

HOUSE BILL REPORT

HB 1331

As Passed House:

February 23, 2009

Title: An act relating to exempting certified public accountants from the restrictions on marketing estate distribution documents for certain purposes.

Brief Description: Exempting certified public accountants from the restrictions on marketing estate distribution documents for certain purposes.

Sponsors: Representatives Rodne, Pedersen and Kelley.

Brief History:

Committee Activity:

Judiciary: 1/28/09, 1/29/09 [DP].

Floor Activity

Passed House: 2/23/09, 97-0.

Brief Summary of Bill

- Provides that the law proscribing the marketing of estate distribution documents does not apply to certified or licensed public accountants engaged in the gathering of information for the preparation of an estate distribution document.
- Defines "gathering information for the preparation of an estate distribution document."

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Kate Moeur (786-5793)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 (except a payable-on-death account or a transfer-on-death account) that is prepared for a specific person and may be 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 also a per se violation of the state Consumer Protection Act (CPA). A person who is injured by a violation of the CPA may recover treble damages, costs, and reasonable attorneys' fees.

A person who 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 also exempt.

A certified public accountant is a person holding a public accountant license certified by the Washington State Board of Accountancy. Certified public accountants provide a range of services to clients, often including: accounting assistance, the issuance of reports on financial statements, management and financial advisory services, tax preparation and advisory services, and estate or financial planning.

Summary of Bill:

Certified or licensed public accountants gathering information for the preparation of an estate distribution document are exempt from the law proscribing the marketing of estate distribution documents.

"Gathering information for the preparation of an estate distribution document" is defined as collecting data, facts, figures, records, and other particulars about a specific person or persons for the preparation of an estate planning document, but it does not include the collection of such information for clients in the customary and usual course of financial, tax, and associated planning.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This is a technical fix to legislation that passed in 2007 that made the marketing of estate distribution documents by non-lawyers unlawful. Certified public accountants were

unintentionally included within the scope of the former legislation. This bill excludes certified public accountants from the provisions of the law so that they are able to provide the services they are certified to provide. The legislation that passed in 2007 and 2008 could be interpreted to require certified public accountants offering estate planning services to be under the supervision of an attorney. This bill provides a necessary clarification that certified public accountants are not required to be supervised by an attorney.

(With concerns) Small business that prepare estate planning documents do not necessarily use certified public accountants when providing these services and should also be exempted under this law.

Persons Testifying: (In support) Representative Rodne, prime sponsor; Richard Sweeney, Washington State Board of Accountancy; and Lisa Thatcher, Washington Society of Certified Public Accountants.

(With concerns) Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: None.