#### DRAFT

FOR DISCUSSION ONLY

# **UNIFORM UNSWORN FOREIGN DECLARATIONS ACT**

#### NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

April 17-18, 2015 Drafting Committee Meeting

#### CHANGES SHOWN IN STRIKE AND SCORE

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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#### UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

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### UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

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1 2	UNIFORM UNSWORN FOREIGN DECLARATIONS ACT
2 3	PREFATORY NOTE
4 5 6 7	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.
8	consular office to finalize their affidavit or statement in a manner similar to a person within the
9	U.S. visiting a notary public. Federal and some state courts and agencies may receive unsworn
10	declarations. The United States Code authorizes the use of unsworn declarations if they meet the
11	requirements of the statute. (see 28 U.S.C. Section 1746, Appendix) The federal provision,
12	though, does not authorize the use of unsworn declarations in state courts or agencies. Those
13	state courts that have addressed the issue generally hold that the federal statute is inapplicable to
14	state actions.
15	
16	In recent years, though, particularly after the September 11, 2001 terrorist attacks, access
17	to U.S. embassies and consulates has become more difficult because of closings or added
18	security. Thus, obtaining appropriately sworn foreign declarations for court or agency use is
19 20	much more difficult in the post 9/11 environment.
21	A significant number of states have statutes of like nature (e.g., California: Cal. Civ.
22	Proc. Code Section 2015.5, Appendix), but these statutes are not uniform. Some apply only to
23 24	foreign declarations; others apply to declarations without regard to where the declaration was made. Some apply only in specific types of litigation, proceedings, or situations. Others are more
25	universally received.
26	
27	The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the
28	Uniform Law Commission at its Annual Meeting in 2008 to address this situation and has since
29	been enacted in 20 states. The Act authorizes the use in litigation and to harmonize state and
30	certain agency filings of unsworn declarations made outside the United States under penalty of
31	perjury. Federal legislation (28 U.S.C. Section 1746, Appendix) is broader in that the federal law
32	legislation also authorizes the use in federal court of unsworn declarations made under penalty of
33	perjury within the United States. Several states have similar provisions. (e.g., California: Cal.
34	Civ. Proc. Code Section 2015.5, Appendix).
35	
36	The Uniform Unsworn Declarations Act (UUDA) expands the Uniform Unsworn Foreign
37	Declarations Act (UUFDA affirms) to cover both foreign and domestic unsworn declarations.
38 39	<u>UUDA reaffirms</u> 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 and
40	expands the authorization to domestic unsworn declarations. Under the UUFDA-UUDA, if an
40 41	unsworn declaration is made subject to penalties for perjury and contains the information in the
42	model form provided in the act, then the statement may be used as an equivalent of a sworn
43	declaration. The UUFDA UUDA excludes use of unsworn declarations for depositions, oaths of
44	office, oaths related to self-proved wills, declarations recorded under certain real estate statutes,

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.

1 The UUFDA UUDA will extend to state proceedings the same flexibility that federal 2 courts have employed for over 30 almost 40 years. Since 1976, federal law (28 U.S.C. § Section 3 1746, Appendix) has allowed an unsworn declaration executed outside the United States to be 4 recognized and valid as the equivalent of a sworn affidavit if it contained an affirmation 5 substantially in the form set forth in the federal act. 6 7 Several states also allow the use of foreign unsworn declarations (e.g., Cal. Civ. Proc. 8 Code § Section 2015.5, Appendix), but the state procedures are not uniform. Further, courts have 9 ruled that 28 U.S.C. § Section 1746 is inapplicable to state court proceedings. 10 Enactment of the UUFDA UUDA harmonizes state and federal treatment of unsworn 11 12 declarations. The act alleviates foreign affiants' burden in providing important information for 13 state proceedings, while at the same time helping to reduce congestion in U.S. consular offices 14 and allowing consular officials to increase focus on core responsibilities. Further, UUFDA 15 UUDDA will help reduce aspects of confusion abroad regarding differences in federal and state 16 litigation practice and help prevent potential negative connotations about cumbersome and 17 inconsistent legal proceedings in. 18 19 The Uniform Unsworn Declarations Act would be for use by those states without a law 20 permitting the use of unsworn declarations as well as by those states that have such a law but 21 which seek to move to a comprehensive, uniform law. By enacting UUDA, the state would 22 authorize the U.S. It use of unsworn declarations regardless of where those declarations were made (*i.e.*, whether the declaration was made within the United States or in a foreign country). 23 24 Some states already have laws that authorize the use of unsworn declarations regardless of where 25 the declarations were made. Those states should be enacted in every state encouraged to adopt the more-inclusive UUDA for the sake of clarity and uniformity. 26 27

1	UNIFORM UNSWORN FOREIGN DECLARATIONS ACT
2	SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Unsworn
3	Foreign Declarations Act.
4	<b>SECTION 2. DEFINITIONS</b> . 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 the federal or a state constitution, a federal or state statute, a judicial
9	decision or order, a rule of court, an executive order, and an administrative rule, regulation, or
10	order.
11	(3) "Record" means information that is inscribed on a tangible medium or that is stored in
12	an electronic or other medium and is retrievable in perceivable form.
13	(4) "Sign" means, with present intent to authenticate or adopt a record:
14	(A) to execute or adopt a tangible symbol; or
15	(B) to attach to or logically associate with the record an electronic symbol, sound,
16	or process.
17	(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
18	United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
19	the United States.
20	(6) "Sworn declaration" means a declaration in a signed record given under oathThe
21	term includes a sworn statement, verification, certificate, and affidavit.
22	(7) "Unsworn declaration" means a declaration in a signed record that is, not given under
23	oath, but is given under penalty of perjury.

1	Comment
23	1. The District of Columbia is included in the definition of "boundaries of the United States" to eliminate any potential ambiguity.
4 5	$2 \cdot 1$ . The definition of "law" is drafted in an open-ended manner to give it the widest
5 6	possible application. The term is not ordinarily defined in uniform acts but in this context it is
7	important that judges applying the act be in no doubt about its breadth. The wording is taken
8	from the definition contained in the Revised Model State Administrative Procedure Act.
9	
10	3.2. A "record" includes information that is in intangible form (e.g., electronically
11	stored) as well as tangible form (e.g., written on paper). It is consistent with the Uniform
12	Electronic Transactions Act and the federal Electronic Signatures in Global and National
13	Commerce Act (15 U.S.C. §Section 7001 et seq.).
14	
15	4. <u>3.</u> The definition of "sign" is broad enough to cover any writing containing a
16	traditional signature and any record containing an electronic signature. It is consistent with the
17	Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and
18	National Commerce Act (15 U.S.C. § Section 7001 et seq.).
19	
20	<b>SECTION 3.</b> APPLICABILITY. This [act] applies to an unsworn declaration by a
21	declarant who at the time of making the declaration is physically located within or outside the
22	boundaries of this state or of the United States whether or not the location is subject to the
23	jurisdiction of the United States. This [act] does not apply to a declaration by a declarant who is
24	physically located on property that is within the boundaries of the United States and subject to
25	the jurisdiction of another country or a federally recognized Indian tribe.
26	Comment
27	In keeping with the limited scope of the act, an unsworn declaration made within the
28	geographical boundaries of the United States, even if the location is under the control of another
29	sovereign, such as foreign embassies or consulates or federally recognized Indian lands, should
30	not be deemed "outside the boundaries of the United States" for the purposes of this act. The act,
31	so limited, meets the immediate needs addressed by the act. Moreover, notaries and officials
32	authorized to administer oaths are more readily available in the United States.
33	·
34	An unsworn declaration made in accordance with the requirements of this Act would be
35	usable to the same extent as a sworn declaration regardless of the location of the declarant at the
36	time of making the declaration. In other words, an unsworn declaration made within the enacting
37	state, in a different state, or in another country would be usable to the same extent as a sworn
38	declaration.

1	SECTION 4. VALIDITY OF UNSWORN DECLARATION.
2	(a) Except as otherwise provided in subsection (b), if a law of this state requires or
3	permits use of a sworn declaration, an unsworn declaration meeting the requirements of this [act]
4	has the same effect as a sworn declaration.
5	(b) This [act] does not apply to:
6	(1) a deposition;
7	(2) an oath of office;
8	(3) an oath required to be given before a specified official other than a notary
9	public;
10	(4) a declaration to be recorded pursuant to [insert appropriate section of state's
11	real estate law]; or
12	(5) an oath required by [insert appropriate section of state's law relating to self-
13	proved wills].
14 15	<i>Legislative Note:</i> Enacting states will need to ensure that the perjury laws of the enacting state include unsworn declarations.
16	Comment
17 18 19 20 21 22 23 24 25 26 27 28 29 30	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 may be used in 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.

1	SECTION 5. REQUIRED MEDIUM. If a law of this state requires that a sworn
2	declaration be presented in a particular medium, an unsworn declaration must be presented in
3	declaration be presented in a particular medium, an unsworn declaration must be presented in
4	that medium.
5	Comment
6 7 8 9	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 an unsworn declaration.
10 11	SECTION 6. FORM OF UNSWORN DECLARATION. An unsworn declaration
12	under this [act] must be in substantially the following form:
13	I declare under penalty of perjury under the law of [insert name of enacting state] that the
14	foregoing is true and correct, and that I am physically located outside the geographic boundaries
15	of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular
16	possession subject to the jurisdiction of the United States.
17 18	Executed on the day of,, at
19 20 21	(date) (month) (year) (city or other location, and state)
22 23 24	( or country)
25 26 27 28	(printed name)
28 29 30	(signature)
31 32	<i>Legislative Note:</i> Enacting states will need to ensure that the perjury laws of the enacting state include unsworn declarations.
33	Comment
34 35	Section 3 of this act authorizes the use of unsworn declarations made outside the

1	boundaries of the United States as defined in Section 2(1). The formal declaration in this section
2	recites the areas defined as within the boundaries and does not rely on the definition in Section
3	2(1) because the person making the formal declaration might believe, and therefore declare that
4	he or she is outside the boundaries of the United States even though at the time of the declaration
5	the person making the declaration is in the Virgin Islands, Puerto Rico, or one of the other
6	territories or insular possessions of the United States. The form of the declaration lessens the
7	opportunity for mistake or fraud.
8	
9	This declaration form is usable for any unsworn declaration regardless of where the
10	declaration was made. It would apply to intrastate, interstate or foreign unsworn declarations.
11	
12	A number of states have an unsworn declarations law that authorizes receipt of
13	declarations and provides a suggested form for the declaration. The declaration in Section 6 is
14	similar to, but more detailed than the declarations found in the laws of Arizona, Florida, Hawaii,
15	Iowa, New Jersey, Oklahoma, South Dakota, Tennessee, Utah, Virginia, Washington, Wyoming,
16	and the Virgin Islands. Other states describe the nature of the declaration without providing a
17	form. Those states include Idaho, Illinois, Minnesota, Pennsylvania, and Rhode Island. Some
18	jurisdictions separate intrastate and interstate declarations and provide distinct forms. Those
19	include California, Kansas, Montana, Nevada, and Texas.
20	mende Sumonna, Ransas, Montana, Portada, and Portas.
21	SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In
22	applying and construing this uniform act, consideration must be given to the need to promote
23	uniformity of the law with respect to its subject matter among states that enact it.
24	Comment
25	This section recites the importance of uniformity among the adopting states when
26	applying and construing the act.
27	apprying and constraing the act.
28	SECTION 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
29	NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal
30	Electronic Signatures in Global and National Commerce Act, (15 U.S.C. Section 7001, et seq.,)
31	but does not modify, limit, or supersede Section 101(c) of that act, (15 U.S.C. Section 7001(c),))
32	or authorize electronic delivery of any of the notices described in Section 103(b) of that act, (15
33	U.S.C. Section 7003(b <del>).</del> )).
34	Comment
35	This section responds to the specific language of the Electronic electronic Signatures in

7

1 2 3 4	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:;
5	CONFORMING AMENDMENTS.
6	<u>(a)</u>
7	<u>(b)</u>
8	<u>(c)</u>
9	Comment
10 11	Any state enacting the Uniform Unsworn Foreign Declarations Act likely will need to
12	amend the state's laws by repealing any conflicting statutory provisions. This Section was added
13	based on comments at the National Conference.
14	
15	<b>SECTION 10. EFFECTIVE DATE</b> . This [act] takes effect [date]
16	
17	Comment
18	This set will be sense offer the superior in the superior indiction on the loci of 1.1.
19	This act will become effective in the enacting jurisdiction on the designated date.