

SENATE BILL REPORT

SB 5197

As Reported By Senate Committee On:
Judiciary, February 24, 1999

Title: An act relating to disclaimer of interests.

Brief Description: Making technical corrections to the disclaimer statute.

Sponsors: Senators Johnson and Kline.

Brief History:

Committee Activity: Judiciary: 1/29/992, 2/24/99 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5197 be substituted therefor, and the substitute bill do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Hargrove, Johnson, Long, McCaslin, Roach, Thibaudeau and Zarelli.

Staff: Penny Nerup (786-7484)

Background: As used in the disclaimer statute, a disclaimer is the refusal by a beneficiary to accept an inheritance. The inheritance then passes, normally, to the children of the beneficiary. Transfer of an inheritance using this disclaimer is not treated as a taxable gift either to the beneficiary or to the children who receive the inheritance. There are generally two situations in which beneficiaries disclaim an inheritance: 1) if they have a sufficient estate and the inheritance would result in their paying large estate taxes; or, 2) if they are insolvent with many judgments against them and they do not want the inheritance monies to go to creditors.

The purpose of the disclaimer law is to insure that a disclaimer that is intended to provide no federal gift tax consequences will satisfy the requirements of the Internal Revenue Code. Currently, specific subsections of state law must be specifically referred to in the language of the disclaimer in order to avoid tax consequences.

Because of the extremely technical wording of the Internal Revenue Code regarding disclaimers, the Estate and Gift Tax Section of the Washington State Bar has concerns that attorneys in general practice may draft disclaimer language for their clients that inadvertently results in substantial estate taxes to the clients and in subsequent malpractice lawsuits directed against those attorneys.

Summary of Substitute Bill: A disclaimer of interest in an estate does not have to specifically refer to specific subsections of state law in order to avoid tax consequences. Unless otherwise designated within the disclaimer, a disclaimer meets the minimum requirements of the Internal Revenue Code. Disclaimed property does not have to pass into

a trust in order for the disclaimer to apply. The word "executor" is changed to the more inclusive fiduciary term "personal representative."

The act applies retroactively to all disclaimers made after the date of the change in the Internal Revenue Code.

Substitute Bill Compared to Original Bill: The original bill had an emergency enactment date. Because the bill does not meet the criteria for emergency enactment, the substitute bill provides for the normal effective date of 90 days after the close of session.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is a savings statute to protect general practice attorneys from malpractice and to save their clients from federal tax consequences. It is supported by the Estate and Gift Tax Section of the WSBA.

Testimony Against: None.

Testified: PRO: Alan Montgomery, Esq., Chair, Estate and Gift Tax Section, Washington State Bar Association.