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102A

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association approves the Uniform Unsworn Foreign
- 2 Declarations Act, promulgated by the National Conference of Commissioners on Uniform State
- 3 Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law
- 4 suggested therein

REPORT

Uniform Unsworn Foreign Declarations Act

Prior to the September 11, 2001 terrorist attacks, access to U.S. consular offices was far less restricted and difficult than it is today. Foreign affiants with information relevant to U.S. proceedings or transactions and willing to provide assistance could visit the U.S. consular office to finalize their affidavit or statement, in very similar fashion to a person within the U.S. visiting a notary public at a local bank. Due to increased security measures, this relatively routine process became more burdensome and time consuming. Even greater hurdles exist for persons seeking statements from individuals who do not reside near a U.S. consular office. The American Bar Association (ABA) raised these issues and referred them to the Uniform Law Commission in Report 110, adopted by the ABA House of Delegates in 2006. The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

The UUFDA affirms the use in state law proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the Act, then the statement may be used as an equivalent of a sworn declaration. The UUFDA precludes the use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUFDA will extend to state proceedings the same 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 as valid and 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. Executed on (date). (Signature)

Several states have procedures for allowing unsworn declarations, but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of UUFDA harmonizes state and federal treatment of unsworn declarations. The Act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing U.S. consular officials to focus on core responsibilities. Further, UUFDA will reduce confusion abroad regarding differences in federal and state litigation practice and help avoid negative impressions abroad about cumbersome and inconsistent procedures in U.S. court proceedings. It should be enacted in every state.

102A

The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

Respectfully submitted,

Martha Lee Walters
President
National Conference of Commissioners
On Uniform State Laws
February, 2009

GENERAL INFORMATION FORM

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted by: Michael Kerr, Legislative Director

1. Summary of Recommendation(s).

The National Conference of Commissioners on Uniform State Laws requests approval of the Uniform Unsworn Foreign Declarations Act by the ABA House of Delegates. The Act was approved by the National Conference in 2008.

2. Approval by Submitting Entity.

The National Conference of Commissioners on Uniform State Laws approved it in July, 2008.

3. Has this or a similar recommendation been submitted to the House or Board previously?

Yes; the ABA Section of International Law submitted a report on this subject to the House of Delegates in February 2006 (Report 110). That report urged NCCUSL to take up a drafting project on this subject.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

See Report 110, February 2006. Adopting this report will implement the recommendation in Report 110.

5. What urgency exists which requires action at this meeting of the House

Not Applicable

6. Status of Legislation. (If applicable.)

None. The Act has not been introduced in any state legislature as of 11-01-2008.

7. Cost to the Association. (Both direct and indirect costs.)

None.

102A

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts, as well as the final Act and Report. The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

The ABA Advisor for the UUFDA was Guy Stanford Lipe, of the ABA Section of International Law.

The Act was referred to the International Law Section for comment and co-sponsorship.

10. Contact Person (Prior to the meeting.)

John A. Sebert, Executive Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6603

Michael R. Kerr, Legislative Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6620

11. Contact Person. (Who will present the report to the House.)

Martha Lee Walters, President, National Conference of Commissioners on Uniform State Laws, Oregon Supreme Court, 1163 State St., Salem, OR. 97301.

EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Unsworn Foreign Declarations Act as “an appropriate Act for those States desiring to adopt the substantive law suggested therein.”

2. Summary of the issue which the recommendation addresses

The Uniform Act affirms the validity of unsworn foreign declarations made by a declarant who is physically outside the boundaries of the United States when making the declaration and who, therefore, may not have ready access to a notary. Under the Act, unsworn declarations could not be used for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary. Use of an unsworn declaration, like a sworn declaration, would be subject to penalties for perjury, and the Act provides a model form that unsworn declarations must substantially follow. This project was initiated at the request of the ABA, which referred this issue to NCCUSL in Report 110, adopted by the House of Delegates on February 13, 2006.

3. Please explain how the proposed policy position will address the issue.

Approval of the UUFDA by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.