

D R A F T  
FOR APPROVAL

# UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR  
BIG SKY, MONTANA  
JULY 18 - JULY 25, 2008

# UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

*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**

## **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. Federal and some state courts and agencies may receive unsworn foreign declarations. The United States Code (28 U.S.C. § 1746) authorizes the use of unsworn foreign declarations if they meet the requirements of the statute. Some 19 states have statutes of like nature, but these statutes are not uniform and some apply only in specific types of litigation, proceedings, or situations. Moreover, state courts that have addressed the issue generally hold that the federal statute is inapplicable to state actions.

In recent years, particularly after September 11, 2001, access to United States embassies and consulates has been 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.

In its Report 110, the American Bar Association identified the pressing need for an alternative to sworn declarations in the form of a uniform act for state courts and agencies. This need was communicated to the National Conference of Commissioners on Uniform State Laws, which decided to convene a drafting committee to address the issue. Commissioner Karen Roberts Washington was designated chair of the Drafting Committee. Professor Joseph A. Colquitt, University of Alabama School of Law, was named reporter for the project.

The Reporter, relying on both the ABA memorandum and a preliminary review of existing statutory and rules-based schemes, prepared an initial report for the Committee's first meeting in Salt Lake City, UT, on April 20-22, 2007. This report outlined and discussed the existing unsworn declarations provisions (focusing primarily on the federal, California, Florida, Kansas, and Alaska statutes), identified issues to be considered by the Committee, and suggested several statutes as initial models.

At the first meeting of the Drafting Committee in April, 2007, the Chair outlined the project. Although the Committee had reviewed the reporter's initial memorandum, the Reporter reviewed for the Committee selected examples of unsworn declarations acts. Thereafter, the Committee discussed at length the need for such provisions, their content, and alternatives available for Committee consideration. Through these discussions and a series of votes, the Chair and the Committee informed the Reporter of the provisions which should be included in the proposed Act. During a recess of the Committee meeting, the Reporter prepared an initial draft of the proposed Act, which was then circulated to the Committee and other interested parties. The Committee reconvened and discussed the draft of the proposed Act and how to proceed. It was decided that due to the pressing need for such a uniform law, the narrow scope of the proposal, and the Committee consensus in support of the proposal, the draft should be edited for style and submitted for a first reading at the 2007 Annual Conference.

Following the first meeting, a draft of the proposal was submitted to the Style Committee, and added to the calendar for the Annual Meeting in Pasadena, CA, in July 2007. The Style Committee finished its first review of the Act in June 2007. The Style Committee's suggestions were incorporated into the draft for consideration at the Annual Meeting.

The revised draft was presented in a first reading at the Annual Meeting in Pasadena, California, on July 29, 2007, with Commissioner Norman L. Greene, of New York, presiding. A number of comments and suggestions were received by the Committee at the Conference.

The Drafting Committee next met at Boise, Idaho, on October 5-6, 2007. The Reporter submitted a revised draft of the Act to the Committee members in advance of the Boise meeting. At the meeting in Boise, the Committee reviewed and considered the comments and suggestions received at the Annual Meeting, several written reports from interested organizations, and the comments of members of the Drafting Committee and other persons in attendance, such as several representatives of organizations representing notaries. Once again, the draft was revised to incorporate some of the proposed revisions and to address some of the comments about particular provisions of the uniform Act.

After the Boise meeting, the Drafting Committee submitted the revised draft to the Style Committee. The Style Committee finished its second review of the Act in January 2008. Once again, the Style Committee's suggestions were incorporated into the draft in preparation for the 2008 Annual Meeting in Big Sky, Montana. During May 2008, the Style Committee submitted its third report on the Act. The Reporter incorporated the Committee's style suggestions into the Act and the Style Committee's comments on substantive issues were circulated to the members of the Drafting Committee.

1                                   **UNIFORM UNSWORN FOREIGN DECLARATIONS ACT**

2

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

4 Foreign Declarations Act.

5   **Comment**

6

7                   In February 2008, the Executive Committee designated the Uniform Foreign Declarations

8 Act a “Uniform” Act. The word “Uniform” was added to the title of the Act by replacing

9 “Certification of” with “Uniform.”

10

11

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

13                   (1) “Boundaries of the United States” means the geographic boundaries of the United

14 States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or

15 insular possession subject to the jurisdiction of the United States.

16                   (2) “Law” includes the federal or a state constitution, a federal or state statute, a judicial

17 decision, a rule of court, an executive order, or an administrative rule or order.

18                   (3) “Record” means information that is inscribed on a tangible medium or that is stored in

19 an electronic or other medium and is retrievable in perceivable form.

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

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

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

23 or process.

24                   (5) “Sworn declaration” means a declaration in a signed record given under oath. The

25 term includes a sworn statement, verification, certificate, and affidavit.

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

oath.

### Comment

1. The District of Columbia was added to the definition of “boundaries of the United States” at the suggestion of the Style Committee 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, as suggested by the Style Committee, 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.*).

5. Section 2(6) was amended to address suggestions made at the National Conference.

6. A Commissioner at National Conference suggested that the Act define the term “electronic.” The Reporter searched a number of uniform acts and none of them defined the term although those acts also included similar references to records and federal acts.

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

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

### Comment

The Committee discussed a number of options, but focused on two: Limiting the Act to

1 declarants in foreign jurisdictions (i.e. outside the United States and its territories), and  
2 extending it to declarants outside the state in which the unsworn declaration is to be used but  
3 within the United States (e.g., a declarant in Michigan making an unsworn declaration for use in  
4 an Arizona court or agency). The Committee decided that the Act should be limited to declarants  
5 in foreign jurisdictions, subject to expansion at some later time should the need arise.  
6

7 At the 2007 National Conference in Pasadena, California, several Commissioners  
8 questioned the Committee's decision to limit the Act to declarations made outside the United  
9 States. The Committee discussed its decision at length at its meeting in Boise, Idaho, in October  
10 2007, and decided to restrict the Act as originally drafted, although the definition in Section 3  
11 was amended to clarify the provision. Thus, in keeping with the limited scope of the Act, the  
12 Drafting Committee decided that an unsworn declaration made within the geographical  
13 boundaries of the United States, even if the location is under the control of another sovereign,  
14 such as foreign embassies or consulates or Indian reservations, should not be deemed "outside  
15 the boundaries of the United States" for the purposes of this Act.  
16

17 The reasons for this decision are that the Committee believes that the Act, so limited,  
18 meets the immediate needs expressed to the Committee by the ABA committee that  
19 recommended the project, and that limiting the Act to truly foreign-based declarants will  
20 enhance the likelihood that states will adopt the provision in a timely manner. Moreover, notaries  
21 and officials authorized to administer oaths are more readily available in the United States.  
22

23 States that already have statutes that permit out-of-state declarants in the U.S. to make  
24 unsworn declarations may be unlikely to modify their statutes to restrict the reach of those  
25 statutes. Their experiences with the broader statutes serve as a laboratory for future review of the  
26 reach this Act.  
27

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

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

32 (b) An unsworn declaration may not be used for:

- 33 (1) a deposition;
- 34 (2) an oath of office;
- 35 (3) an oath required to be given before a specified official other than a notary  
36 public;



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

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

5 **Comment**

6  
7 The use of unsworn declarations is not limited to litigation. Unsworn declarations would  
8 be usable in civil, criminal, and regulatory proceedings and settings. However, there are certain  
9 contexts in which the Committee concluded they should not be used, and these contexts are  
10 listed in this section.  
11

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

15 **Comment**

16  
17 Courts and agencies often restrict the medium in which pleadings, motions, and other  
18 documents may be filed. This section recognizes that such a restriction is binding on a person  
19 seeking to introduce a foreign unsworn declaration.  
20

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

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

27 Executed on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_.  
28 (month) (year) (city or other location, and state) (country)  
29

1 \_\_\_\_\_  
2 (printed name)  
3  
4 \_\_\_\_\_

5 (signature)  
6

7 **Comment**  
8

9 “Insert name of enacting state” was added to the original version based on suggestions  
10 made at the 2007 National Conference in Pasadena, California.  
11

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

15 **Comment**  
16

17 This section recites the importance of uniformity among the adopting states when  
18 applying and construing the act.  
19

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

26 **Comment**  
27

28 This section responds to the specific language of the Electronic Signatures in Global and  
29 National Commerce Act and is designed to avoid preemption of state law under that federal  
30 legislation.  
31

**SECTION 9. REPEALS.** The following acts and parts of acts 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.

1 **REPORTER’S NOTES & COMMENTARY**

2  
3 This draft of the Act came after just three meetings of the Drafting Committee, the initial  
4 reading of the Act at the 2007 Annual Meeting in Pasadena, California, and three reviews by the  
5 Style Committee. The Act in its present form will be presented for final review and approval at  
6 the 2008 Annual Meeting in Big Sky, Montana. There are four principal reasons for the  
7 expedited process.  
8

9 First, the Committee was informed and believes that there is a pressing need for a  
10 uniform Act that will allow state courts and agencies to receive unsworn foreign declarations.  
11

12 Second, two acts—one federal and one state—provide splendid models for the  
13 Committee to work from during the drafting process. These acts have been used in their  
14 respective systems for some time, and provide the Committee with an experience base for the  
15 proposed Act. Additionally, a number of other states have non-uniform statutes that authorize the  
16 receipt of unsworn declarations. These non-uniform provisions demonstrate the need for an Act  
17 permitting the use of unsworn declarations as well as reinforce the need for uniformity.  
18

19 Third, the uniform Act is rather concise and straightforward. There is no need for an  
20 extensive, rigorous drafting process. The Committee has been able to refine and polish the Act  
21 since the 2007 Annual Meeting in Pasadena, California.  
22

23 Fourth, the Committee has been able to reach a consensus on the key issues that it has  
24 confronted to date, and as issues have been raised during the drafting and approval process about  
25 particular provisions the Committee has reached consensus on those issues.  
26

27 The state statute which has served as a model for the uniform Act is CAL. CIV. PROC.  
28 CODE § 2015.5. The federal version of this statute is 28 U.S.C. § 1746. They state as follows:  
29

30 **CAL. CIV. PROC. CODE § 2015.5. Certification or Declaration Under Penalty of**  
31 **Perjury.**  
32

33 Whenever, under any law of this state or under any rule, regulation, order or requirement  
34 made pursuant to the law of this state, any matter is required or permitted to be  
35 supported, evidenced, established, or proved by the sworn statement, declaration,  
36 verification, certificate, oath, or affidavit, in writing of the person making the same (other  
37 than a deposition, or an oath of office, or an oath required to be taken before a specified  
38 official other than a notary public), such matter may with like force and effect be  
39 supported, evidenced, established or proved by the unsworn statement, declaration,  
40 verification, or certificate, in writing of such person which recites that it is certified or  
41 declared by him or her to be true under penalty of perjury, is subscribed by him or her,  
42 and (1), if executed within this state, states the date and place of execution, or (2), if  
43 executed at any place, within or without this state, states the date of execution and that it  
44 is so certified or declared under the laws of the State of California. The certification or  
45 declaration may be in substantially the following form:

(a) If executed within this state:  
“I certify (or declare) under penalty of perjury that the foregoing is true and correct”

-----  
(Date and Place) (Signature)

(b) If executed at any place, within or without this state:  
“I certify (or declare) under penalty of perjury under the laws of the State of California  
that the foregoing is true and correct”:

-----  
(Date and Place) (Signature)

**28 U.S. CODE § 1746.**

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)”.

(2) If executed within the United States, its territories, possessions, or commonwealths:  
“I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)”.

As noted in the Legislative Note to Section 3, any state enacting the Uniform Unsworn Foreign Declarations Act likely will need to amend the state’s perjury laws to impose the penalties of perjury on false unsworn statements. At the 2007 National Conference, a Commissioner suggested that a citation to the enacting state’s perjury statute be incorporated into the text of the uniform Act (i.e., instead of “as provided by the law of this state,” the provision should be “as provided by [insert citation of perjury statute]”). After some discussion, the Committee left the provision as originally drafted.