

SENATE BILL REPORT

SB 6831

As of February 9, 2010

Title: An act relating to estates and trusts.

Brief Description: Concerning estates and trusts.

Sponsors: Senator Parlette.

Brief History:

Committee Activity: Ways & Means: 2/09/10.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: Many wills and trusts drafted to take advantage of federal tax exemptions for spouses and children use terms and formulas referring to things such as the applicable credit amount, unified credit, federal estate tax, and generation-skipping transfer tax. However, in 2010 there is no federal estate tax, and therefore many of the formulas used in drafting wills and trusts will not function to fund trust or estate plans as intended when the will or trust document was created.

Summary of Bill: A will or trust of a decedent who dies after December 31, 2009, but before January 1, 2011, will be deemed to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or trust:

1. contains a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, or unlimited marital deduction;
2. measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes; or
3. is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law.

The personal representative or any affected beneficiary under a will or trust may bring a proceeding under the trust and estate dispute resolution act to determine whether the

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decedent intended that the references referred to above be construed with respect to the federal law as it existed after December 31, 2009. Such a proceeding must be commenced within 12 months following the death of the testator or grantor, and not thereafter.

The provisions of the bill are retroactive to December 31, 2009.

Appropriation: None.

Fiscal Note: Requested on February 2, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: Because the federal estate tax has lapsed, many wills that contain formulas for the distributions of the estate to children and spouses will not work. Depending on what the court decides, a spouse or children could be left out. In December, the U.S. Senate chose to not take up the estate tax and reinstate it. Many wills make a gift to a family trust or just to the spouse based on a formula that is based on the federal exemption. Since in 2010, there is no federal exemption, these wills will have to go to court and there may be some unintended disinheritance. We have changed a few of the wills, but it is not likely that we can get to all of them. This bill will give the courts guidance.

Persons Testifying: PRO: Alan Macpherson, Attorney, Gordon Thomas; Michael D. Carrico, Attorney, Riddell Williams.