

SENATE BILL REPORT

SB 5787

As Reported by Senate Committee On:
Law & Justice, January 11, 2024

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

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

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

Brief History:

Committee Activity: Law & Justice: 1/09/24, 1/11/24 [DPS].

Brief Summary of First Substitute Bill

- Authorizes the use of electronic nontestamentary estate planning documents and electronic signatures on nontestamentary estate planning documents.
- Establishes guidelines for the validity and recognition of electronic nontestamentary estate planning documents and electronic signatures on nontestamentary estate planning documents.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5787 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

Background: Estate Planning Documents. A testamentary document generally refers to a

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will that creates, extinguishes, or transfers interest in, or the right to, an asset or property upon a person's death. A nontestamentary document generally refers to a document other than a will that creates, extinguishes, or transfers interest in, or the right to, property.

Uniform Electronic Transactions Act. In 1999, the Uniform Law Commission (ULC) adopted the Uniform Electronic Transactions Act (UETA) with a stated goal of removing barriers to electronic commerce by validating and effectuating electronic records and electronic signatures. The UETA establishes the general rule that a signature, contract, or other record related to a transaction may not be denied legal effect or enforceability solely because it is in electronic form.

Electronic Estate Planning Documents Act. In 2022, the ULC adopted the Uniform Electronic Estate Planning Documents Act (UEEPDA) with a stated goal to clarify the electronic execution of certain types of estate planning documents, including trusts and powers of attorney. The UEEPDA expressly authorizes the use of electronic documents and electronic signatures for trusts, powers of attorney, and other types of estate planning documents.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): The use of an electronic nontestamentary estate planning document or electronic signatures on nontestamentary estate planning documents is optional.

Neither an electronic nontestamentary estate planning document nor an electronic signature on a nontestamentary estate planning document may be denied legal effect or enforceability solely because of their electronic form. All requirements for written nontestamentary estate planning documents or written signatures on nontestamentary estate planning documents are satisfied by their electronic forms. Acceptance of such electronic documents or signatures may be enforced by court order.

An electronic nontestamentary estate planning document or electronic signature on a nontestamentary estate planning document may be attributable to an act of the person in any manner.

A signature or record related to an electronic nontestamentary estate planning document may be notarized, acknowledged, verified, or made under oath by an authorized individual. A nontestamentary estate planning document may be validated by electronic signature, electronic witnessing, or electronic attestation of an individual whose presence may be electronic.

Retention requirements for electronic nontestamentary estate planning documents are satisfied by retaining, transmitting, copying, or filing 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 the electronic record remains accessible as required by applicable law. An electronic record retained in this manner satisfies requirements 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 a nontestamentary estate planning document may not be excluded in a proceeding solely because of their electronic form.

The UETA applies to nonjudicial settlement agreements in disputes involving trusts and estates.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on First Substitute: PRO: There is a gap of estate planning documents that are unable to be prepared electronically, such as powers of attorney, trust agreements, health care directives, and other documents. The purpose of this act is to make sure that all estate planning documents are able to be prepared electronically. It is uncertain how often electronic estate planning documents will be used. However, the COVID-19 pandemic taught us that flexibility to electronically prepare estate planning documents is important. Electronic estate planning documents would be significantly utilized in rural communities, where people can sign such documents from home rather than commute to an attorney's office. The software used to prepare and sign electronic estate planning documents are secure. Estate, probate, and litigation lawyers who have reviewed this act are comfortable with the language.

Persons Testifying: PRO: Karen Boxx; Bryce Mackay, Bromiley Mackay Williams, PLLC.

Persons Signed In To Testify But Not Testifying: No one.