
SENATE BILL 5787

State of Washington

68th Legislature

2024 Regular Session

By Senators Pedersen, Padden, Mullet, Nobles, and Salomon; by request of Uniform Law Commission

Prefiled 12/04/23. Read first time 01/08/24. Referred to Committee on Law & Justice.

1 AN ACT Relating to the uniform electronic estate planning
2 documents act; amending RCW 1.80.020; and adding a new chapter to
3 Title 11 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** TITLE. This chapter may be cited as the
6 uniform electronic estate planning documents act.

7 NEW SECTION. **Sec. 2.** DEFINITIONS. In this chapter:

8 (1) "Electronic" means relating to technology having electrical,
9 digital, magnetic, wireless, optical, electromagnetic, or similar
10 capabilities.

11 (2) "Electronic record" means a record created, generated, sent,
12 communicated, received, or stored by electronic means.

13 (3) "Electronic signature" means an electronic symbol or process
14 attached to or logically associated with a record and executed or
15 adopted by a person with the intent to sign the record.

16 (4) "Information" includes data, text, images, codes, computer
17 programs, software, and databases.

18 (5) "Nontestamentary estate planning document" means a record
19 relating to estate planning that is readable as text at the time of
20 signing and is not a will or contained in a will. The term:

1 (a) Includes a record readable as text at the time of signing
2 that creates, exercises, modifies, releases, or revokes:
3 (i) A trust instrument;
4 (ii) A trust power that under the terms of the trust requires a
5 signed record;
6 (iii) A certification of a trust under RCW 11.98.075;
7 (iv) A power of attorney that is durable under chapter 11.125
8 RCW;
9 (v) An agent's certification under RCW 11.125.430 of the validity
10 of a power of attorney and the agent's authority;
11 (vi) A power of appointment;
12 (vii) An advance directive, including a durable power of attorney
13 for health care, directive to physicians, natural death statement,
14 living will, and medical or physician order for life-sustaining
15 treatment;
16 (viii) A record directing disposition of an individual's body
17 after death;
18 (ix) A nomination of a guardian for the signing individual;
19 (x) A nomination of a guardian for a minor child or disabled
20 adult child;
21 (xi) A mental health treatment declaration;
22 (xii) A community property survivorship agreement;
23 (xiii) A disclaimer under RCW 11.86.011(5);
24 (xiv) A trust decanting under chapter 11.107 RCW; and
25 (xv) Any other record intended to carry out an individual's
26 intent regarding property or health care while incapacitated or on
27 death; and
28 (b) Does not include:
29 (i) A deed of real property or certificate of title for a motor
30 vehicle, watercraft, or aircraft; or
31 (ii) A nonjudicial settlement agreement under RCW 11.96A.220.
32 (6) "Person" means an individual, estate, business or nonprofit
33 entity, government or governmental subdivision, agency, or
34 instrumentality, or other legal entity.
35 (7) "Power of attorney" means a record that grants authority to
36 an agent to act in place of the principal, even if the term is not
37 used in the record.
38 (8) "Record" means information:
39 (a) Inscribed on a tangible medium; or

1 (b) Stored in an electronic or other medium and retrievable in
2 perceivable form.

3 (9) "Security procedure" means a procedure to verify that an
4 electronic signature, record, or performance is that of a specific
5 person or to detect a change or error in an electronic record. The
6 term includes a procedure that uses an algorithm, code, identifying
7 word or number, encryption, or callback or other acknowledgment
8 procedure.

9 (10) "Settlor" means a person, including a testator, that creates
10 or contributes property to a trust.

11 (11) "Sign" means, with present intent to authenticate or adopt a
12 record:

13 (a) Execute or adopt a tangible symbol; or

14 (b) Attach to or logically associate with the record an
15 electronic signature.

16 (12) "State" means a state of the United States, the District of
17 Columbia, Puerto Rico, the United States Virgin Islands, or other
18 territory or possession subject to the jurisdiction of the United
19 States. The term includes a federally recognized Indian tribe.

20 (13) "Terms of a trust" means:

21 (a) Except as provided in (b) of this subsection, the
22 manifestation of the settlor's intent regarding a trust's provisions
23 as:

24 (i) Expressed in the trust instrument; or

25 (ii) Established by other evidence that would be admissible in a
26 judicial proceeding; or

27 (b) The trust's provisions as established, determined, or amended
28 by:

29 (i) A trustee or other person in accordance with applicable law;

30 (ii) A court order; or

31 (iii) A nonjudicial settlement agreement under RCW 11.96A.220.

32 (14) "Trust instrument" means an instrument executed by the
33 settlor that contains terms of the trust, including any amendments.

34 (15) "Will" includes a codicil and a testamentary instrument that
35 merely appoints an executor, revokes or revises another will,
36 nominates a guardian, or expressly excludes or limits the right of an
37 individual or class to succeed to property of the decedent passing by
38 intestate succession.

1 NEW SECTION. **Sec. 3.** CONSTRUCTION. This chapter must be
2 construed and applied to:

- 3 (1) Facilitate electronic estate planning documents and
4 signatures consistent with other law; and
5 (2) Be consistent with reasonable practices concerning electronic
6 documents and signatures and continued expansion of those practices.

7 NEW SECTION. **Sec. 4.** SCOPE. (1) Except as provided in
8 subsection (2) of this section, this chapter applies to an electronic
9 nontestamentary estate planning document and an electronic signature
10 on a nontestamentary estate planning document.

11 (2) This chapter does not apply to a nontestamentary estate
12 planning document if the document precludes use of an electronic
13 record or electronic signature.

14 (3) This chapter does not affect the validity of an electronic
15 record or electronic signature that is valid under:

- 16 (a) Chapter 1.80 RCW; or
17 (b) RCW 11.12.400 through 11.12.491.

18 NEW SECTION. **Sec. 5.** PRINCIPLES OF LAW AND EQUITY. The law of
19 this state and principles of equity applicable to a nontestamentary
20 estate planning document apply to an electronic nontestamentary
21 estate planning document except as modified by this chapter.

22 NEW SECTION. **Sec. 6.** USE OF ELECTRONIC RECORD OR SIGNATURE NOT
23 REQUIRED. (1) This chapter does not require a nontestamentary estate
24 planning document or signature on a nontestamentary estate planning
25 document to be created, generated, sent, communicated, received,
26 stored, or otherwise processed or used by electronic means or in
27 electronic form.

28 (2) A person is not required to have a nontestamentary estate
29 planning document in electronic form or signed electronically even if
30 the person previously created or signed a nontestamentary estate
31 planning document by electronic means.

32 (3) A person may not waive the provisions of this section.

33 NEW SECTION. **Sec. 7.** RECOGNITION OF ELECTRONIC NONTESTAMENTARY
34 ESTATE PLANNING DOCUMENT AND ELECTRONIC SIGNATURE. (1) A
35 nontestamentary estate planning document or a signature on a

1 nontestamentary estate planning document may not be denied legal
2 effect or enforceability solely because it is in electronic form.

3 (2) If other law of this state requires a nontestamentary estate
4 planning document to be in writing, an electronic record of the
5 document satisfies the requirement.

6 (3) If other law of this state requires a signature on a
7 nontestamentary estate planning document, an electronic signature
8 satisfies the requirement.

9 (4) A person that refuses in violation of this section to accept
10 a nontestamentary estate planning document or a signature on a
11 nontestamentary estate planning document is subject to:

12 (a) A court order mandating acceptance of the document or
13 signature; and

14 (b) Liability for reasonable attorneys' fees and costs incurred
15 in any action or proceeding that confirms the validity of the
16 document or signature or mandates acceptance of the document or
17 signature.

18 NEW SECTION. **Sec. 8.** ATTRIBUTION AND EFFECT OF ELECTRONIC
19 RECORD AND ELECTRONIC SIGNATURE. (1) An electronic nontestamentary
20 estate planning document or electronic signature on an electronic
21 nontestamentary estate planning document is attributable to a person
22 if it was the act of the person. The act of the person may be shown
23 in any manner, including by showing the efficacy of a security
24 procedure applied to determine the person to which the electronic
25 record or electronic signature was attributable.

26 (2) The effect of attribution to a person under subsection (1) of
27 this section of a document or signature is determined from the
28 context and surrounding circumstances at the time of its creation,
29 execution, or adoption and as provided by other law.

30 NEW SECTION. **Sec. 9.** NOTARIZATION AND ACKNOWLEDGMENT. If other
31 law of this state requires a signature or record to be notarized,
32 acknowledged, verified, or made under oath, the requirement is
33 satisfied with respect to an electronic nontestamentary estate
34 planning document if an individual authorized to perform the
35 notarization, acknowledgment, verification, or oath attaches or
36 logically associates the individual's electronic signature on the
37 document together with all other information required to be included
38 under the other law. The individual making the statement or executing

1 the signature may appear physically or, as provided in RCW 42.45.280,
2 remotely.

3 NEW SECTION. **Sec. 10.** WITNESSING AND ATTESTATION. (1) If other
4 law of this state bases the validity of a nontestamentary estate
5 planning document on whether it is signed, witnessed, or attested by
6 another individual, the signature, witnessing, or attestation of that
7 individual may be electronic.

8 (2) If other law of this state bases the validity of a
9 nontestamentary estate planning document on whether it is signed,
10 witnessed, or attested by another individual in the presence of the
11 individual signing the document, the presence requirement is
12 satisfied if the individuals are in each other's electronic presence,
13 as defined in RCW 11.02.005.

14 NEW SECTION. **Sec. 11.** RETENTION OF ELECTRONIC RECORD—ORIGINAL.

15 (1) Except as provided in subsection (2) of this section, if other
16 law of this state requires an electronic nontestamentary estate
17 planning document to be retained, transmitted, copied, or filed, the
18 requirement is satisfied by retaining, transmitting, copying, or
19 filing an electronic record that:

20 (a) Accurately reflects the information in the document after it
21 was first generated in final form as an electronic record or under
22 section 12 of this act; and

23 (b) Remains accessible to the extent required by the other law.

24 (2) A requirement under subsection (1) of this section to retain
25 a record does not apply to information the sole purpose of which is
26 to enable the record to be sent, communicated, or received.

27 (3) If other law of this state requires a nontestamentary estate
28 planning document to be presented or retained in its original form,
29 or provides consequences if a nontestamentary estate planning
30 document is not presented or retained in its original form, an
31 electronic record retained in accordance with subsection (1) of this
32 section satisfies the other law.

33 (4) This section does not preclude a governmental agency from
34 specifying requirements for the retention of a record subject to the
35 agency's jurisdiction in addition to those in this section. In this
36 subsection, "governmental agency" means an executive, legislative, or
37 judicial agency, department, board, commission, authority,
38 institution, or instrumentality of the federal government or of a

1 state or of a county, municipality, or other political subdivision of
2 a state.

3 NEW SECTION. **Sec. 12.** CERTIFICATION OF PAPER COPY. An
4 individual may create a certified paper copy of an electronic
5 nontestamentary estate planning document by affirming under penalty
6 of perjury that the paper copy is a complete and accurate copy of the
7 document.

8 NEW SECTION. **Sec. 13.** ADMISSIBILITY IN EVIDENCE. Evidence
9 relating to an electronic nontestamentary estate planning document or
10 an electronic signature on the document may not be excluded in a
11 proceeding solely because it is in electronic form.

12 NEW SECTION. **Sec. 14.** UNIFORMITY OF APPLICATION AND
13 CONSTRUCTION. In applying and construing this uniform act, a court
14 shall consider the promotion of uniformity of the law among
15 jurisdictions that enact it.

16 NEW SECTION. **Sec. 15.** RELATION TO ELECTRONIC SIGNATURES IN
17 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
18 supersedes the electronic signatures in global and national commerce
19 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
20 supersede 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of
21 any of the notices described in 15 U.S.C. Sec. 7003(b).

22 NEW SECTION. **Sec. 16.** TRANSITIONAL PROVISION. This chapter
23 applies to an electronic nontestamentary estate planning document
24 created, signed, generated, sent, communicated, received, or stored
25 before, on, or after the effective date of this section.

26 **Sec. 17.** RCW 1.80.020 and 2020 c 57 s 3 are each amended to read
27 as follows:

28 (1) Except as otherwise provided in subsection (2) of this
29 section, this chapter applies to electronic records and electronic
30 signatures relating to a transaction.

31 (2) This chapter does not apply to a transaction to the extent it
32 is governed by:

1 (a) A law governing the creation and execution of wills,
2 codicils, or testamentary trusts. However, this chapter applies to
3 nonjudicial settlement agreements under RCW 11.96A.220; and

4 (b) Title 62A RCW other than RCW 62A.1-306 and chapters 62A.2 and
5 62A.2A RCW.

6 (3) This chapter applies to an electronic record or electronic
7 signature otherwise excluded from the application of this chapter
8 under subsection (2) of this section to the extent it is governed by
9 a law other than those specified in subsection (2) of this section.

10 (4) A transaction subject to this chapter is also subject to
11 other applicable substantive law.

12 NEW SECTION. **Sec. 18.** SEVERABILITY. If any provision of this
13 act or its application to any person or circumstance is held invalid,
14 the remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 19.** CODIFICATION. Sections 1 through 16 of
17 this act constitute a new chapter in Title 11 RCW.

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