

Memorandum

To: National Conference of Commissioners on Uniform State Laws
From: Linda Whitton, Reporter
Re: Drafting Issues Regarding the Interjurisdictional Recognition of Substitute Decision-Making Documents Act
Date: May 15, 2013

The Interjurisdictional Recognition of Substitute Decision-Making Documents Act is a joint endeavor of the Uniform Law Commission and the Uniform Law Conference of Canada, undertaken to promote portability and usefulness of substitute decision-making documents for property, health care, and personal care. Common examples of such documents include powers of attorney and proxy delegations for personal decision making. The first reading draft is a product of two drafting committee meetings. 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.

At present there are no unresolved issues pending before the drafting committee. 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 the adopting 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 by providing portability features where none exist or by supplementing portability provisions that lack desirable features of the Act.