

HOUSE BILL REPORT

SSB 5343

As Reported by House Committee On: Judiciary

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

Brief Description: Exempting specified persons from restrictions on marketing estate distribution documents.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Regala, Carrell and Kline).

Brief History:

Committee Activity:

Judiciary: 3/25/09, 3/26/09 [DP].

Brief Summary of Substitute Bill

- Exempts certified or licensed public accountants and enrolled agents gathering information for the preparation of an estate distribution document from the law proscribing the marketing of estate distribution documents by those not licensed to practice law.
- Defines "gathering information for the preparation of an estate distribution document."

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Kate Moeur White (786-5793) and Trudes Tango (786-7384)

Background:

It is unlawful for anyone not authorized to practice law in Washington to market estate distribution documents.

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.

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 upon 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' fee.

A person who is not authorized to practice law in Washington may nonetheless gather information for, or assist in, the preparation of 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.

An enrolled agent is an individual who, though neither a certified public accountant nor an attorney, has been admitted to practice before the Internal Revenue Service (IRS), either by passing an examination or by working for the IRS in a technical area for at least five years.

Summary of Bill:

Certified or licensed public accountants and enrolled agents 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 distribution document; it does not include the collection of such information for clients in the customary and usual course of financial, tax, and associated planning by licensed certified public accountants.

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 bill contains exactly the same exemption for certified public accountants that was in the House version of this bill. The additional exemption for enrolled agents corrects the concerns that existed about the House companion bill. There are approximately 900 enrolled agents in this state that will be affected by this bill.

(Opposed) None.

Persons Testifying: Lisa Ratcher, Washington State Certified Public Accountants; Richard Sweeny, State Board of Accountancy; Toni McKinley, Washington State Society of Enrolled Agents; and Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: None.