

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5787

68th Legislature
2024 Regular Session

Passed by the Senate January 24, 2024
Yeas 49 Nays 0

President of the Senate

Passed by the House February 29, 2024
Yeas 92 Nays 1

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5787** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5787

Passed Legislature - 2024 Regular Session

State of Washington

68th Legislature

2024 Regular Session

By Senate Law & Justice (originally sponsored by Senators Pedersen, Padden, Mullet, Nobles, and Salomon; by request of Uniform Law Commission)

READ FIRST TIME 01/12/24.

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 record" means a record created, generated, sent,
9 communicated, received, or stored by electronic means.

10 (2) "Electronic signature" means an electronic symbol or process
11 attached to or logically associated with a record that uses a
12 security procedure and is executed or adopted by a person with the
13 intent to sign the record.

14 (3) "Information" includes data, text, images, codes, computer
15 programs, software, databases, and the like, and does not include
16 videos or sounds.

17 (4) "Nontestamentary estate planning document" means a record
18 relating to estate planning that is readable as text at the time of
19 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) An inter vivos trust governed by chapters 11.97, 11.98,
4 11.98B, 11.103, 11.110, and 11.118 RCW;

5 (ii) A trust power held by a trustor, a trustee, a beneficiary or
6 a third party that is granted under the terms of a trust, under this
7 title, specifically including chapters 11.97, 11.98, 11.98B, 11.103,
8 11.110, and 11.118 RCW, or by any other statute or rule of law
9 related to trusts that requires a writing, written instrument, or a
10 signed record or document;

11 (iii) A certification of a trust under RCW 11.98.075;

12 (iv) A power of attorney, including for health care of the
13 principal or of the principal's minor children, that is durable under
14 chapter 11.125 RCW;

15 (v) An agent's certification under RCW 11.125.430 of the validity
16 of a power of attorney and the agent's authority;

17 (vi) A power of appointment;

18 (vii) A health care directive under chapter 70.122 RCW;

19 (viii) A document appointing an agent to dispose of an
20 individual's remains, directing disposition of an individual's
21 remains after death, or expressing wishes regarding an anatomical
22 gift;

23 (ix) A nomination of a guardian or conservator for the signing
24 individual;

25 (x) A nomination of a guardian or conservator for a minor child
26 or disabled adult child or a delegation of parental powers for a
27 minor child pursuant to RCW 11.130.145;

28 (xi) A mental health advance directive under chapter 71.32 RCW;

29 (xii) A community property agreement as described in RCW
30 26.16.120;

31 (xiii) A disclaimer under RCW 11.86.011(5);

32 (xiv) A trust decanting under chapter 11.107 RCW;

33 (xv) A separate writing directing the disposition of tangible
34 personal property under RCW 11.12.260; and

35 (xvi) Any other record intended to carry out an individual's
36 intent regarding property or health care while incapacitated or on
37 death; and

38 (b) Does not include:

39 (i) A deed of real property or certificate of title for a motor
40 vehicle, watercraft, or aircraft; or

1 (ii) A nonjudicial settlement agreement under RCW 11.96A.220.

2 (5) "Person" means an individual, estate, business or nonprofit
3 entity, government or governmental subdivision, agency, or
4 instrumentality, or other legal entity.

5 (6) "Security procedure" means a procedure employed for the
6 purpose of verifying that an electronic signature, record, or
7 performance is that of a specific person or for detecting changes or
8 errors in the information in an electronic record. The term includes
9 a procedure that requires the use of algorithms or other codes,
10 identifying words or numbers, encryption, or callback or other
11 acknowledgment procedures.

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

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

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

17 (8) "State" means a state of the United States, the District of
18 Columbia, Puerto Rico, the United States Virgin Islands, or any
19 territory or insular possession subject to the jurisdiction of the
20 United States. The term includes an Indian tribe or band, or Alaskan
21 native village, which is recognized by federal law or formally
22 acknowledged by a state.

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

25 (1) Facilitate electronic estate planning-related documents and
26 signatures consistent with other law; and

27 (2) Be consistent with reasonable practices concerning electronic
28 documents and signatures and continued expansion of those practices.

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

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

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

38 (a) Chapter 1.80 RCW;

- 1 (b) Chapter 5.50 RCW;
- 2 (c) RCW 11.12.400 through 11.12.491; or
- 3 (d) Chapter 42.45 RCW.

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

8 NEW SECTION. **Sec. 6.** USE OF ELECTRONIC RECORD OR SIGNATURE NOT
9 REQUIRED. (1) This chapter does not require a nontestamentary estate
10 planning document or signature on a nontestamentary estate planning
11 document to be created, generated, sent, communicated, received,
12 stored, or otherwise processed or used by electronic means or in
13 electronic form.

14 (2) A person is not required to have a nontestamentary estate
15 planning document in electronic form or signed electronically even if
16 the person previously created or signed a nontestamentary estate
17 planning document by electronic means.

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

19 NEW SECTION. **Sec. 7.** RECOGNITION OF ELECTRONIC NONTESTAMENTARY
20 ESTATE PLANNING DOCUMENT AND ELECTRONIC SIGNATURE. (1) A
21 nontestamentary estate planning document or a signature on a
22 nontestamentary estate planning document may not be denied legal
23 effect or enforceability solely because it is in electronic form.

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

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

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

33 (a) A court order mandating acceptance of the document or
34 signature; and

35 (b) Liability for reasonable attorneys' fees and costs incurred
36 in any action or proceeding that confirms the validity of the

1 document or signature or mandates acceptance of the document or
2 signature.

3 NEW SECTION. **Sec. 8.** ATTRIBUTION AND EFFECT OF ELECTRONIC
4 RECORD AND ELECTRONIC SIGNATURE. (1) An electronic nontestamentary
5 estate planning document or electronic signature on an electronic
6 nontestamentary estate planning document is attributable to a person
7 if it was the act of the person. The act of the person may be shown
8 in any manner, including by showing the efficacy of a security
9 procedure applied to determine the person to which the electronic
10 record or electronic signature was attributable.

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

15 NEW SECTION. **Sec. 9.** NOTARIZATION AND ACKNOWLEDGMENT. If other
16 law of this state requires a signature or record to be notarized,
17 acknowledged, verified, or made under oath, the requirement is
18 satisfied with respect to an electronic nontestamentary estate
19 planning document if an individual authorized to perform the
20 notarization, acknowledgment, verification, or oath attaches or
21 logically associates the individual's electronic signature on the
22 document together with all other information required to be included
23 under the other law. The individual making the statement or executing
24 the signature may appear physically or, as provided in RCW 42.45.280,
25 remotely.

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

31 (2) If other law of this state bases the validity of a
32 nontestamentary estate planning document on whether it is signed,
33 witnessed, or attested by another individual in the presence of the
34 individual signing the document, the presence requirement is
35 satisfied if the individuals are in each other's electronic presence,
36 as defined in RCW 11.02.005.

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

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

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

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

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

14 (3) If other law of this state requires a nontestamentary estate
15 planning document to be presented or retained in its original form,
16 or provides consequences if a nontestamentary estate planning
17 document is not presented or retained in its original form, an
18 electronic record retained in accordance with subsection (1) of this
19 section satisfies the other law.

20 (4) This section does not preclude a governmental agency from
21 specifying requirements for the retention of a record subject to the
22 agency's jurisdiction in addition to those in this section. In this
23 subsection, "governmental agency" means an executive, legislative, or
24 judicial agency, department, board, commission, authority,
25 institution, or instrumentality of the federal government or of a
26 state or of a county, municipality, or other political subdivision of
27 a state.

28 NEW SECTION. **Sec. 12.** CERTIFICATION OF PAPER COPY. An

29 individual may create a certified paper copy of an electronic
30 nontestamentary estate planning document by affirming under penalty
31 of perjury that the paper copy is a complete and accurate copy of the
32 document.

33 NEW SECTION. **Sec. 13.** ADMISSIBILITY IN EVIDENCE. Evidence

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

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

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

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

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

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

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

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

25 (b) Title 62A RCW other than RCW 62A.1-306 and chapters 62A.2 and
26 62A.2A RCW.

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

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

33 NEW SECTION. **Sec. 18.** SEVERABILITY. If any provision of this
34 act or its application to any person or circumstance is held invalid,
35 the remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

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

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