

# SENATE BILL REPORT

## SB 5132

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As of January 19, 2021

**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:** Law & Justice: 1/19/21.

### Brief Summary of Bill

- Creates the Uniform Electronic Wills Act, the Uniform Fiduciary Income and Principal Act, and the Uniform Powers of Appointment Act.

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## SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

**Background:** Wills. Wills and trusts are legal instruments for the distribution of property. Washington State law requires that every will must be in writing, signed by the testator, and attested by two or more competent witnesses. Many legal and commercial transactions are digital, and people assume they can also make and execute electronic wills. Electronic wills may result in legal actions to contest their validity. Utah has enacted the Uniform Electronic Wills Act and four other states including Washington have introduced the act.

Washington Principal and Income Act of 2002. The Washington Principal and Income Act (WPIA) governs the allocation of receipts and disbursements of a trust. A trust may have different classes of beneficiaries: those that have an interest in the income—income beneficiary, and those that have an interest in the principal—remainder beneficiary. A trustee has a fiduciary duty to both kinds of beneficiaries. If a trust has two or more beneficiaries, the trustee is to act impartially among them and is to take into account the

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differing interests of the beneficiaries. The WPIA gives a trustee the power to reallocate or adjust receipts of the trust between or among beneficiaries.

The act also applies to trusts that are converted to 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 Washington Principal and Income Act of 2002, the default annual payout of a unitrust is 4 percent of the net fair market value of the assets of the trust.

Uniform Powers of Appointment Act. Powers of appointment are usually included in wills and trusts, and is a power to distribute or dispose of property. The powers may be broad or limited depending on how the donor creates those powers in their last will. It provides the exercise of powers by the powerholder and the distribution of appointive property.

**Summary of Bill:** Uniform Electronic Wills Act. The act permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect. The act retains core formalities of writing, signature and attestation, but makes them 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.

A sample form is provided to be used as an electronic will. The act 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. Fiduciary duties are set forth. A fiduciary shall act in good faith based on what is fair and reasonable to all beneficiaries. A fiduciary may convert an income trust to a unitrust or a unitrust to an income trust. A fiduciary may adjust between income and principal if the fiduciary determines the exercise of the power to adjust is necessary to administer the trust or estate. A governing law section is included to avoid jurisdictional disputes.

Uniform Powers of Appointment Act. Donor, powerholder, and power of appointment is defined. A power of appointment means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in, or another power of appointment over, the appointive property. The term does not include a power of attorney. Statutory authority for the creation, revocation, and use of powers of appointment is provided. The exercise of powers by the powerholder and the distribution of property is

outlined. It also addresses the release of those powers and the rights of creditors.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

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

**Staff Summary of Public Testimony:** PRO: Unfortunately during the pandemic some people were essentially trapped in long-term care facilities and without the ability to make or update their estate planning documents because they could not have lawyers, or witnesses, or notaries in to be with them where they stay. The Uniform Electronic Wills Act will allow people to make or update wills online. There are additional protections, for example, an electronic will can not be self proving unless it is retained by a qualified custodian from when it is made to when it is probated. That will ensure that the electronic will is not altered.

The Uniform Fiduciary Income and Principal Act, and the Uniform Powers of Appointment Act are both primarily updates. The fiduciary act includes technical accounting provisions for how income is taxed in trusts, and a newer version of it has been adopted across the country. The powers of appointment give flexibility for a trustee to make adjustments to help a more needy child. The Electronic Wills Act is new and will help people during the pandemic or where people are unable to travel. Part of the bill responds to the Rathbone case and is necessary. The language in the case has been asserted in extreme fashion. There has been confusion about what the Rathbone case means. In the Rathbone case there was a challenge by an unhappy beneficiary to the executor's authority to administer the estate. The court said that the executor, a nonintervention personal representative, has the authority to interpret a will on their own. There have been attempts to interpret that holding too broadly. What the holding did not say is that a personal representative always has to exercise a fiduciary duty and be reasonable in their interpretation. This bill would not override the interpretation in Rathbone, but it clarifies the procedures where there is a dispute.

**Persons Testifying:** PRO: Senator Jamie Pedersen, Prime Sponsor; Karen Boxx, citizen.

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