

HOUSE BILL REPORT

SB 5132

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to trusts and estates.

Brief Description: Concerning trusts and estates.

Sponsors: Senators Pedersen, Padden and Mullet; by request of Uniform Law Commission.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/10/21, 3/12/21 [DP].

Brief Summary of Bill

- Adopts the Uniform Electronic Wills Act, the Uniform Fiduciary Income and Principal Act, and the Uniform Powers of Appointment Act.
- Outlines the powers of a personal representative with nonintervention powers and clarifies the process for the removal of a personal representative and withdrawal of nonintervention powers.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Hansen, Chair; Simmons, Vice Chair; Abbarno, Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Without recommendation. Signed by 5 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Klippert and Ybarra.

Staff: Ingrid Lewis (786-7289).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

A large and complex set of statutes governs the control and disposition of a person's property through the use of wills or trusts or through intestacy.

Wills.

A will is a legal declaration that names one or more persons to manage one's estate and provides for the transfer of one's property at death. Any person who is of sound mind and age 18 or older may make a last will and testament. At a minimum, the document must be:

- in writing;
- signed by the testator in the presence of two competent witnesses; and
- the two witnesses must either sign the will or sign an affidavit, in the presence of a notary that swears the facts needed to prove that the will belongs to the testator.

Washington Principal and Income Act of 2002.

Trusts provide a means of transferring real or personal property. A trust is created by a trustor, who gives his or her property to a trustee. The trustee holds legal title to the property, but only manages the property for the benefit of other individuals specified by the trustor, called beneficiaries.

A trust may create two kinds of beneficiaries. Income beneficiaries are persons who are entitled to earnings of the trust during a period of time. Remainder beneficiaries are persons who are entitled to the principal of the trust at the end of the period of the income beneficiaries' right to income. A trustee has a fiduciary duty to both kinds of beneficiaries.

The Washington Principal and Income Act of 2002 (WPIA) provides procedures for trustees administering trusts and personal representatives administering estates in allocating assets to principal and income, and to govern their proper distribution to beneficiaries. Washington statutes specify accounting rules that determine what counts as income and what counts as principal, and how large a distribution an income beneficiary should receive and what a remainder beneficiary will receive. The WPIA gives a trustee the power to reallocate or adjust receipts of the trust between or among beneficiaries. In allocating trust receipts, disbursements, and other matters within the scope of the law, a trustee should not favor one or more beneficiaries.

The WPIA also recognizes the creation of so-called "unitrusts." A unitrust is one in which a percentage of the assets of the trust are paid out to beneficiaries based on the net fair market value of the assets. For purposes of this calculation, it does not matter whether an individual asset of the trust would be considered principal or income for other purposes. All assets are treated the same when calculating the payout, although the payout is to come first from income and then to the extent necessary from capital gains and principal. Under the WPIA, the annual payout of a unitrust is 4 percent of the net fair market value of the assets of the trust.

Powers of Appointment.

A power of appointment is an estate planning tool that allows a donor to avoid naming specific beneficiaries to receive specific property, and instead name a trusted third party or "powerholder," to direct the distribution of property after the donor's death taking all future conditions into account.

Nonintervention Powers.

The personal representative of an estate may, under some circumstances, obtain nonintervention powers. Many wills provide for the granting of these powers. Generally, nonintervention powers allow the personal representative to proceed with the administration of a solvent estate without the direct involvement of the court. If a personal representative does not meet his or her responsibility, a statutory provision is made for the removal of the personal representative and the withdrawal of nonintervention powers.

Uniform Laws.

The National Conference of Commissioners on Uniform State Laws develops and proposes laws in subject matters where it believes uniformity between states is desirable.

The Uniform Electronic Wills Act has been adopted by two states and introduced by four states.

The Uniform Fiduciary Income and Principal Act has been adopted by one state and introduced by four states.

The Uniform Powers of Appointment Act has been adopted by 10 states and introduced by two states.

Summary of Bill:

Uniform Electronic Wills Act.

The Uniform Electronic Wills Act (UEWA) as adapted for Washington is adopted. The UEWA permits a testator to execute a will by electronic means. Specifically, the bill outlines the processes for executing an electronic will; revoking an electronic will; simultaneously attesting to an electronic will and making it self-proving; and creating a certified paper copy of an electronic will.

Core formalities required to make a will valid are retained but are made executable electronically. An electronic will must be:

- a record that is readable as text at the time of signing;
- signed by the testator or another individual in the testator's name, in the testator's physical presence, and by the testator's direction; and
- signed by at least two competent witnesses at the testator's direction or request and in the physical or electronic presence of the testator.

The UEWA states who may be a qualified custodian of an electronic will and their legal duties to deliver the electronic will and make an affidavit relating to those duties.

Uniform Fiduciary Income and Principal Act.

The Uniform Fiduciary Income and Principal Act (UFIPA) as adapted for Washington is adopted. The UFIPA:

- updates the Washington Principal and Income Act of 2002;
- adapts to changes in the design and use of trusts, including an expansion of the use of the power to adjust between income and principal if the trustee determines the exercise of the power to adjust is necessary to administer the trust or estate;
- expands provisions for unitrusts; and
- includes a governing law section to avoid jurisdictional disputes.

Uniform Powers of Appointment Act.

The Uniform Powers of Appointment Act (UPAA) as adapted for Washington is adopted. The UPAA codifies the law of powers of appointment used by estate planners to give a third party the authority to direct the disposition of a donor's property to specified recipients. The UPAA governs the creation, amendment, and revocation of powers of appointment, and codifies many of the rules found in the *Restatement (Third) of Property*.

Nonintervention Powers.

The reasons for which a party may petition the court to remove a personal representative or withdraw nonintervention powers are expanded and clarified. The powers of a personal representative are outlined.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on January 1, 2022.

Staff Summary of Public Testimony:

(In support) Individuals in long-term care facilities have experienced significant difficulties in making or updating estate planning documents during the pandemic due to the inability for lawyers, witnesses, and notaries to be physically present to execute a paper will. The Uniform Electronic Wills Act makes it possible for the electronic execution of wills. The requirement of a qualified custodian establishes sufficient safeguards against abuse. Undue influence and fraud are also an issue for paper wills. Lawyers have attempted to improvise will drafting during the pandemic, and setting forth a process and procedure to make it safe is necessary. Fifty percent of adults 55 years and older do not have a will. There is broad support in that population to use electronic wills. In-person wills will still be best.

The Uniform Principal and Income Act (UPIA) and Uniform Power of Appointment Act are both updates to trust administration. Washington currently has older versions of the uniform acts in statute. The UPIA addresses the way trusts are taxed. The previous act was enacted 20 years ago, and an update on how trustees determine the rights of different beneficiaries in a trust is needed due to the decline of interest rates. It has been difficult for trustees to generate the income to provide income beneficiaries the amount of money needed to sustain their lifestyle. The new act expands the guidance for trustees in converting the trusts.

The Uniform Power of Appointment Act builds in flexibility in wills and trusts.

The nonintervention provisions are in response to the *Rathbone* decision which has created uncertainty in this area of the law. The court made broad statements about the powers of an executor to carry out statutory duties.

(Opposed) None.

Persons Testifying: Senator Pedersen, prime sponsor; Karen Boxx; Kristi Mathisen; and Cathleen MacCaul, American Association of Retired Persons Washington State.

Persons Signed In To Testify But Not Testifying: None.