
Civil Rights & Judiciary Committee

SB 5132

Brief Description: Concerning trusts and estates.

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

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.

Hearing Date: 3/10/21

Staff: Ingrid Lewis (786-7289).

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

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- 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 WPIA and 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; the expansion of provisions for unitrusts; and the inclusion of 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 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: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4021, relating to binding agreement provisions that reference guardianship chapters, which takes effect January 1, 2022.