

DRAFT  
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# UNIFORM UNSWORN ~~FOREIGN~~ DECLARATIONS ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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April 17-18, 2015 Drafting Committee Meeting

CHANGES SHOWN IN STRIKE AND SCORE

*WITH PREFATORY NOTE AND PRELIMINARY COMMENTS*

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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## **UNIFORM UNSWORN FOREIGN DECLARATIONS ACT**

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1 **UNIFORM UNSWORN FOREIGN DECLARATIONS ACT**

2  
3 **PREFATORY NOTE**

4       Declarations of persons ~~abroad~~ are routinely received in state and federal courts and  
5 agencies. Many of the declarations are affidavits and other documents sworn to by declarants  
6 before authorized officials ~~in United States embassies and consulate offices. Affiants in foreign~~  
7 ~~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 ~~much more difficult in the post-9/11 environment.~~

20  
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 foreign declarations; others apply to declarations without regard to where the declaration was  
24 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 UUDA reaffirms the use in state legal proceedings of unsworn declarations made by declarants  
39 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  
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,  
45 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

11           Enactment of ~~the UUFDA~~ UUDA harmonizes state and federal treatment of unsworn  
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 UUDA 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. to use of unsworn declarations regardless of where those declarations were  
23 made (i.e., whether the declaration was made within the United States or in a foreign country).  
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  
26 the more-inclusive UUDA for the sake of clarity and uniformity.  
27



1 **Comment**

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

4  
5 ~~2.1. The definition of “law” is drafted in an open-ended manner to give it the widest~~  
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 ~~4.3. 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 **SECTION 3. 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 ~~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  
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  
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);).

34 **Comment**

35 This section responds to the specific language of the ~~Electronic~~ electronic Signatures in

1 Global and National Commerce Act and is designed to avoid preemption of state law under that  
2 federal legislation.

3  
4 **SECTION 9. REPEALS.** ~~The following are repealed: \_\_\_\_\_.~~ ;

5 **CONFORMING AMENDMENTS.**

6 (a) . . . .

7 (b) . . . .

8 (c) . . . .

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

16  
17 **Comment**

18  
19 This act will become effective in the enacting jurisdiction on the designated date.