

HOUSE BILL REPORT

SSB 5787

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the uniform electronic estate planning documents act.

Brief Description: Enacting the uniform electronic estate planning documents act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Padden, Mullet, Nobles and Salomon; by request of Uniform Law Commission).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/16/24, 2/20/24 [DP].

Brief Summary of Substitute Bill

- Adopts the Uniform Electronic Estate Planning Documents Act to establish guidelines for the optional use of electronic nontestamentary estate planning documents and electronic signatures on nontestamentary estate planning documents.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Taylor, Chair; Farivar, Vice Chair; Abbarno, Cheney, Entenman, Goodman, Peterson, Thai and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Staff: Yelena Baker (786-7301).

Background:

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.

Estate Planning Documents.

In estate planning, a testamentary document generally refers to a will or a similar legal instrument by which a person directs the distribution of the person's property upon death while retaining control of the property during the person's life.

A nontestamentary document generally refers to a legal instrument other than a will that creates or transfers interest in or the right to property, gives someone else the power to handle the person's financial affairs or to make health care decisions, or specifies end-of-life decisions and medical preferences. Nontestamentary documents include inter vivos trust documents, powers of attorney, and health care directives.

Uniform Electronic Transactions Act.

Adopted in Washington in 2020, the Uniform Electronic Transactions Act (UETA) applies to transactions relating to business, commercial, or governmental affairs. The UETA establishes a general rule that a signature, record, or contract related to a transaction may not be denied legal effect or enforceability solely because it is in electronic form.

The UETA neither prohibits nor expressly authorizes the electronic signing of estate planning documents. However, because the UETA applies to bilateral agreements between parties who have agreed to conduct transactions by electronic means, unilateral estate planning documents, such as trusts and powers of attorney, are not directly within the UETA's scope.

Uniform Electronic Wills Act.

Adopted in Washington in 2021, the Uniform Electronic Wills Act (UEWA) permits a testator to execute a will by electronic means. Under the UEWA, the core formalities required to make a will valid are retained but are made executable electronically. Additionally, the UEWA outlines the process for revoking an electronic will and creating a certified paper copy of an electronic will. The UEWA does not apply to nontestamentary estate planning documents.

Uniform Electronic Estate Planning Documents Act.

In 2022 the Uniform Law Commission promulgated the Uniform Electronic Estate Planning Documents Act (UEEPDA). The UEEPDA provides UETA-like rules for electronic estate plans by expressly authorizing the use of electronic documents and electronic signatures for nontestamentary estate planning documents, such as trusts and powers of attorney. The UEEPDA has been adopted in Illinois and introduced in Missouri, Oklahoma, and West Virginia.

Summary of Bill:

The Uniform Electronic Estate Planning Documents Act (UEEPDA) is adopted to establish guidelines for the optional use of electronic nontestamentary estate planning documents and

electronic signatures on nontestamentary estate planning documents.

"Nontestamentary estate planning document" is defined as a record relating to estate planning that is readable as text at the time of signing and that is not a will or contained in a will. Nontestamentary estate planning documents include records that create, modify, or revoke:

- an inter vivos trust;
- a power of attorney;
- a power of appointment;
- a nomination of a guardian or conservator for a minor child or disabled adult;
- a health care directive or a mental health advance directive; and
- any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death.

Nontestamentary estate planning documents do not include real property deeds or certificates of title for a motor vehicle, watercraft, or aircraft. Additionally, nontestamentary estate planning documents do not include nonjudicial settlement agreements in trust and estate disputes; instead, the Uniform Electronic Transactions Act (UETA) applies to such agreements. The UEEPDA does not apply to a nontestamentary estate planning document if the document precludes the use of an electronic record or electronic signature.

The UEEPDA does not require a nontestamentary estate planning document or signature on the document to be in electronic form, even if a person previously created or signed a nontestamentary estate planning document by electronic means. A person may not waive the right to require nontestamentary estate planning documents to be in physical form and signed with a wet signature.

A nontestamentary estate planning document or a signature on the document may not be denied legal effect or enforceability solely because it is in electronic form. An electronic record of a nontestamentary estate planning document satisfies the requirement that the document be in writing, and an electronic signature satisfies the signature requirement for a nontestamentary estate planning document. A person who refuses to accept an electronic nontestamentary estate planning document or an electronic signature on the document is subject to a court order mandating acceptance of the document or signature.

An electronic nontestamentary estate planning document or an electronic signature on the document is attributable to a person if it was the act of the person, which may be shown in any manner. The effect of attribution is determined from the context and surrounding circumstances at the time of the creation, execution, or adoption of the document or signature.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if an individual authorized to perform those acts

attaches or logically associates the individual's electronic signature on the electronic nontestamentary estate planning document together with all other information required to be included. The individual making the statement or executing the signature may appear physically or remotely, as provided in state law governing notarial acts.

If a law requires a nontestamentary estate planning document to be signed, witnessed, or attested by another individual, that individual's signature, witnessing, or attestation may be electronic. If a law requires a nontestamentary estate planning document to be signed, witnessed, or attested by another individual in the presence of the individual signing the document, the presence requirement is satisfied if the individuals are in each other's electronic presence, as that term is defined in state probate and trust law.

An individual may create a certified paper copy of an electronic nontestamentary estate planning document by affirming under penalty of perjury that the paper copy is a complete and accurate copy of the document. If a law requires an electronic nontestamentary estate planning document to be retained, the requirement is satisfied by retaining an electronic record that accurately reflects the information in the document after it was first generated in final form as an electronic record or as a certified paper copy, and that remains accessible to the extent required by law. An electronic record retained in accordance with the UEEPDA satisfies a requirement that a nontestamentary estate planning document be presented or retained in its original form.

Evidence relating to an electronic nontestamentary estate planning document or an electronic signature on the document may not be excluded in a proceeding solely because such evidence is in electronic form.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill closes a small but very important gap in current law. A few years ago, the Legislature enacted the UEWA, but that law applies to wills and does not apply to nontestamentary documents that are typically executed at the same time as wills. As a result, no one is using the UEWA or investing in the technology required for it because it does not make sense to execute an electronic will and then not be able to execute an electronic nontestamentary document at the same time. The technology for this process does exist and it is secure, with a credentialing process that verifies all participants' identities in advance. It is essentially a recorded Zoom call, and the recording is saved

forever, which makes it a safer and more verifiable alternative to the current method of executing these documents. This bill has been vetted by state bar lawyers. The suggested amendments have been incorporated into the bill to bolster protections against fraud and to customize the model act to Washington.

(Opposed) None.

Persons Testifying: Senator Jamie Pedersen, prime sponsor; Bryce Mackay, Bromiley Mackay Williams, Professional Limited Liability Company; and Karen Boxx.

Persons Signed In To Testify But Not Testifying: None.