

HOUSE BILL REPORT

ESHB 3012

As Passed Legislature

Title: An act relating to estate distribution documents.

Brief Description: Regarding estate distribution documents.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Ross, Lantz, Rodne and Williams).

Brief History:

Committee Activity:

Judiciary: 1/29/08, 2/5/08 [DPS].

Floor Activity:

Passed House: 2/18/08, 95-0.

Passed Senate: 3/4/08, 46-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Exempts documents, instruments, writings, or marketing materials relating to a transfer on death account from the definition of "estate distribution document."

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Lara Zarowsky (786-7123).

Background:

It is unlawful for anyone not authorized to practice law in this state to market estate distribution documents in or from the state.

An estate distribution document is a will, trust, living trust, or other agreement fixing the terms of the sale of a decedent's interest in any property at or following the decedent's death,

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except a payable on death account, that is prepared for a specific person or prepared as marketing materials. Marketing materials include an offer or agreement to prepare or provide individualized advice about an estate distribution document.

The unauthorized marketing of estate distribution documents is a violation of the state Consumer Protection Act (CPA). Under the CPA, certain activities have been designated by the Legislature as unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. Various remedies for violations of the CPA are provided, including authorization for the Attorney General to seek restraining orders. A person who is injured by a violation of the CPA may recover treble damages, costs, and reasonable attorneys' fees.

The practice of law includes not only legal representation of a client in court, but also legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured.

The State Bar Act makes the "unlawful practice of law" a gross misdemeanor punishable by up to one year in jail and a fine of up to \$5,000. "Nonlawyers," for purposes of this statute, include anyone not an active member in good standing of the State Bar Association. Court rules on the practice of law regulate admission to the bar and allow for discipline and disbarment of members, but do not directly regulate or discipline nonlawyers.

A person that is not authorized to practice law in this state may nonetheless gather information or assist in preparing estate distribution documents if (1) he or she is employed by someone who is authorized to practice law in this state, and (2) he or she does not provide legal advice.

Financial institutions are exempt from the prohibition against marketing estate distribution documents by those not authorized to practice law.

A financial institution is a:

- bank or bank holding company registered under federal law;
- trust company;
- savings or mutual savings bank;
- savings and loan association;
- credit union organized under state or federal law; or
- any affiliate, subsidiary, officer or employee of a financial institution.

A payable on death account is an account that becomes payable to one or more designated beneficiaries upon the death of the depositor.

A transfer on death account allows a holder to pass securities directly to another person or entity upon death without having to go through probate.

Summary of Engrossed Substitute Bill:

Documents, instruments, writings, or marketing materials relating to a transfer on death account established under RCW 21.35 are specifically exempted in the definition of "estate distribution document."

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Last year, Attorney General request legislation HB 1114 made an effort to strengthen provisions to address unscrupulous activity with estate planning documents, particularly living wills. The law that passed provided exclusions in two areas: first a *payment* on death account is specifically excluded in the definition of an estate distribution document. However, a "transfer on death" account, common in the securities industry, was not excluded in the definition. Transfer on death is a common activity, and failing to exclude it from the prohibition against marketing of estate distribution documents results in an exposure that is unintended for a very basic activity.

Securities broker-dealers should be included in the definition of a financial institution so that they are exempted under the law. There is an inequity in the fact that banks and trust companies are excluded under the law, but securities broker-dealers are not. If a broker-dealer works for a financial institution, such as Wells Fargo, they are able to do securities transactions while being exempted under this law. However, if the broker-dealer works for Merrill Lynch, they are not protected because Merrill Lynch is a securities company and does not fall under any of the categories considered a "financial institution" under the law. The inequity should be addressed. The rogues and non-licensed crowd are really the problem, and we should work to find a solution.

(In support with concerns) From a civil law enforcement standpoint, the bill passed last year is a good law. The purpose is to separate those engaged in the unauthorized practice of law from being able to engender trust through the sale of estate planning documents, particularly in the case of vulnerable consumers who can be misled into believing that dealing with an attorney is not in their best interest. The deception sets up fertile ground conflict of interest, incompetence, and sharp dealing. Allowing *transfer* on death accounts to be marketed is a good thing and this provision of the bill is strongly supported. Transfer on death accounts simply direct a financial institution on how to handle matters upon death. This doesn't involve the danger that we see in other transactions, such as we saw with living trusts. The question is whether *unlicensed* brokers should be exempted. The broker-dealer may be included as a party to trust activity as opposed to simply taking direction from the consumer, and may want to include its own language. This is the real issue.

(Opposed) None.

Persons Testifying: (In support) Representative Ross, prime sponsor; and Bill Stauffacher, Securities Industry and Financial Markets Association.

(In support with concerns) Doug Walsh, Office of the Attorney General.

Persons Signed In To Testify But Not Testifying: None.