

LEGISLATIVE COMMITTEE MINUTES

SB297

Bill as Introduced

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 struck through.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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.

CHAPTER 160
SB 297 - FINAL VERSION

2022 SESSION

22-2944
04/08

SENATE BILL

297

AN ACT

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CHAPTER 160
SB 297 - FINAL VERSION

22-2944
04/08

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

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4 *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 jurisdiction that has*
6 *adopted the uniform foreign depositions law in RSA 517-A, or the Uniform Interstate Depositions and*
7 *Discovery Act, or other similar process for obtaining out-of-state discovery and testimony. In such*
8 *matters, discovery and testimony may be sought pursuant to the manner and process required in the*
9 *foreign jurisdiction.*

160:2 Effective Date. This act shall take effect January 1, 2023.

Approved: June 07, 2022
Effective Date: January 01, 2023

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: January 14, 2022

HEARINGS

Wednesday		01/26/2022
(Day)		(Date)
Judiciary	State House 100	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m. SB 292	requiring notice of arrest to a probation and parole officer.	
1:15 p.m. SB 297	relative to obtaining out-of-state discovery and testimony.	
1:30 p.m. SB 327	relative to the duties of the registers of probate.	
1:45 p.m. SB 392	relative to the statutory definition of insane or insane person.	
2:00 p.m. SB 388	relative to availability of information or records relating to the enhanced 911 system.	

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 292

Sen. Reagan
Sen. D'Allesandro
Sen. Birdsell
Rep. Spillane

Sen. Gray
Sen. Avard
Sen. Prentiss
Rep. Verville

Sen. Hennessey
Sen. French
Sen. Soucy

Sen. Gannon
Sen. Carson
Rep. McGuire

SB 297

Sen. Carson
Rep. McLean

Sen. Soucy
Rep. Alexander Jr.

Sen. Gannon

Rep. Gordon

SB 327

Sen. Gray

SB 392

Sen. Sherman

Sen. Prentiss

SB 388

Sen. Carson

Rep. Hunt

Rep. Gordon

Rep. Alexander Jr.

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee
Jennifer Horgan 271-7875

SB 297, relative to obtaining out-of-state discovery and testimony.

Hearing Date: January 26, 2022

Time Opened: 1:15 p.m.

Time Closed: 1:21 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill 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.

Sponsors:

Sen. Carson

Sen. Soucy

Sen. Gannon

Rep. Gordon

Rep. McLean

Rep. Alexander Jr.

Who supports the bill: Senator Carson; Senator Soucy; Rory Parnell, NHAJ; Marissa Chase, NHAJ

Who opposes the bill: No one

Summary of testimony presented in support:

Senator Carson

- 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.

Rory Parnell (NH Association for Justice)

- This is basically providing a very small fix to a loophole in the law.
- It removes a step NH lawyers must take to get discovery from a foreign jurisdiction.
- Presently if a lawyer is out of state and they want discovery in NH they just need to comply with NH's statute and then they are able to get it.
- If a NH lawyer wants information from someone outside of NH, they must first file something with the court that must be approved, and then the court appoints someone to take the deposition.
- This is an extra step in the process that is unnecessary.

- This bill allows NH lawyers to go straight to the out of state jurisdiction, comply with their rules, and then get the discovery.
- The removal of this step will free up time in the court system.
- This doesn't change anything functional, except giving NH lawyers the same process as other states.
- 43 states have already adopted this.
- Senator Kahn asked if this is part of the current interstate agreement.
 - In the states that have adopted this, a lawyer must comply with that jurisdiction's rules. If a lawyer is from VT or ME, they just go straight to NH and comply with the rules here. A NH lawyer must first file in court, the court makes a ruling, and then they can go. This is just extra paperwork for the court, and the removal of this should free up judges' time.

- Senator Gannon asked if the rules vary much from state to state.
 - The lawyer must be aware of what the rules of the jurisdiction are, but generally they are very similar. Part of this process is to make this more uniform across the country.

Summary of testimony presented in opposition:

None

jch

Date Hearing Report completed: January 27, 2022

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill SB297 on 2022-01-26

Support: 1 Oppose: 0

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Soucy, Donna	An Elected Official	SD 18	Support

Testimony



Senate Judiciary Committee
Hon. Sharon Carson, Chair

January 26, 2022

Re: Support for SB 297

Dear Senator Carson and members of Senate 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.

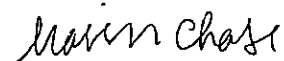
With the change being proposed in this bill, the attorney in the above example would not have to burden the Coos County Superior Court with an unnecessary motion. They could simply go to the Court in ME to request the foreign subpoena be issued because ME has already fully adopted the Uniform Deposition 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

Complete Document

Can Be Viewed

In Bill Folder

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

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Turner | Padget

David C. Marshall
P.O. Box 1473 | Columbia, SC 29202
1901 Main Street, Suite 1700 | Columbia, SC 29201
803-227-4293 | Fax 803-400-1466
dmarshall@turnerpadget.com

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

TABLE OF CONTENTS

THE ACT	3
GENERAL PROCEDURE	4-5
STATE SPECIFIC PROCEDURES.....	6-16
ALABAMA	6
ARIZONA.....	6-7
CALIFORNIA.....	7
COLORADO	7
DELAWARE	7
DISTRICT OF COLUMBIA.....	7
GEORGIA.....	8
HAWAII	8
IDAHO	8-9
INDIANA.....	9
IOWA.....	9-10
KANSAS	10
KENTUCKY	10
LOUISIANA.....	10-11
MARYLAND	11
MICHIGAN.....	11
MISSISSIPPI.....	12
MONTANA.....	12
NEVADA.....	12
NEW MEXICO.....	12
NEW YORK	12
NORTH CAROLINA	12-13
NORTH DAKOTA	13
OREGON.....	13-14
PENNSYLVANIA.....	14
SOUTH CAROLINA.....	14
SOUTH DAKOTA.....	14-15
TENNESSEE	15
U.S. VIRGIN ISLANDS	15
UTAH	15
VERMONT	15
VIRGINIA	16
WASHINGTON	16

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

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.

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB297

Hearing date: 1/26

Executive Session date: 1/26

Motion of: OTP Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Carson

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Wednesday, January 26, 2022

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, the committee recommends that the Bill

ought to pass

BY A VOTE OF: 5-0

Senator Sharon Carson
For the Committee

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. 43 states have already adopted this language, and this will simply remove an unnecessary step for our attorneys, while still maintaining appropriate procedures.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

SB 297, relative to obtaining out-of-state discovery and testimony.

Ought to Pass, Vote 5-0.

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SB297

Bill Details

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

Sponsors: (Prime) Carson (R), Donna Soucy (D), Gannon (R), Gordon (R), McLean (R), Alexander (R)

LSR Number: **22-2944**

General Status: **SIGNED BY GOVERNOR**

Chapter Number: **160**

House:

Committee: Judiciary

Due Out: 4/28/2022

Status: PASSED/ADOPTED

Senate:

Committee: Judiciary

Floor Date: 2/3/2022

Status: PASSED/ADOPTED

Bill Docket

Body	Description
S	To Be Introduced 01/05/2022 and Referred to Judiciary; SJ 1
S	Hearing: 01/26/2022, Room 100, SH, 01:15 pm; SC 4
S	Committee Report: Ought to Pass, 02/03/2022; Vote 5-0; CC; SC 5
S	Ought to Pass: MA, VV; OT3rdg; 02/03/2022; SJ 2
H	Introduced 03/17/2022 and referred to Judiciary
H	Public Hearing: 04/06/2022 10:00 am LOB 206-208
H	Executive Session: 04/14/2022 09:00 am LOB 206-208
H	Committee Report: Ought to Pass (Vote 21-0; CC)
H	Ought to Pass: MA VV 05/04/2022 HJ 11
S	Enrolled Adopted, VV, (In recess 05/26/2022); SJ 13
H	Enrolled (in recess of) 05/26/2022 HJ 14
S	Signed by the Governor on 06/07/2022; Chapter 0160; Effective 01/01/2023

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB297

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Hayden
Committee Aide

9/12/22
Date

Senate Clerk's Office AK