
Judiciary Committee

HB 3012

Title: An act relating to estate distribution documents.

Brief Description: Regarding estate distribution documents.

Sponsors: Representatives Ross, Lantz, Rodne and Williams.

Brief Summary of Bill

- Modifies the definition of "estate distribution document" to include transfer on death accounts.
- Modifies the definition of "financial institution" to include securities broker-dealers licensed under state law.

Hearing Date: 1/29/08

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

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

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.

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.

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.

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 **securities broker-dealer** is any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. A security is a kind of contract that can be assigned a value and traded. Examples include notes, stocks, bonds, options, futures, warrants, and other financial assets.

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 Bill:

A transfer on death account established under RCW 21.35 is added to the definition of "estate distribution document."

A securities broker-dealer licensed under state law is added to the definition of "financial institution" and is therefore exempted from the prohibition against the marketing of estate distribution documents by anyone not authorized to practice law.

Appropriation: None.

Fiscal Note: Not requested.

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