

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 783 Uniform Interstate Depositions and Discovery Act

SPONSOR(S): Gregory

TIED BILLS: **IDEN./SIM. BILLS:** SB 7006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Jones	Poche
2) Justice Appropriations Subcommittee	9 Y, 0 N	Jones	Gusky
3) Judiciary Committee	15 Y, 0 N	Jones	Poche

SUMMARY ANALYSIS

A lawyer litigating a civil case in one state often needs to depose a witness who lives in a different state. Each state has laws governing this process, but the laws are not uniform. Current Florida law, based on a 1920 model act called the Uniform Foreign Depositions Act (UFDA), provides that whenever the trial court state issues a mandate, writ, or commission or when the deposition of a Florida witness is required, the witness may be deposed "in the same manner and by the same process and proceeding" as Florida law allows. This means an out-of-state lawyer must comply with the rules of the Florida county where discovery is sought. The patchwork of state and local laws causes confusion and inefficiency for lawyers, clerks, and judges.

A solution to this problem is the Uniform Interstate Depositions and Discovery Act (UIDDA), a model act with an updated, simple process for interstate discovery requests. The UIDDA has been adopted in 40 states.

Some UIDDA states do not give reciprocity to out-of-state lawyers whose states have not adopted the UIDDA, like Florida. Florida's failure to adopt the UIDDA causes inconvenience and complications for Florida lawyers who need to conduct discovery in states that have adopted the UIDDA, but do not give reciprocity to Florida.

HB 783 adopts the general provisions of the UIDDA, a streamlined process which:

- Allows a Florida clerk of court, without need for judicial oversight, to issue discovery subpoenas;
- Allows out-of-state lawyers to conduct discovery in Florida without having to make an appearance in Florida court; and
- For discovery sought in the state, provides that any dispute is resolved by a Florida court applying Florida law.

The bill makes Florida a UIDDA state, allowing Florida lawyers to receive the benefit of reciprocity from other UIDDA states.

The bill may have an indeterminate positive fiscal impact on state and local governments.

The effective date of the bill is July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In civil litigation, a lawyer with a case pending in one state (the "trial court state") often needs to depose a witness who lives in a different state (the "discovery state"). When a lawyer in the trial court state needs the discovery state to subpoena a witness living in that state, many issues arise, such as which state's evidence law applies and which state can modify or quash the subpoena.

Each state has laws governing the process for foreign depositions, but the laws are not uniform. When a Florida lawyer attempts discovery in another state with different procedures, this legal patchwork can cause unnecessary confusion and inefficiency. To make the interstate discovery process smoother, states have enacted uniform laws.

Current Florida law is based on a 1920 model act called the Uniform Foreign Depositions Act (UFDA). The UFDA provides that whenever the trial court state issues a mandate, writ, or commission, or when the deposition of a Florida witness is required, the witness may be deposed "in the same manner and by the same process and proceeding" as Florida law allows.¹

Different Florida counties have different processes for issuing subpoenas for out-of-state litigation, which worsens the problem. For example, if a case is pending in Georgia and Georgia counsel needs to depose a witness in Escambia County, Florida, Georgia counsel must obtain a Florida subpoena under the rules of Escambia County, which requires an out-of-state subpoena to be accompanied by a letter rogatory. These differing procedures may require hiring local counsel to ensure compliance.

Uniform Interstate Depositions and Discovery Act

In response to the challenges of this patchwork system, the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2007 proposed the Uniform Interstate Depositions and Discovery Act (UIDDA). The UIDDA, now the law in 40 states, establishes the following simple, streamlined process:

- The lawyer in the trial court state obtains a subpoena in that state and presents the subpoena to the clerk of court in the discovery state.
- The clerk of court in the discovery state ministerially issues a subpoena from the discovery state.
- The out-of-state lawyer is not deemed to have made a court appearance.
- If a challenge to the subpoena is made, the discovery state has jurisdiction and the discovery state's law applies.

Some states that have adopted the UIDDA do not provide reciprocity for an out-of-state lawyer whose state has not adopted the UIDDA. Georgia is such an example.² Because Florida has not adopted the UIDDA, Florida lawyers attempting discovery in Georgia do not receive the benefit of the simple UIDDA process and are disadvantaged.

Effect of Proposed Changes

HB 783 adopts a version of the UIDDA, replacing the 1920 UFDA model provisions and streamlining the out-of-state discovery process. The bill makes Florida a UIDDA state, which will allow Florida lawyers the benefit of reciprocity from other UIDDA states.

¹ S. 92.251(2), F.S.

² Ga. Code Ann. s. 24-13-112.

Under the bill, an out-of-state lawyer attempting discovery in Florida must first obtain a subpoena in the trial court state and then submit the subpoena to the clerk of court for the county where discovery is sought. This action does not constitute an official appearance in Florida court. The clerk then issues a Florida subpoena, which must:

- Incorporate the terms used in the foreign subpoena;
- Contain or be accompanied by the contact information of all counsel of record and of any party not represented by counsel; and
- Be served in compliance with Florida laws and rules.

The bill defines "subpoena" as a document, regardless of how denominated, issued under authority of a court of record and requiring a person to:

- Attend and give testimony at a deposition;
- Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
- Permit inspection of premises under the control of the person.

If there is a dispute about a subpoena, a Florida court applies Florida law to resolve it. For example, if a New York lawyer seeks discovery from a Florida resident for information privileged under Florida law, the Florida resident can challenge the subpoena in Florida court, and Florida law will apply. Any application to the court for a protective order or to enforce, quash, or modify a subpoena must comply with Florida laws and rules and be submitted to the Florida court where discovery is sought.

The UIDDA process does not apply in criminal proceedings. In applying and construing the bill's language, a court must give consideration to the need to promote uniformity of the law among states that have enacted the UIDDA.

The bill is effective July 1, 2019, and applies to requests for discovery in cases pending or commenced on or after the effective date.

B. SECTION DIRECTORY:

Section 1: Amends s. 92.251, F.S., relating to Uniform Foreign Depositions Law.

Section 2: Creates an unnumbered section of law providing that the bill applies to requests for discovery in proceedings pending or commenced on or after July 1, 2019.

Section 3: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may reduce state costs by reducing judicial involvement in issuance of subpoenas for out-of-state proceedings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce costs by simplifying the process by which a clerk can ministerially issue subpoenas for out-of-state proceedings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES