dist 18; Sen. Gannon, Dist 23; Rep. Gordon, Graf. 9; Rep. McLean, Hills. 44; Rep. Alexander Jr., Hills. 6.

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Sen Carson Sponsor Support** This allows testimony and discovery needed from an outside jurisdiction needed for litigation in NH pursuant to the outside jurisdiction's rules.

Q Chase: How often is this a problem?

Ans: Mr. Head can answer better.

Richard Head Judicial Branch Support There is a fairly complex process in place for this, but it is cumbersome. There is a uniform Act which NH has partially passed, that we allow parties from other states to just follow our procedures. This bill extends that to NH parties seeking outside jurisdiction information if that jurisdiction has adopted the Act, this just makes for a much smoother process when you are dealing with other states.

***Neil Nicholson NHAJ Supports** This bill will improve the judicial efficiency. We won't have to get someone from another state to act as a commissioner to help us out. Most of the time, attorneys on both sides agree the information is needed. The bill will expedite the case because it will remove unnecessary delays we have now. It will also reduce costs for



Rep Kurt Wuelper, Clerk

House Remote Testify

Judiciary Committee Testify List for Bill SB297 on 2022-04-06

Support: 2 Oppose: 0 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Soucy, Donna	Manchester, NH donna.soucy@leg.state.nh.us	An Elected Official	SD 18	Support	No	No	4/1/2022 4:18 PM
Chase, Marissa	Manchester, NH mchase@nhaj.org	A Lobbyist	NH Association for Justice	Support	No	No	4/5/2022 1:22 PM

SB216 Submitted testimony

AN OVERVIEW OF
THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT
AND THE STATES THAT HAVE ADOPTED IT

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**THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT
BY DAVID C. MARSHALL**

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**THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT
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UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

The Uniform Interstate Depositions and Discovery Act (“UIDDA”) was drafted by National Conference of Commissioners on Uniform Law States. In 2007, it was approved and recommended for enactment in all states.

The Act provides simple procedures for courts in one state to issue subpoenas for out-of-state document requests and depositions. It applies if both states have adopted the Act.

The following jurisdictions have adopted the UIDDA: Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Montana, Nevada, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, U.S. Virgin Islands, Utah, Vermont, Virginia, and Washington. Similar legislation is pending in Rhode Island, Connecticut, and Wisconsin.¹

¹ Rhode Island introduced a bill to enact the UIDDA on March 4, 2014, but the senate committee on judiciary recommended that the measure be held for further study and therefore the bill is still pending. 2013 Bill Tracking RI S.B. 2587. A bill was introduced in Connecticut in 2012 and 2013 to adopt the UIDDA, but it has not passed yet. See 2012 Bill Text CT H.B. 5331 (Feb. 27, 2012); See also 2013 Bill Text CT H.B. 6584 (March 6, 2013). The Wisconsin Judicial Council planned to file a petition and memorandum proposing a Supreme Court rule change in 2013, but Wisconsin Supreme Court has yet to adopt the UIDDA. *Minutes of the Meeting of the Wisconsin Judicial Council November 15, 2013*, <http://www.wicourts.gov/courts/committees/judicialcouncil/docs/minutes1113.pdf>.

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GENERAL PROCEDURE FOR ISSUING A SUBPOENA UNDER THE UIDDA

Under the Uniform Interstate Depositions and Discovery Act, the procedure for issuing a foreign subpoena to a state that has adopted the Act is:

1. A party must submit a foreign subpoena to a clerk of court in the county, district, court or parish in where discovery is sought.
2. The clerk, in accordance with the court's procedures, will issue a subpoena for service on the person to which the foreign subpoena is directed.
 - a. The subpoena issued by the clerk must:
 - i. Incorporate the terms used in the foreign subpoena; and
 - ii. Contain or be accompanied by the name, addresses, and telephone numbers of all counsel of record to which the subpoena relates and of any party not represented by counsel.
3. The subpoena must be served according to applicable rules or statutes of the state where the subpoena is being served.
4. Applicable state law governs compliance with subpoenas to give testimony, produce documents, and permit inspection of premises.
5. Any application to the court for protective order, or to enforce, quash, or modify a subpoena must comply with applicable state law and rules and be submitted to the court where the discovery is sought.

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In a comment to the UIDDA, the National Conference of Commissioners on Uniform State Laws explained the envisioned standard procedure for requesting subpoenas under the act:

The committee envisions the standard procedure under this section will become as follows, using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives in Florida (the discovery state): A lawyer of record for a party in the action pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in pending actions). That lawyer will then check with the clerk's office, in the Florida county or district in which the witness to be deposed lives, to obtain a copy of its subpoena form (the clerk's office will usually have a Web page explaining its forms and procedures). The lawyer will then prepare a Florida subpoena so that it has the same terms as the Kansas subpoena. The lawyer will then hire a process server (or local counsel) in Florida, who will take the completed and executed Kansas subpoena and the completed but not yet executed Florida subpoena to the clerk's office in Florida. In addition, the lawyer might prepare a short transmittal letter to accompany the Kansas subpoena, advising the clerk that the Florida subpoena is being sought pursuant to Florida statute ___ (citing the appropriate statute or rule and quoting Sec. 3). The clerk of court, upon being given the Kansas subpoena, will then issue the identical Florida subpoena ("issue" includes signing, stamping, and assigning a case or docket number). The process server (or other agent of the party) will pay any necessary filing fees, and then serve the Florida subpoena on the deponent in accordance with Florida law (which includes any applicable local rules).

Uniform Interstate Depositions and Discovery Act § 3 (2007).

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STATE SPECIFIC RULES FOR ISSUING A SUBPOENA UNDER THE UIDDA

Each state that enacts the UIDDA has the option of changing the procedure or language of the Act. Below are some ways in which each state differs from the general UIDDA procedure outlined above.

Alabama – The Alabama Uniform Interstate Depositions and Discovery Act took effect January 1, 2013 and only applies to civil actions. Ala. Code § 12-21-401. The Alabama Act procedurally follows the Interstate Depositions and Discovery Act. *See* §§ 12-21-400-407. However, the subpoena must be issued to a clerk of the *circuit* court in the county where the discovery is sought. § 12-21-402. The subpoena issued by the clerk of court must also plainly and prominently state on its face:

THE RECIPIENT OF THIS SUBPOENA HAS THE RIGHT TO OBJECT TO THIS SUBPOENA WITHIN FIFTEEN (15) DAYS OF PROPER SERVICE BY SUBMITTING A REASONABLY SPECIFIC WRITTEN OBJECTION TO THE PARTY INITIATING THE SUBPOENA AS WELL AS THE LOCAL ISSUING CLERK OF THE COURT AT THE FOLLOWING ADDRESS: [ADDRESS OF CLERK OF COURT].

Id. Alabama also added a section stating that one can only issue a subpoena pursuant to the Alabama Interstate Depositions and Discovery Act if the jurisdiction where the action is pending has enacted a similar act. § 12-21-406.

Arizona – Ariz. R. Civ. P. 45.1 adopts the interstate depositions and discovery act and became effective January 1, 2013. Arizona requires the foreign subpoena to include the following phrase below the case number: “For the Issuance of an Arizona Subpoena Under Ariz. R. Civ. P. 45.1.” The clerk of court will then issue a signed, blank subpoena to the requestor and the requestor will complete the subpoena before serving it. In addition to the contact information of all parties and the discovery request from the foreign subpoena, the subpoena must also include the following information or meet the following requirements: (1) the name of the Arizona court issuing it; (2) the caption and case number of the out-of-state case to which it relates, identifying the foreign jurisdiction where the case is pending before the case number; (3) comply with the specific form in Ariz. R. Civ. P. 45(a)(1); and (4) not exceed the discovery authorized in Rule 45. *Id.* Rule 45(a)(1) does not add any new requirements. If a protective order or motion to enforce, quash, or modify a subpoena is filed with the court, it must be

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filed as a separate civil action bearing the caption from the subpoena and must also include the following phrase: “Motion or Application Related to a Subpoena Issued Under Ariz. R. Civ. P. 45.1.”

- California –** The California version of the Uniform Interstate Depositions and Discovery Act broadly says that a party can submit the original subpoena *or a true and correct copy of the foreign subpoena*. Cal. Civ. Proc. Code § 2029.300. The foreign subpoena must be submitted to the *superior* court where discovery is sought. *Id.* In addition to submitting the foreign subpoena, the requestor must also submit an application requesting the superior court to issue a subpoena with the same terms as the foreign subpoena, which can be found at <http://www.courts.ca.gov/documents/subp030.pdf>, and must pay a \$20 fee pursuant to Cal. Gov’t Code § 70626. § 2029.300. In addition to the terms of the foreign subpoena and the contact information of parties, the subpoena from the clerk of court must also: (1) include the caption and case number of the out-of-state case; (2) include the name of the court that issues it; and (3) be on the correct form. *Id.* Under the California Act, a request for relief is considered a petition instead of a motion and must be accompanied by a civil case cover sheet. § 2029.600. The Act applies to any discovery request in cases pending on or after January 1, 2010. §§ 2029.800-900.
- Colorado –** In order to request a subpoena in Colorado under the Uniform Interstate Depositions and Discovery Act, a party must submit the foreign subpoena to the *district* court in the county where discovery is sought. Colo. Rev. Stat. § 13-90.5-103.
- Delaware –** The Delaware Uniform Interstate Depositions and Discovery Act became effective July 12, 2010 and applies to requests for discovery in cases pending on or after July 12, 2010. *See* Del. Code Ann. tit. 10, § 4311. In order to serve a subpoena pursuant to the Delaware UIDDA, the requestor must send the foreign subpoena to the *prothonotary* in the county where discovery is sought. *Id.* A request for a protective order or to enforce, quash, or modify a subpoena must be submitted to the *Superior Court* in the county where discovery is sought. *Id.*
- District of Columbia –** The Uniform Interstate Depositions and Discovery Act in the District of Columbia applied to discovery in cases pending on May 22, 2010. D.C. Code § 13-448. To request issuance of a subpoena, the requestor must issue the foreign subpoena to the clerk of the *superior court*. § 13-443. A request for a protective order or to enforce, quash, or modify a subpoena must be submitted to the *superior court* in the county where discovery is sought. § 13-446.

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Georgia – The Uniform Interstate Depositions and Discovery Act in Georgia became effective January 1, 2013 and only applies to subpoenas served on or after July 1, 2013 in actions pending on or after July 1, 2013. Ga. Code Ann. §§ 24-13-110-116. Under the Georgia UIDDA, the foreign subpoena must be issued to a clerk of *superior* court in the county where the person receiving the subpoena resides. § 24-13-112. The clerk will then “issue and provide to *the requestor* a subpoena for service upon the person to which the foreign subpoena is directed.” *Id.* (emphasis added). The Georgia Act also does not apply to criminal proceedings. *Id.* One can only issue a subpoena pursuant to the Georgia Act if the jurisdiction where the subpoena is issued has adopted a version of the UIDDA. *Id.*

Hawaii – The Hawaii UIDDA became effective April 12, 2012 and applied to any cases pending on or after that date. *See* Haw. Rev. Stat. § 624D-7. To request issuance of a subpoena, the requestor must issue the foreign subpoena to the clerk in the *circuit* where discovery is sought. § 624D-3. A motion to the court for a protective order or to enforce, quash, or modify a subpoena must be submitted to the court in the *circuit* where discovery is sought. *Id.*

Idaho – The Idaho UIDDA applies to discovery in cases pending on or after July 1, 2009 and only applies to states that have also implemented the UIDDA. *See* Idaho R. Civ. P. 45(i)(7)-(8). The Act only applies to civil lawsuits. Rule 45(i). The foreign subpoena must be submitted to *a court in the county* where discovery is sought and submitting a subpoena creates jurisdiction for an Idaho court to: (1) enforce the subpoena, (2) quash or modify the subpoena, (3) issue any protective order or resolve any other dispute relating to the subpoena, and (4) impose sanctions on the attorney requesting the issuance of the subpoena for any action constituting a violation of the Idaho Rules of Civil Procedure. Rule 45(i)(3). The subpoena issued by the clerk is not required to incorporate the terms used in the foreign subpoena, but it must include all party information and advise the person to whom the subpoena is to that they have a right to petition the Idaho court to quash or modify the subpoena. *Id.* In a comment to Rule 45(i)(3), the Idaho legislature gives an example scenario of how serving a foreign subpoena will work:

The standard procedure under this section will become as follows, using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives in Idaho (the discovery state): A lawyer of record for a party in the action pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in pending actions). The lawyer will then prepare an Idaho subpoena so that it conforms to the requirements of the Idaho Rules of

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Civil Procedure and may also incorporate the same terms of the Kansas subpoena -- so long as they conform to the Idaho Rules of Civil Procedure [Rule 45 and Rule 45(c)]. The lawyer will then hire a process server (or local counsel) in Idaho, who will take the completed and executed Kansas subpoena and the completed but not yet executed Idaho subpoena to the clerk's office in Idaho. In addition, the lawyer might prepare a short transmittal letter to accompany the Kansas subpoena, advising the clerk that an Idaho subpoena is being sought pursuant to Idaho Rule 45(i)(3). The clerk of court, upon being given the Kansas subpoena, will then issue the Idaho subpoena ("issue" includes signing and stamping). The process server (or other agent of the party) will then serve the Idaho subpoena on the deponent in accordance with Idaho law (which includes any applicable local rules).

The Idaho clerk will not create a file or collect a fee when issuing a subpoena under the Idaho UIDDA. Rule 45(i)(4). The officer or individual responsible for service will deliver a certificate of service to the requestor who will then be responsible for retaining it and providing a copy to any party or deponent upon request. *Id.* A file will be opened if a motion to enforce, quash, or modify the subpoena is brought before the court. *Id.* Any motion relating to the subpoena must be filed in the county where discovery is sought or the county where the deponent resides, is employer, or transacts business. Rule 45(i)(6). An action to quash or modify the subpoena must be filed as a petition and must be filed at or before the time of compliance specified in the subpoena. *Id.* The Idaho court can quash or modify the subpoena if it is unreasonable, oppressive, fails to allow proper time to comply, requires disclosure of any privileged or protected matter, or subjects the person to undue burden. *Id.* The Idaho court may also condition compliance with the subpoena on the advancement of reasonable cost of compliance. *Id.* The court may also impose sanctions. *Id.*

Indiana – The Indiana version of the UIDDA applies to discovery in cases pending on July 1, 2010 or cases filed after June 30, 2010. Ind. Code Ann. § 34-44.5-1-11. The foreign subpoena and any motion must be submitted to the *county* where discovery is to be sought. § 34-44.5-1-6, 9.

Iowa – The Iowa version of the UIDDA became effective February 4, 2013. Iowa R. Civ. P. 1.1702. In order to have a subpoena issued under the Iowa Act, the requestor must either:

- (1) request a signed, blank subpoena from the clerk of an

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Iowa court in the county in which discovery is to be conducted pursuant to rule 1.1701(2); or
(2) arrange for an attorney who is retained by that party and who is licensed or otherwise authorized to practice law in Iowa to issue and sign the subpoena as an officer of the court pursuant to rule 1.1701(2). . . .

Rule 1.1702(2). The blank subpoena issued by the clerk must list the Iowa court in the county where discovery is sought as the court from which the subpoena is issued and must list the title of the action and docket number from the foreign jurisdiction. *Id.* A copy of the foreign subpoena must also be included as an attachment. *Id.* An attorney can issue a subpoena without a court file being opened, but if the clerk issues a blank subpoena, a court file must be opened and will collect a \$50 fee. Rule 1.1702(5). A court file will also be opened for any motions relating to the subpoena and the clerk will collect a \$50 fee then as well. *Id.* Any fee that is paid in connection with a motion will be recoverable by the successful party. Rule 1.1702(6). An attorney who files a motion or reply must be eligible to appear in the courts of Iowa. *Id.*

- Kansas –** In order to request issuance of a subpoena under the Kansas Uniform Interstate Depositions and Discovery Act, the requestor must send the foreign subpoena to the clerk of court in the county where discovery is sought along with the docket fee required by Kan. Stat. Ann. § 60-2001. § 60-228(a)(c)(1). The docket fee is \$156 on or after July 1, 2009 through June 30, 2013, and \$154 on or after July 1, 2013, and should be paid to the clerk of the district court. § 60-2001. When the clerk issues the subpoena to the party, they will also assign a case file number to the subpoena and enter it on the docket as a civil action. § 60-228(a)(c)(2). Any motions related to the subpoena must be submitted to the court in the county where discovery is sought. § 60-228(a)(f).
- Kentucky –** The Kentucky Uniform Interstate Depositions and Discovery Act applied to requests for discovery in cases pending on July 15, 2008. Ky. Rev. Stat. Ann. § 421.360(8). The foreign subpoena and any motion relating to the subpoena must be submitted to the clerk of the *circuit court* in the county where discovery is sought. § 421.360(3), (6).
- Louisiana –** The Louisiana Uniform Interstate Depositions and Discovery Act was enacted June 19, 2014 and will be codified under § 13.3825 in the Louisiana Revised Statutes. 2014 La. HB 619 (June 19, 2014). To request a subpoena under the Louisiana Act, the requestor must present the original or a certified copy of a foreign subpoena to the clerk of court in the *parish* where discovery is sought. *Id.* Along with including the terms of the foreign

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subpoena and all parties contact information, the subpoena issued by the clerk must identify the caption and case number of the out-of-state case and state the name of the court in Louisiana that issued it and an identifying number. *Id.* A motion relating to the subpoena must be submitted to *the district court* that issued the subpoena. *Id.* The Louisiana legislature included the following comment explaining how requesting a subpoena under the act will generally operate:

The standard procedure under this Section will be as follows. When a case is filed in a foreign state and the witness to be deposed lives or is found in Louisiana, a lawyer of record for a party in the action pending in the foreign state will issue a subpoena in that state. The lawyer in the out of state proceeding will then obtain a copy of the subpoena form from the clerk's office in this state. The lawyer will then prepare a Louisiana form of subpoena so that it has the same terms as the out-of-state subpoena. The completed and executed out-of-state subpoena and the completed but not yet executed Louisiana subpoena will be delivered to the clerk's office in Louisiana. It is suggested that a short transmittal letter accompany the subpoena, advising the clerk in this state that the subpoena is being sought pursuant to this statute. The clerk of court, upon being presented with the out-of-state subpoena, will then issue the identical subpoena from the court in this state ("issue" includes signing, stamping, and assigning a case or docket number). The party seeking issuance of the subpoena will pay any necessary filing and service fees, and then have the subpoena served on the deponent in accordance with Louisiana law (which includes any applicable local rules).

Maryland – The Maryland Uniform Interstate Depositions and Discovery Act became effective on October 1, 2008 and applied to any cases pending on or after that date. Md. Code Ann. Cts. & Jud. Proc. § 9-401. In order to request a subpoena under the Maryland act, a party must issue the foreign subpoena to the *circuit court* in the county where discovery is sought. § 9-402.

Michigan – The Michigan Uniform Interstate Depositions and Discovery Act became effective April 1, 2013 and only applies to requests for discovery in actions pending on April 1, 2013 or later. *See* Mich. Comp. Laws § 600.2208-2209. Under the Michigan Act, the foreign subpoena must be submitted to the *circuit court* in the county where discovery is sought. § 600.2203.

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- Mississippi** – The Mississippi Uniform Interstate Depositions and Discovery Act applies to cases pending on or after July 1, 2011. Miss. Code Ann. § 11-59-1. To request a subpoena, a party must submit the foreign subpoena to a clerk in the *county* where discovery is sought. § 11-59-5.
- Montana** – The Montana version of the UIDDA became effective October 1, 2011. Mont. Code Ann. § 25-20-28(c). To request a subpoena, a party must submit the foreign subpoena to a clerk in the *county* where discovery is sought. *Id.*
- Nevada** – The Nevada version of the UIDDA became effective on October 1, 2011. Nev. Rev. Stat. § 53.100. To request a subpoena, a party must submit the foreign subpoena to a clerk in the *county* where discovery is sought. § 53.170.
- New Mexico** – To request a subpoena, a party must submit the foreign subpoena to the clerk of the *district court* where discovery is sought. N.M. Dist. Ct. R. Civ. P. 1-045.1. Any motion relating to the subpoena must be filed in a court in the district where discovery is sought. *Id.* The New Mexico version of the UIDDA became effective August 7, 2009. *Id.*
- New York** – The New York version of the UIDDA became effective January 1, 2011. NY C.P.L.R. Law § 3119. The foreign subpoena must be submitted to the *county clerk* in the county where discovery is sought. § 3119(b). If a party retains an attorney licensed in New York, that attorney may issue a subpoena under this section if he receives the original or true copy of the foreign subpoena. *Id.*
- North Carolina** – The North Carolina Uniform Interstate Depositions and Discovery Act became effective December 1, 2011 and applies to any cases pending on or after that date. N.C. Gen. Stat. § 1F-1. The North Carolina legislature changed the definition of subpoena provided in the act to expressly authorize oral depositions or depositions upon written questions. § 1F-2(5)(a). The foreign subpoena must be issued to a clerk in the *county* where discovery is sought. § 1F-3(a). After receiving the subpoena, the clerk will open a court file, assign a file number, collect the applicable filing fee pursuant to § 7A-305(a)(2) and issue the subpoena. § 1F-3(b). N.C. Gen. Stat. § 7A-305(a)(2) provides that:
- For support of the General Court of Justice, the sum of one hundred eighty dollars (\$ 180.00) in the superior court and the sum of one hundred thirty dollars (\$ 130.00) in the district court except that if the case is assigned to a magistrate the sum

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BY DAVID C. MARSHALL

shall be eighty dollars (\$ 80.00). If a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, upon assignment the party filing the notice of designation pursuant to G.S. 7A-45.4 or the motion for complex business designation shall pay an additional one thousand dollars (\$ 1,000) for support of the General Court of Justice; if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3 by a court on its own motion, upon assignment the plaintiff shall pay an additional one thousand dollars (\$ 1,000) for support of the General Court of Justice. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and fifty cents (\$ 1.50) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19.

In a comment to the statute, the North Carolina legislature provides that a party should submit a letter or memorandum to the court requesting the issuance of a subpoena along with the foreign subpoena with any attachments or exhibits, a check made payable to the clerk of court in the amount of the appropriate civil filing fee, and a self-addressed, postage-paid envelope for return of the documents. § 1F-3. Any application to the court for a protective order or to enforce, modify, or quash a subpoena must be submitted to the court in the county where discovery is sought; however, if there is a dispute between the parties, the party who opposes discovery should apply for appropriate relief to the court where the action is pending. § 1F-6.

North Dakota – In order to request issuance of a subpoena under the North Dakota UIDDA, a party must submit the foreign subpoena to a clerk of court in the *county* where discovery is sought. N.D. R. Ct. 5.1. Any applications to the court related to the subpoena must also be submitted to the court in the *county* where discovery is sought. *Id.*

Oregon – The Oregon version of the UIDDA became effective January 1, 2014. ORCP 38. After the clerk receives the foreign subpoena, they will assign a case number and issue the Oregon subpoena. Rule 38(C)(2)(b). If a party retains an attorney licensed to practice in Oregon, the Oregon attorney can assist the clerk in drafting the subpoena. *Id.* Although the request for a subpoena does not constitute an appearance in the court, it does allow the court to impose sanctions for violations of any applicable law in connection with the subpoena. Rule 38(C)(4). However, any motion related to the

THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT
BY DAVID C. MARSHALL

subpoena must be submitted to the court in the county where discovery is sought and does constitute an appearance in the court. Rule 38(C)(5).

Pennsylvania – The Pennsylvania Uniform Interstate Depositions and Discovery Act became effective on December 23, 2012 and only applies to civil actions. *See* 42 Pa. Con. Stat. § 5332. The Pennsylvania statute adds prothonotary under the definition section as “a clerk of court.” § 5333. It also expands the definition of a subpoena to include subpoenas to attend or give testimony at a hearing or trial and not just at depositions. *Id.* In order to request issuance of a subpoena pursuant to this act, a party must submit the foreign subpoena to the prothonotary in the jurisdiction where the person subpoenaed “is employed or regularly transacts business in person.” § 5335. The Pennsylvania act also provides that “a person within [the] Commonwealth not served with a subpoena under [the act] may voluntarily give his testimony or statement or produce documents or other things for use in a matter before a tribunal outside of [the] Commonwealth.” *Id.* Any motion or application to the court relating to the subpoena must be submitted to the court that issued the subpoena. § 5337.

South Carolina – The South Carolina Uniform Interstate Depositions and Discovery Act became effective March 30, 2010 and applied to any cases pending on that date. S.C. Code Ann. §15-47-100. The South Carolina Act adds the definition of “clerk of court” to the definition section as meaning:

a clerk of court who is duly elected for that county elected in each county pursuant to § 14-17-10 and who is ex officio clerk of the court of general sessions, the family court, and all other courts of record in the county except as may be provided by the law establishing the other courts.

§ 15-47-110. To request issuance of a subpoena, a party must submit the foreign subpoena to a clerk of court in the *county* where discovery is sought. § 15-47-120.

South Dakota – The South Dakota version of the UIDDA became effective July 1, 2012. S.D. Codified Laws § 15-6-28.1. To request a subpoena, a party must submit the foreign subpoena to a clerk of court in the *county* where discovery is sought. § 15-6-28.3. This act gives the court jurisdiction to enforce the subpoena, quash or modify the subpoena, issue any protective order relating to the subpoena, or impose sanctions on the attorney requesting the subpoena. *Id.* An attorney who is not licensed in South Dakota will be able to petition the courts in South Dakota, resolve any dispute related to the subpoena in the courts in South Dakota, or may respond in the courts to any petition or motion relating to the subpoena

THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT
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without being admitted pro hac vice. *Id.* Along with incorporating the terms of the foreign subpoena and containing the contact information for all parties, the subpoena issued by the clerk must also advise the person who is subpoenaed that they have a right to petition the court to quash or modify the subpoena. *Id.*

Tennessee – The Tennessee Uniform Interstate Depositions and Discovery Act applied in cases pending on or after July 1, 2008. *See* Tenn. Code Ann. § 24-9-201. The foreign subpoena must be submitted to a clerk of court in the *county* where discovery is sought. § 24-9-203. If the court grants a motion to modify or quash a subpoena, they may award the person subpoenaed attorney’s fees and expenses occurred while defending against the subpoena. § 24-9-207. Any final order awarding fees and expenses will be a judgment entitled to full faith and credit. *Id.* If the court sustains the subpoena, they may award the prevailing party attorney’s fees and expenses. *Id.*

U.S. Virgin Islands – To request issuance of a subpoena under the Virgin Islands Uniform Interstate Depositions and Discovery Act, a party must submit the foreign subpoena to a clerk of court in the *district* where discovery is sought. 5 V.I.C. § 4924.

Utah – The Utah Uniform Interstate Depositions and Discovery Act became effective on May 5, 2008. Utah Code Ann. § 78B-17-302. The Utah act only applied to the issuance, service, and enforcement of subpoenas. § 78B-17-103. The act does not exclude an attorney from complying with “the statutes and rules governing unauthorized practice of law or from the requirements contained in the Utah Rules of Civil Procedure governing limited appearance.” *Id.* A party can only use the Utah act for issuance of a subpoena if their state has enacted the act or enacted a provision substantially similar to the UIDDA. *Id.* The foreign subpoena must be submitted to *a court in the judicial district* where discovery is sought. § 78B-17-201.

Vermont – Under UIDDA in Vermont, a party must submit the foreign subpoena to a clerk of court in the *county* where discovery is sought. V.R.C.P. 45(f)(3). Along with incorporating the terms of the foreign subpoena and including the contact information for all parties, the subpoena issued by the clerk must also advise the person subpoenaed that they have a right to make a motion to the Vermont court to modify or quash the subpoena. *Id.* The officer or individual responsible for service of a subpoena will not return a certificate of service or an affidavit to the court. Rule 45(f)(4). Instead, they will deliver it to the requestor. *Id.*

THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT
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- Virginia –** The Virginia Uniform Interstate Depositions and Discovery Act applied to any request for discovery submitted on or after July 1, 2009. Va. Code Ann. § 8.01-412.15. To request issuance of a subpoena pursuant to the Virginia UIDDA, a party must submit a foreign subpoena and “a written statement that the law of the foreign jurisdiction grants reciprocal privileges to citizens of [Virginia] for taking discovery in the jurisdiction that issued the foreign subpoena.” § 8.01-412.10. A separate civil action does not need to be filed in order to petition the court for a protective order or to enforce, quash, or modify a subpoena. § 8.01-412.13. The act only applies if the foreign jurisdiction has enacted the UIDDA, a predecessor uniform act, or another comparable law or rule providing similar privileges for out-of-state parties. § 8.01-412.14.
- Washington –** The Washington version of the UIDDA applies to requests for discovery in cases pending on or after June 7, 2012. Wash. Rev. Code § 5.51.902. The foreign subpoena must be issued to the clerk of court in the *county* where discovery is sought. § 5.51.020.

Karen Karwocki

From: Marissa Chase <mchase@nhaj.org>
Sent: Monday, April 11, 2022 4:17 PM
To: ~House Judiciary Committee
Subject: Re: Followup re: SB 297

Importance: High

CORRECTION: Paragraph 6 is incorrect. I should have stated:

We ~~do not~~ believe this alleviate some burden the NH court system from having to process motions and schedule a hearing for a commissioner to be appointed in order for an attorney to seek discovery. Also, to ensure some judicial oversight, we are only looking to eliminate the commissioner process by a NH judge if the foreign jurisdiction has an oversight process in place.

I apologize for this error, thank you for your time and consideration.

Thank you,
Marissa

Marissa Chase

Executive Director
New Hampshire Association for Justice
PO Box 1583
Concord, NH 03302-1583 ***please note our new address*
O 603.224.7077 I F 603.224.3256 I C 603.854.9330

From: Marissa Chase <mchase@nhaj.org>
Sent: Monday, April 11, 2022 2:29 PM
To: HouseJudiciaryCommittee@leg.state.nh.us <HouseJudiciaryCommittee@leg.state.nh.us>
Subject: Followup re: SB 297

Good afternoon Representatives,

In light of [SB 297](#) (relative to obtaining out-of-state discovery and testimony) scheduled for executive session in House Judiciary committee this Thursday, I am following up with information that I hope the Committee finds helpful. NHAJ is in strong support of SB 297 and we hope your committee recommends "ought to pass" on this simple bill that faced no opposition in either the Senate or House.

There are two different issues with respect to obtaining discovery or depositions in another state. Issue #1 is when someone is litigating a case outside of NH and they need to obtain discovery in NH. Issue #2 is when someone is litigating a case in NH and they need to obtain discovery located in another state.

New Hampshire has adopted the Uniform Foreign Deposition Law. This statute, set forth in RSA 517-A:1 (Uniform Foreign Depositions Law), provides that an attorney litigating a case outside of NH can follow

the same process and proceeding used in NH for subpoenaing a witness in the state. We are not looking to amend or change this statute or any of the process or proceedings for obtaining discovery in NH.

We are trying to address issue #2. Right now, when litigation is pending in NH, and discovery or testimony is needed from another state, an attorney has to request a commissioner appointment per N.H. Rev. Stat. Ann. § 517:15 rather than simply go into the foreign jurisdiction and follow that jurisdiction's process. In other words, there is an extra, unnecessary step in the process that takes time and judicial resources.

Our goal is to make it as easy to obtain discovery from out of state for use in New Hampshire as it is to obtain discovery in New Hampshire for use out of state.

We do not believe this alleviate some burden the NH court system from having to process motions and schedule a hearing for a commissioner to be appointed in order for an attorney to seek discovery. Also, to ensure some judicial oversight, we are only looking to eliminate the commissioner process by a NH judge if the foreign jurisdiction has an oversight process in place.

SB 297 does not change what discovery or testimony is admissible in cases - it just eliminates a small, burdensome step when an attorney is seeking discovery or testimony from a witness outside of New Hampshire in a New Hampshire-based case.

Please do not hesitate to contact me if you have any questions or concerns.

Thank you,
Marissa

Marissa Chase

Executive Director

New Hampshire Association for Justice

PO Box 1583

Concord, NH 03302-1583 ***please note our new address*

O 603.224.7077 **I** **F** 603.224.3256 **I** **C** 603.854.9330

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O 603.224.7077 I F 603.224.3256 I C 603.854.9330



House Judiciary Committee
Hon. Ned Gordon, Chair

April 6, 2022

Re: Support for SB 297

Dear Representative Gordon and members of House Judiciary committee:

NHAJ is a statewide professional trade association of approximately 400 trial attorneys who predominantly practice in the areas of personal injury, family law, medical malpractice, civil rights, employment law, workers' compensation, and consumer protection matters. As New Hampshire is a small state with a collegial bar, that list of practice areas is not exhaustive. If our organization can ever be of assistance or serve as a legal resource to any of you, or your constituents, please do not hesitate to give me a call. As practicing attorneys with a variety of experience, we support SB 297 for the following reasons.

New Hampshire has partially adopted the Uniform Interstate Deposition and Discovery Act but our organization believes our laws need a small fix that would simplify court procedures for lawyers on both sides of a case, and reduce court time and resources.

Background

There are two different issues with respect to obtaining discovery or depositions in a foreign state. The first is when someone is litigating a case outside of NH and they need to obtain discovery in NH. The second is when someone is litigating a case in NH and they need to obtain discovery located in another state.

The Uniform Foreign Depositions Law found at RSA 517-A:1 provides that an attorney litigating a case outside of NH can follow the same process and proceedings used in NH for subpoenaing a witness in the state. We are **not** looking to amend or change this statute or any of the process or proceedings for obtaining discovery in NH.

However, under current law, when litigation is pending in NH and discovery or testimony is needed from another state, an attorney has to request a commissioner appointment pursuant to RSA 517:15 rather than simply go into the foreign jurisdiction and follow that jurisdiction's process. In other words, there is an extra, unnecessary step in the process that takes time and judicial resources.

Our goal is also to make it as easy to obtain discovery from out of state for use in NH as it is to obtain discovery in NH for use out of state.

Solution

We believe the simplest way to do this is to clarify that a commission is not required if the foreign jurisdiction has adopted the Uniform Deposition and Discovery Act, or similar language provision which provides a process for addressing foreign subpoenas. Most importantly, we believe this would ease some burden on our Court system. Finally, to ensure there is still judicial oversight, we are only looking to eliminate the commissioner process by a NH judge if the foreign jurisdiction has an oversight process in place.

For example, say one of our members represents a victim in a personal injury case pending in Coos County. A witness is located across the border in Maine. Currently, to subpoena that witness for a deposition, the attorney first has to file a motion with the Coos County Superior Court, requesting that they be appointed a commissioner to take this deposition. They then must wait for the Court to rule on this motion before they can secure this witness' testimony. Once the Court has approved the commission, then the attorney must go to court in Maine and follow the ME process for subpoenaing that witness.

With the change being proposed in this bill, the attorney in the above example would not have to burden the Coos County Superior Court with an unnecessary motion. They could simply go to the Court in ME to request the foreign subpoena be issued because ME has already fully adopted the Uniform Deposition and Discovery Act and therefore already has a procedure in place for this exact situation. Practically, eliminating the additional (and unnecessary) commission process saves time, money, and lessens the burden on our judicial system. Sometimes, depending on the Court and backlog, a ruling on a benign motion such as this still might take weeks to months. Meanwhile, the witness may relocate or otherwise become unavailable. Eliminating this additional step makes it easier to obtain important evidence in a timely manner.

The NH statutes detailing this process can be found at [RSA 517:15-18 517:15-18](#). Two of those sections were last touched in 1903, and the other in 1967.

Forty-six other states have adopted this act, and we believe New Hampshire citizens would be better served if we fix this small loophole.

Attached to this letter is "An Overview of the Uniform Interstate Depositions And Discovery Act and the States That Have Adopted It" by Turner Padgett.

Thank you for your consideration, and please as always do not hesitate to call if you have any questions.



Marissa Chase
Executive Director
New Hampshire Association for Justice



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April 6, 2022

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However, under current law, when litigation is pending in NH and discovery or testimony is needed from another state, an attorney has to request a commissioner appointment pursuant to RSA 517:15 rather than simply go into the foreign jurisdiction and follow that jurisdiction's process. In other words, there is an extra, unnecessary step in the process that takes time and judicial resources.

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Thank you for your consideration, and please as always do not hesitate to call if you have any questions.



Marissa Chase
Executive Director
New Hampshire Association for Justice

SB 297 - AS INTRODUCED

2022 SESSION

22-2944

04/08

SENATE BILL **297**

AN ACT relative to obtaining out-of-state discovery and testimony.

SPONSORS: Sen. Carson, Dist 14; Sen. Soucy, Dist 18; Sen. Gannon, Dist 23; Rep. Gordon,
Graf. 9; Rep. McLean, Hills. 44; Rep. Alexander Jr., Hills. 6

COMMITTEE: Judiciary

ANALYSIS

This bill allows testimony and discovery from a foreign jurisdiction needed for litigation pending in New Hampshire to be obtained without a court-appointed commissioner and pursuant to the procedure in the foreign jurisdiction.

Explanation: Matter added to current law appears in ***bold italics.***
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to obtaining out-of-state discovery and testimony.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Depositions; Commissioners to Take Depositions. Amend RSA 517:15 to read as follows:
2 517:15 Appointment.

3 ***I.*** Upon petition the superior court may appoint some suitable person as commissioner to
4 take depositions outside this state, for use in causes pending in or returnable to said court.

5 ***II.*** ***No appointment shall be required when discovery is sought in a foreign***
6 ***jurisdiction that has adopted the uniform foreign depositions law in RSA 517-A, or the***
7 ***Uniform Interstate Depositions and Discovery Act, or other similar process for obtaining***
8 ***out-of-state discovery and testimony. In such matters, discovery and testimony may be***
9 ***sought pursuant to the manner and process required in the foreign jurisdiction.***

10 2 Effective Date. This act shall take effect January 1, 2023.