

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR
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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 117th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

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UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

PREFATORY NOTE

Declarations of persons abroad are routinely received in state and federal courts and agencies. Many of the declarations are affidavits and other documents sworn to by declarants before authorized officials in United States embassies and consulate offices. Affiants in foreign countries with information relevant to U.S. proceedings or transactions could visit the U.S. consular office to finalize their affidavit or statement in a manner similar to a person within the U.S. visiting a notary public.

In recent years, though, particularly after the September 11, 2001 terrorist attacks, access to U.S. embassies and consulates has become more difficult because of closings or added security. Thus, obtaining appropriately sworn foreign declarations for court or agency use is much more difficult in the post-9/11 environment.

The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

UUFDA affirms the use in state legal proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used as an equivalent of a sworn declaration. The UUFDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUFDA will extend to state proceedings the same flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration executed outside the United States to be recognized and valid as the equivalent of a sworn affidavit if it contained an affirmation substantially in the form set forth in the federal act.

Several states also allow the use of foreign declarations (e.g., Cal. Civ. Proc. Code § 2015.5), but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of the UUFDA harmonizes state and federal treatment of unsworn declarations. The act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing consular officials to increase focus on core responsibilities. Further, UUFDA will reduce aspects of confusion abroad regarding differences in federal and state litigation practice and help prevent potential negative connotations about cumbersome and inconsistent legal proceedings in the U.S. It should be enacted in every state.

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Unsworn Foreign Declarations Act.

SECTION 2. DEFINITIONS. In this [act]:

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

(2) “Law” includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

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

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

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

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

(5) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

(7) “Unsworn declaration” means a declaration in a signed record that is not given under

oath, but is given under penalty of perjury.

Comment

1. The District of Columbia is included in the definition of “boundaries of the United States” to eliminate any potential ambiguity.

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

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

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

SECTION 3. APPLICABILITY. This [act] applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This [act] does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Comment

In keeping with the limited scope of the act, an unsworn declaration made within the geographical boundaries of the United States, even if the location is under the control of another sovereign, such as foreign embassies or consulates or federally recognized Indian lands, should not be deemed “outside the boundaries of the United States” for the purposes of this act. The act, so limited, meets the immediate needs addressed by the act. Moreover, notaries and officials authorized to administer oaths are more readily available in the United States.

SECTION 4. VALIDITY OF UNSWORN DECLARATION.

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

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

(1) a deposition;

(2) an oath of office;

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

(4) a declaration to be recorded pursuant to [insert appropriate section of state's real estate law]; or

(5) an oath required by [insert appropriate section of state's law relating to self-proved wills].

Legislative Note: Enacting states will need to ensure that the perjury laws of the enacting state include unsworn declarations.

Comment

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

Except as provided in section 4 of this act, pursuant to this section, an unsworn declaration meeting the requirements of this act may be used in a state proceeding or transaction whenever other state law authorizes the use of a sworn declaration. Thus, if other state law, permits the use of either sworn testimony or an affidavit, an unsworn declaration meeting the requirements of this act would also suffice. Additionally, if other state law authorizes other substitutes for a sworn declaration, such as an affirmation, then as provided in subsection (a) of this section, an unsworn declaration meeting the requirements of this act could serve as a substitute for an affirmation.

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

Comment

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

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

I declare under penalty of perjury under the law of [insert name of enacting state] that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ____ day of _____, _____, at _____,
(date) (month) (year) (city or other location, and state)

(country)

(printed name)

(signature)

Legislative Note: Enacting states will need to ensure that the perjury laws of the enacting state include unsworn declarations.

Comment

Section 3 of this act authorizes the use of unsworn declarations made outside the boundaries of the United States as defined in Section 2(1). The formal declaration in this section recites the areas defined as within the boundaries and does not rely on the definition in Section 2(1) because the person making the formal declaration might believe, and therefore declare that he or she is outside the boundaries of the United States even though at the time of the declaration the person making the declaration is in the Virgin Islands, Puerto Rico, or one of the other territories or insular possessions of the United States. The form of the declaration lessens the opportunity for mistake or fraud.

SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

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

SECTION 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

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

SECTION 9. REPEALS. The following are repealed: _____.

Comment

Any state enacting the Uniform Unsworn Foreign Declarations Act likely will need to amend the state's laws by repealing any conflicting statutory provisions. This Section was added based on comments at the National Conference.

SECTION 10. EFFECTIVE DATE. This [act] takes effect [date].

Comment

This act will become effective in the enacting jurisdiction on the designated date.