

Memorandum

To: National Conference of Commissioners on Uniform State Laws

From: Linda S. Whitton, Reporter

Re: Final Reading Draft of the Uniform Recognition of Substitute Decision-Making Documents Act

Date: May 19, 2014

The Uniform Recognition of Substitute Decision-Making Documents Act is a joint endeavor of the Uniform Law Commission and the Uniform Law Conference of Canada. The project was undertaken to promote the portability and usefulness of substitute decision-making documents for property, health care, and personal care, without regard to whether the documents are created within or outside of the jurisdiction where a substitute decision is needed. Common examples of substitute decision-making documents include powers of attorney and proxy delegations for personal decision making. The Uniform Law Conference of Canada version of the Act tracks closely the ULC version with variations as needed to reflect differences in style and terminology.

As further described in the Prefatory Note and Commentary, the Act embodies a three-part approach to portability modeled after the Uniform Power of Attorney Act (2006). The Act recognizes the validity of a substitute decision-making document created outside of an enacting jurisdiction and preserves the meaning and effect of the document as defined by the law under which it was created. A good faith acceptance or rejection of a substitute decision-making document is protected by the Act. A refusal in violation of the Act is subject to a court order mandating acceptance and to liability for reasonable attorney's fees and costs. The Act is designed to complement existing statutes that do not adequately address portability and recognition of substitute decision-making documents.