

D R A F T

FOR APPROVAL

**UNIFORM UNSWORN DOMESTIC  
DECLARATIONS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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June 2, 2016

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DECLARATIONS ACT**

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1 **UNIFORM UNSWORN DOMESTIC DECLARATIONS ACT**

2 **PREFATORY NOTE**

3  
4 Declarations of persons are routinely received in state and federal courts and agencies.  
5 Many – but not all – of the declarations are affidavits and other documents sworn to by  
6 declarants before notaries public or authorized officials.  
7

8 Courts and agencies do receive unsworn declarations. Unsworn declarations may be oral  
9 or in writing. For example, they may be in the form of:

- 10     ◦ testimony given under affirmation rather than oath. See, e.g., Fed. R. Evid. 603 (“a  
11 witness must give an oath or affirmation to testify truthfully”); Ala. R. Evid. 603 (“every witness  
12 [must] declare that the witness will testify truthfully, by oath or affirmation”); Mich. R. Evid.  
13 603 (same); Wash. R. Evid. 603 (same);
- 14     ◦ an attested (or witnessed) will. See, e.g., Ala. Code § 43-8-131; Cal. Prob. Code §  
15 6110; Colo. Rev. Stats. § 15-11-502; Tex. Estates Code § 251.051; Va. Code § 64.2-403;
- 16     ◦ other unsworn declarations authorized by a state’s law or rules. See, e.g., Cal. Civ.  
17 Proc. Code § 2015.5; Fla. Stat. § 92.525; Kan. Stats. § 53-601; Va. Code § 8.01-4.3;
- 18     ◦ statements made while under a belief of impending death. See, e.g., Fed. R. Evid.  
19 804(b)(2) (statements under belief of imminent death); Ala. R. Evid. 804(b)(2) (statement under  
20 belief of impending death); Mich. Laws § 767.72 (dying declarations admissible as evidence in  
21 manslaughter cases); Ohio R. Evid. 804(b)(2) (statement under belief of impending death); or
- 22     ◦ declarations made by an officer of the court. See, e.g., *Cox v. State*, 279 So. 2d 143,  
23 144-45 (Ala. Crim. App. 1973) (“[I]t was within the judge’s judicial discretion as to whether or  
24 not he would take the unsworn statement of an officer of his court as evidence.”).  
25

26 In 2008 the Uniform Law Commission completed work on the Uniform Foreign  
27 Declarations Act (UUFDA), which allows for the use of unsworn declarations under penalty of  
28 perjury when made outside the United States. The UUFDA extends to state proceedings the same  
29 flexibility that federal courts have had since 1976 under 28 U.S.C. § 1746. However, 28 U.S.C. §  
30 1746 is broader than the UUFDA in that it also covers unsworn declarations made within the  
31 United States. Additionally, while working on the UUFDA, the ULC identified 22 states with  
32 existing laws, procedural rules or statutes having a similar effect as 28 U.S.C. § 1746. It is noted  
33 in the comments of the UUFDA that the Drafting Committee considered expanding the UUFDA  
34 to include unsworn declarations made within the United States but decided against it due to the  
35 limited charge of the Committee as well as time and enactability concerns.  
36

37 Since its promulgation, the UUFDA has been adopted in over 20 states and the District of  
38 Columbia. It is under consideration in additional states. Additionally, a number of states have  
39 existing or procedural rules that permit the use of unsworn declarations made within the United  
40 States.  
41

42 The Uniform Unsworn Domestic Declarations Act (UUDDA) affirms the use in state  
43 legal proceedings of unsworn declarations made by declarants while within the boundaries of the  
44 United States as provided in Section 3. The UUDDA is provided for use by those states that have  
45 previously enacted the Uniform Unsworn Foreign Declarations Act (UUFDA) and choose not to

1 replace the UUFDA by enacting the Uniform Unsworn Declarations Act (UUDA).  
2

3 Under the UUDDA, if an unsworn declaration is made subject to penalties for perjury  
4 and contains the information in the model form provided in the act, then the statement may be  
5 used as an equivalent of a sworn declaration. The UUDDA excludes use of unsworn declarations  
6 for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under  
7 certain real estate statutes, and oaths required to be given before specified officials other than a  
8 notary.  
9

10 The UUDDA will extend to state proceedings the same flexibility that federal – and a  
11 number of state – courts and agencies have employed for decades. Since 1976, federal law (28  
12 U.S.C. § 1746) has allowed an unsworn declaration to be recognized and valid as the equivalent  
13 of a sworn affidavit if it contained an affirmation substantially in the form set forth in the federal  
14 act. The courts, though, have ruled that 28 U.S.C. § 1746 is inapplicable to state court  
15 proceedings. Several states also allow the use of unsworn declarations (e.g., Cal. Civ. Proc. Code  
16 § 2015.5; Fla. Stat. § 92.525; Kan. Stats. § 53-601), but the state procedures are not uniform.  
17 Existing state law varies significantly in content, scope and form.  
18

19 Enactment of the UUDDA harmonizes state and federal treatment of unsworn  
20 declarations made within the boundaries of the United States. Uniformity is important because  
21 many matters as to which the use of unsworn declarations is valuable will involve more than one  
22 state or jurisdiction. Further, the UUDDA will reduce aspects of confusion regarding differences  
23 in federal and state litigation practice. The act also eases some of the declarants' burdens in  
24 providing important information for state proceedings.  
25

26 The Uniform Unsworn Domestic Declarations Act should be enacted in every state not  
27 having the Uniform Unsworn Declarations Act.

1                                       **UNIFORM UNSWORN DOMESTIC DECLARATIONS ACT**

2           **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Unsworn  
3 Domestic Declarations Act.

4           **SECTION 2. DEFINITIONS.** In this [act]:

5           (1) “Boundaries of the United States” means the geographic boundaries of the United  
6 States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession  
7 subject to the jurisdiction of the United States.

8           (2) “Law” includes a statute, judicial decision or order, rule of court, executive order, and  
9 administrative rule, regulation, or order.

10           (3) “Record” means information that is inscribed on a tangible medium or that is stored in  
11 an electronic or other medium and is retrievable in perceivable form.

12           (4) “Sign” means, with present intent to authenticate or adopt a record:

13                       (A) to execute or adopt a tangible symbol; or

14                       (B) to attach to or logically associate with the record an electronic symbol, sound,  
15 or process.

16           (5) “Sworn declaration” means a declaration in a signed record given under oath. The  
17 term includes a sworn statement, verification, certificate, and affidavit.

18           (6) “Unsworn declaration” means a declaration in a signed record not given under oath  
19 but given under penalty of perjury.

20                                       **Comment**

21           1. The definition of “law” is drafted in an open-ended manner to give it the widest  
22 possible application. The term is not ordinarily defined in uniform acts but in this context it is  
23 important that judges applying the act be in no doubt about its breadth. The wording is taken  
24 from the definition contained in the Revised Model State Administrative Procedure Act.

25           In most instances, “law” is referring to the law of the enacting state. Section 7 is the  
26

1 exception; in that section, “law” would address the general law on the subject of declarations  
2 because the provision encourages interpretation to achieve uniformity in the law.  
3

4 2. A “record” includes information that is in intangible form (e.g., electronically stored)  
5 as well as tangible form (e.g., written on paper). It is consistent with the Uniform Electronic  
6 Transactions Act and the federal Electronic Signatures in Global and National Commerce Act  
7 (15 U.S.C. § 7001 et seq.).  
8

9 3. The definition of “sign” is broad enough to cover any writing containing a traditional  
10 signature and any record containing an electronic signature. It is consistent with the Uniform  
11 Electronic Transactions Act and the federal Electronic Signatures in Global and National  
12 Commerce Act (15 U.S.C. § 7001 et seq.).  
13

14 **SECTION 3. APPLICABILITY.** This [act] applies to an unsworn declaration by a  
15 declarant who at the time of making the declaration is physically located within the boundaries  
16 of the United States.

17 **Comment**

18 An unsworn declaration made within the geographical boundaries of the United States,  
19 even if the location is under the control of another sovereign, such as foreign embassies or  
20 consulates or federally recognized Indian lands, is deemed “within the boundaries of the United  
21 States” for the purposes of this act.  
22

23 **SECTION 4. VALIDITY OF UNSWORN DECLARATION.**

24 (a) Except as otherwise provided in subsection (b), if a law of this state requires or  
25 permits use of a sworn declaration, an unsworn declaration meeting the requirements of this [act]  
26 has the same effect as a sworn declaration.

27 (b) This [act] does not apply to:

28 (1) a deposition;

29 (2) an oath of office;

30 (3) an oath required to be given before a specified official other than a notary  
31 public;

32 (4) a declaration to be recorded under [insert appropriate section of state real-

1 estate law]; or

2 (5) an oath required by [insert appropriate section of stat law relating to self-

3 proved wills].

4 ***Legislative Note:*** *An enacting state will need to ensure that its perjury law includes an unsworn*  
5 *declaration.*

6  
7

### Comment

8 Except as provided in subsection 4(b) of this section, an unsworn declaration meeting the  
9 requirements of this act may be used in a state proceeding or transaction whenever other state  
10 law authorizes the use of a sworn declaration. Thus, if other state law permits the use of an  
11 affidavit, an unsworn declaration meeting the requirements of this act would also suffice.  
12 Additionally, if other state law authorizes other substitutes for a sworn declaration, such as an  
13 affirmation, then as provided in subsection (a) of this section, an unsworn declaration meeting  
14 the requirements of this act could serve as a substitute for an affirmation. Nothing in this act  
15 affects the efficacy of sworn declarations. An unsworn declaration is an alternative to a sworn  
16 declaration. In perhaps most cases, sworn or notarized declarations may be preferred; unsworn  
17 declarations though may be used when necessary or suggested by circumstances.

18

19 The use of unsworn declarations is not limited to litigation. Unsworn declarations would  
20 be usable in civil, criminal, and regulatory proceedings and settings. However, there are certain  
21 contexts in which unsworn declarations should not be used, and these contexts are listed in  
22 subsection (b) of this section.

23

24 This act does not relieve a party from establishing the necessary foundation for the  
25 admission of an unsworn declaration. Authenticity is not addressed in this act.

26

27 The authenticity of the declaration must be established in accordance with the law of the  
28 enacting state. If authorized by the law of the enacting state, authenticity of written declarations  
29 might be established through, for example, testimony of witnesses to the declaration,  
30 handwriting experts or lay witnesses familiar with the signature of the declarant, comparison  
31 with authenticated specimens, or other recognized methods of authentication. See Fed. R. Evid.  
32 901. Such approaches are commonly acceptable in cases involving attested wills. Although  
33 subscribing witnesses are preferred, their testimony is not necessary for authentication of the  
34 declaration if its authenticity can be established by other means. See, e.g., Fed. R. Evid. 903; Cal.  
35 Prob. Code §§ 8220-21, (attested wills may be proved by testimony or deposition to subscribing  
36 witness or absent a witness by proof of handwriting and affidavit of person with personal  
37 knowledge); Iowa Code § 622.24 (absent testimony of subscribing witness to attested will,  
38 execution of will may be proved by other evidence); Mass. Gen. Laws 190B § 3-406(a) (due  
39 execution of an attested will may be proved by evidence other than testimony of attesting  
40 witness); Mich. Comp. Laws § 700.3405(2) (authentication of attested wills by witnesses or  
41 other evidence authorized).

42



1 As noted in the Legislative Note, an enacting state should ensure that its perjury law  
2 includes unsworn declarations. For example, see Ore. Rev. Stats. § 162.065, which provides: “(1)  
3 A person commits the crime of perjury if the person makes a false sworn statement or a false  
4 unsworn declaration in regard to a material issue, knowing it to be false. (2) Perjury is a Class C  
5 felony.” See also 11 Del. Code § 1224 (definition of “swears falsely” includes unsworn  
6 declarations).

7 **SECTION 5. REQUIRED MEDIUM.** If a law of this state requires that a sworn  
8 declaration be presented in a particular medium, an unsworn declaration must be presented in  
9 that medium.

10 **Comment**

11 Courts and agencies often restrict the medium in which pleadings, motions, and other  
12 documents may be filed. This section recognizes that such a restriction is binding on a person  
13 seeking to introduce an unsworn declaration.

14 **SECTION 6. FORM OF UNSWORN DECLARATION.** An unsworn declaration  
15 under this [act] must be substantially in the following form:  
16

17 I declare under penalty of perjury under the law of [insert name of state] that the  
18 foregoing is true and correct.

19 Signed on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_.  
20 (month) (year) (city or other location, and state)

21 \_\_\_\_\_  
22 (printed name)

23 \_\_\_\_\_  
24 (signature)

27 **Legislative Note:** An enacting state will need to replace “[insert name of state]” in the  
28 declaration form with the name of the enacting state so that the declaration is made under  
29 penalty of perjury under the law of the enacting state. For example, if the State of Texas is the  
30 enacting state, the declaration form would state: “I declare under penalty of perjury under the  
31 law of Texas that the foregoing is true and correct.”

32 **Legislative Note:** An enacting state will need to ensure that its perjury law includes an unsworn  
33 declaration. For example, Ore. Rev. Stats. § 162.065 provides: “(1) A person commits the crime  
34 of perjury if the person makes a false sworn statement or a false unsworn declaration in regard  
35 to a material issue, knowing it to be false. (2) Perjury is a Class C felony.”

1 **Comment**

2  
3 The form informs the declarant that the declaration is made under penalty of perjury,  
4 thereby reminding the declarant of the potential liability it establishes.  
5

6 Section 3 of this act authorizes the use of unsworn declarations made within the  
7 boundaries of the United States as defined in Section 2(1). The form in this section requires a  
8 declaration of the declarant’s location at the time of making the declaration.  
9

10 **SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

11 applying and construing this uniform act, consideration must be given to the need to promote  
12 uniformity of the law with respect to its subject matter among states that enact it.

13 **Comment**

14 This section recites the importance of uniformity among the adopting states when  
15 applying and construing the act.  
16

17 **SECTION 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**

18 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic  
19 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not  
20 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
21 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.  
22 Section 7003(b).

23 **Comment**

24 This section responds to the specific language of the Electronic Signatures in Global and  
25 National Commerce Act and is designed to avoid preemption of state law under that federal  
26 legislation.  
27

28 **SECTION 9. REPEALS; CONFORMING AMENDMENTS.**

29 (a) . . . .

30 (b) . . . .

31 (c) . . . .

1 **Comment**

2  
3 Any state enacting the Act likely will need to amend the state's laws by repealing any  
4 conflicting statutory provisions. This Section was added based on comments at the National  
5 Conference during consideration of the UUFDA.

6  
7 **SECTION 10. EFFECTIVE DATE.** This [act] takes effect . . . .