

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

On H. 436: International Wills

April 9, 2019

Stephanie J. Willbanks

My name is Stephanie Willbanks. I am a professor of law at Vermont Law School. I am also a member of the Uniform Law Commission, appointed by the Governor. I am testifying in my individual capacity and as a member of the Uniform Law Commission. My testimony represents my own personal views and not that of Vermont Law School or the Uniform Law Commission.

H. 436 is modeled after the Uniform Law Commission's Uniform Wills Recognition Act. This Act was adopted by the Uniform Law Commission in 1977 to implement the 1973 Convention Providing a Uniform Law on the Form of an International Will. The United States is a signatory to the Convention. The United States State Department encourages all states to enact this Act to facilitate estate planning for American citizens living abroad, moving abroad, or returning from living abroad.

Approximately 20 American jurisdictions have enacted the Uniform Wills Recognition Act. This allows a will that is drafted in any jurisdiction, either within the United States or abroad, that meets the requirements of the Act to be probated in any jurisdiction that has enacted the Act. While title 14 sections 112 and 113 of the Vermont Statutes Annotated recognize wills from other jurisdictions, the will proponent must prove what execution requirements that other jurisdiction has and that the will was executed in compliance with those requirements. This can be particularly onerous for a will that is drafted abroad. H. 436 obviates the need for that proof. As long as the will meet the requirements of the Act and has the required Certificate of Authorized Person, it would meet the execution requirements of Vermont law.

The Act does not impose any will execution requirements that are significantly different from existing Vermont law. Under current Vermont law, the testator and the witnesses must all sign the will at the same time in the same place. H. 436 requires the same. Vermont law now recognizes self-proving affidavits, affidavits signed by the testator and witnesses before a notary public attesting to the execution of the will. The Certificate of Authorized Person is very similar and serves the same purpose. The person offering the will for probate does not need to prove that the will was properly executed if there is a self-proving affidavit or a Certificate of Authorized Person.

Under H. 436, all licensed attorneys are authorized persons. So the Act does not impose any additional licensing requirements.

This Act will benefit individuals living abroad or in other jurisdictions that move to Vermont and do not execute a new will after they move. It will also benefit Vermont residents who move to another jurisdiction that has enacted the uniform law. This is particularly beneficial for individuals who are moving or living abroad. Of particular benefit is the fact that Canada has signed the Convention and has enacted appropriate legislation. So if Vermont enacts H.436, a Vermont resident who owns property in Canada or moves to Canada and a Canadian citizen who owns property in Vermont or moves to Vermont would only need to execute one will.

The Act will also benefit Vermont attorneys who represent such clients. Now Vermont attorneys have to work with an attorney in New Hampshire or another jurisdiction that has adopted the uniform act. That increases the cost and complexity of representation.

I have sent Mike Bailey a copy of the Uniform Law that includes extensive comments. Those comments explain the 1973 Convention and each section of the act.