

D R A F T
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UNIFORM UNSWORN DECLARATIONS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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CLEAN DRAFT

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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UNIFORM UNSWORN DECLARATIONS ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

RICHARD B. LONG, 99 Corporate Dr., P.O. Box 2039, Binghamton, NY 13904, *Chair*

W. GRANT CALLOW, 425 G St., Suite 610, Anchorage, AK 99501

TERRY J. CARE, 4371 Woodcrest Rd., Las Vegas, NV 89121

PAUL W. CHAIKEN, 97 Winthrop St., P.O. Box 527, Augusta, ME 04332

VINCENT C. DELIBERATO, Legislative Reference Bureau, Main Capitol Bldg., Room 641,
Harrisburg, PA 17120-0033

BARRY H. EVENCHICK, 5 Becker Farm Rd., Roseland, NJ 07068

MICHAEL B. GETTY, 430 Cove Towers Dr., Naples, FL 34110

REED L. MARTINEAU, 5458 Merlyn Dr., Salt Lake City, UT 84117

MARILYN E. PHELAN, 306 Peninsula Ct., Granbury, TX 76048

WILLIAM J. QUINLAN, Two First National Plaza, 20 S. Clark St., Suite 2900, Chicago, IL
60603

KAREN R. WASHINGTON, 2214 Main St., Dallas, TX 75201

JOSEPH A. COLQUITT, University of Alabama School of Law, Box 870382,
Tuscaloosa, AL 35487-0382, *Reporter*

EX OFFICIO

HARRIET LANSING, 1 Heather Pl., St. Paul, MN 55102-2615, *President*

LANE SHETTERLY, 189 S.W. Academy St., P.O. Box 105, Dallas, OR, 97338, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

RICHARD W. MOREFIELD, 11300 Tomahawk Creek Pkwy., Leawood, KS, 66211-2693, *ABA
Advisor*

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, Illinois 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

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1 **UNIFORM UNSWORN DECLARATIONS ACT**

2
3 **PREFATORY NOTE**

4 Declarations of persons are routinely received in state and federal courts and agencies.
5 Many of the declarations are affidavits and other documents sworn to by declarants before
6 authorized officials. Federal and some state courts and agencies may receive unsworn
7 declarations. The United States Code authorizes the use of unsworn declarations if they meet the
8 requirements of the statute. (see 28 U.S.C. Section 1746, Appendix) The federal provision,
9 though, does not authorize the use of unsworn declarations in state courts or agencies. Those
10 state courts that have addressed the issue generally hold that the federal statute is inapplicable to
11 state actions.

12
13 A significant number of states have statutes of like nature (e.g., California: Cal. Civ.
14 Proc. Code Section 2015.5, Appendix), but these statutes are not uniform. Some apply only to
15 foreign declarations; others apply to declarations without regard to where the declaration was
16 made. Some apply only in specific types of litigation, proceedings, or situations. Others are more
17 universally received.

18
19 The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated in 2008 and
20 has since been enacted in 20 states. The Act authorizes the use in litigation and certain agency
21 filings of unsworn declarations made outside the United States under penalty of perjury. Federal
22 legislation (28 U.S.C. Section 1746, Appendix) is broader in that the federal legislation also
23 authorizes the use in federal court of unsworn declarations made under penalty of perjury within
24 the United States. Several states have similar provisions. (e.g., California: Cal. Civ. Proc. Code
25 Section 2015.5, Appendix).

26
27 The Uniform Unsworn Declarations Act (UUDA) expands the Uniform Unsworn Foreign
28 Declarations Act (UUFDA) to cover both foreign and domestic unsworn declarations. UUDA
29 reaffirms the use in state legal proceedings of unsworn declarations and expands the
30 authorization to domestic unsworn declarations. Under UUDA, if an unsworn declaration is
31 made subject to penalties for perjury and contains the information in the model form provided in
32 the act, then the statement may be used as an equivalent of a sworn declaration. UUDA excludes
33 use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills,
34 declarations recorded under certain real estate statutes, and oaths required to be given before
35 specified officials other than a notary.

36
37 UUDA will extend to state proceedings the same flexibility that federal courts have
38 employed for almost 40 years. Since 1976, federal law (28 U.S.C. Section 1746, Appendix) has
39 allowed an unsworn declaration to be recognized and valid as the equivalent of a sworn affidavit
40 if it contained an affirmation substantially in the form set forth in the federal act.

41
42 Several states also allow the use of unsworn declarations (e.g., Cal. Civ. Proc. Code
43 Section 2015.5, Appendix), but the state procedures are not uniform. Further, courts have ruled
44 that 28 U.S.C. Section 1746 is inapplicable to state court proceedings.

1 Enactment of UUDA harmonizes state and federal treatment of unsworn declarations.
2 The act alleviates affiants' burden in providing important information for state proceedings.
3 Further, UUDA will help reduce aspects of confusion regarding differences in federal and state
4 litigation.

5
6 The Uniform Unsworn Declarations Act would be for use by those states without a law
7 permitting the use of unsworn declarations as well as by those states that have such a law but
8 which seek to move to a comprehensive, uniform law. By enacting UUDA, the state would
9 authorize the use of unsworn declarations regardless of where those declarations were made (*i.e.*,
10 whether the declaration was made within the United States or in a foreign country). Some states
11 already have laws that authorize the use of unsworn declarations regardless of where the
12 declarations were made. Those states should be encouraged to adopt the more-inclusive UUDA
13 for the sake of clarity and uniformity.

1 **Comment**

2 1. The definition of “law” is drafted in an open-ended manner to give it the widest
3 possible application. The term is not ordinarily defined in uniform acts but in this context it is
4 important that judges applying the act be in no doubt about its breadth. The wording is taken
5 from the definition contained in the Revised Model State Administrative Procedure Act.
6

7 2. A “record” includes information that is in intangible form (e.g., electronically stored)
8 as well as tangible form (e.g., written on paper). It is consistent with the Uniform Electronic
9 Transactions Act and the federal Electronic Signatures in Global and National Commerce Act
10 (15 U.S.C. Section 7001 et seq.).
11

12 3. The definition of “sign” is broad enough to cover any writing containing a traditional
13 signature and any record containing an electronic signature. It is consistent with the Uniform
14 Electronic Transactions Act and the federal Electronic Signatures in Global and National
15 Commerce Act (15 U.S.C. Section 7001 et seq.).
16

17 **SECTION 3. APPLICABILITY.** This [act] applies to an unsworn declaration by a
18 declarant who at the time of making the declaration is physically located within or outside the
19 boundaries of this state or of the United States whether or not the location is subject to the
20 jurisdiction of the United States.

21 **Comment**

22 An unsworn declaration made in accordance with the requirements of this Act would be
23 usable to the same extent as a sworn declaration regardless of the location of the declarant at the
24 time of making the declaration. In other words, an unsworn declaration made within the enacting
25 state, in a different state, or in another country would be usable to the same extent as a sworn
26 declaration.
27

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

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

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

33 (1) a deposition;

34 (2) an oath of office;

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

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

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

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

9 **Comment**

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

14
15 Except as provided in section 4 of this act, pursuant to this section, an unsworn
16 declaration meeting the requirements of this act may be used in a state proceeding or transaction
17 whenever other state law authorizes the use of a sworn declaration. Thus, if other state law
18 permits the use of either sworn testimony or an affidavit, an unsworn declaration meeting the
19 requirements of this act would also suffice. Additionally, if other state law authorizes other
20 substitutes for a sworn declaration, such as an affirmation, then as provided in subsection (a) of
21 this section, an unsworn declaration meeting the requirements of this act could serve as a
22 substitute for an affirmation.

23
24 **SECTION 5. REQUIRED MEDIUM.** If a law of this state requires that a sworn
25 declaration be presented in a particular medium, an unsworn declaration must be presented in
26 that medium.

27 **Comment**

28
29 Courts and agencies often restrict the medium in which pleadings, motions, and other
30 documents may be filed. This section recognizes that such a restriction is binding on a person
31 seeking to introduce an unsworn declaration.

32
33 **SECTION 6. FORM OF UNSWORN DECLARATION.** An unsworn declaration
34 under this [act] must be in substantially the following form:

1 I declare under penalty of perjury under the law of [*insert name of enacting state*] that the
2 foregoing is true and correct.

3 Executed on the ___ day of _____, _____, at _____.
4 (date) (month) (year) (city or other location, and state or
5 country)

6
7 _____
8 (printed name)

9 _____
10 (signature)

11
12 ***Legislative Note:*** *Enacting states will need to ensure that the perjury laws of the enacting state*
13 *include unsworn declarations.*

14 **Comment**

15 This declaration form is usable for any unsworn declaration regardless of where the
16 declaration was made. It would apply to intrastate, interstate or foreign unsworn declarations.

17
18 A number of states have an unsworn declarations law that authorizes receipt of
19 declarations and provides a suggested form for the declaration. The declaration in Section 6 is
20 similar to, but more detailed than the declarations found in the laws of Arizona, Florida, Hawaii,
21 Iowa, New Jersey, Oklahoma, South Dakota, Tennessee, Utah, Virginia, Washington, Wyoming,
22 and the Virgin Islands. Other states describe the nature of the declaration without providing a
23 form. Those states include Idaho, Illinois, Minnesota, Pennsylvania, and Rhode Island. Some
24 jurisdictions separate intrastate and interstate declarations and provide distinct forms. Those
25 include California, Kansas, Montana, Nevada, and Texas.

26
27 **SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

28 applying and construing this uniform act, consideration must be given to the need to promote

29 uniformity of the law with respect to its subject matter among states that enact it.

30 **Comment**

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

33
34 **SECTION 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**

35 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal

36 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.)

1 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or
2 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15
3 U.S.C. Section 7003(b)).

4 **Comment**

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

8
9 **SECTION 9. REPEALS; CONFORMING AMENDMENTS.**

- 10 (a)
11 (b)
12 (c)

13 **Comment**

14
15 Any state enacting the Uniform Unsworn Declarations Act likely will need to amend the
16 state's laws by repealing any conflicting statutory provisions.

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

18
19 **Comment**

20
21 This act will become effective in the enacting jurisdiction on the designated date.
22