



## UNIFORM UNSWORN FOREIGN DECLARATIONS ACT (2008)<sup>1</sup>

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### Introduction

Sworn statements by persons physically outside the boundaries of the United States, its insular possessions, territories, embassies and consulates are often required to provide information relevant to U.S. proceedings or transactions. Sworn statements can be made at an American Embassy or Consulate. However, since 9/11 increased security at these locations has made it very difficult and requires a great amount of time to make a sworn declaration.

The difficulty of obtaining a sworn statement is even more pronounced when the affiant does not live near an embassy or consulate. This expanding problem prompted the American Bar Association to discuss it in an official report adopted by the ABA House of Delegates in 2006 and it referred the matter to NCCUSL and asked it to draft a uniform act.

This act extends to state courts the flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language: *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*, dated and signed.

Several states have procedures for allowing unsworn declarations, but the state procedures are not uniform.

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<sup>1</sup> This outline is taken directly from the Act and Comments published by the National Conference of Commissioners on Uniform State Laws.

The Act and official comments can be found at <http://www.law.upenn.edu/bll/archives/ulc/cufda/2008final.htm>

**A. This Act will:**

- a. harmonize state and federal treatment of unsworn declarations;
- b. reduce confusion abroad regarding differences in state and federal litigation practices; and
- c. extend to state proceedings the same flexibility that is afforded federal courts.

**B. Section 2. Definitions.** Some key ones:

- a. (1) “Boundaries of the United States” means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.
- b. (6) “Sworn declaration” means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.
- c. (7) “Unsworn declaration” means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

**C. Section 3. Applicability.**

- a. The act applies to an unsworn declaration by a declarant who at the time of making the declaration is physically outside the boundaries of the U.S. whether or not the location is subject to the jurisdiction of the U.S.
- b. This act does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

**D. Section 4. Validity of Unsworn Declarations.**

- a. Except as otherwise provided in subsection (b), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this act has the same effect as a sworn statement.
- b. This act does not apply to:
  - i. a deposition;
  - ii. an oath of office;
  - iii. an oath required to be given before a specified official other than a notary public;
  - iv. a declaration to be recorded pursuant to certain real estate laws; or
  - v. an oath required by law relating to self-proved wills.

**E. Section 5. Required Medium.** If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

**F. Section 6. Form of Unsworn Declaration.** An unsworn declaration under this [act] must be in substantially the following form:

*I declare under penalty of perjury under the law of Minnesota that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.*

dated and signed.

**G. Section 7. Uniformity of Application and Construction.** The need for uniformity must be given consideration when interpreting the act.

**H. Section 8. Relation to Electronic Signatures in Global and National Commerce Act.**

This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).