

SENATE BILL REPORT

ESHB 1114

As Reported By Senate Committee On:
Judiciary, March 21, 2007

Title: An act relating to marketing of estate distribution documents.

Brief Description: Prohibiting the marketing of estate distribution documents by persons not authorized to practice law in this state or who are not a financial institution.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Rodne, Lantz, Moeller and B. Sullivan; by request of Attorney General).

Brief History: Passed House: 3/06/07, 97-0.

Committee Activity: Judiciary: 3/16/07, 3/21/07 [DP, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Hargrove, Murray and Weinstein.

Minority Report: That it be referred without recommendation.

Signed by Senators Carrell and Roach.

Staff: Lidia Mori (786-7755)

Background: The practice of law as construed by Washington State courts includes not only legal representation of a client in court, but also legal advice and the preparation of legal instruments and contracts. Controversy and concern have arisen over the preparation and marketing of various documents, such as wills and trusts, that relate to the disposition of a person's property. In some instances, such documents are being prepared and marketed by persons who are not members of the state bar association.

RCW 2.48, the State Bar Act, makes the "unlawful practice of law" a crime. One way in which the crime is committed is for a nonlawyer to practice law or hold himself or herself out as entitled to practice law or to share legal fees with a lawyer. "Nonlawyers" for purposes of this statute include anyone not an active member in good standing of the state bar association. Committing the crime of unlawful practice for the first time is a gross misdemeanor, punishable by up to one year in jail and a fine of up to \$5,000. Any subsequent violation is a class C felony, punishable by up to five years in prison and a fine of up to \$10,000.

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 unlawful practice statute states that a violation of that section by a person who is licensed in another business or profession may be grounds for discipline as unprofessional conduct in that business or profession. An action may be brought by a prosecuting attorney for an injunction and a civil penalty of up to \$5,000 for each violation of the unlawful practice statute. The Washington State Court Rules authorize certain certified nonlawyers to select, prepare, and complete legal documents incident to the closing of real estate and personal property transactions. Under the state's Consumer Protection Act (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 available, including authorization for the Attorney General to seek restraining orders. A person injured by a violation of the CPA may recover treble damages, costs, and reasonable attorney's fees.

Summary of Engrossed Substitute Bill: It is unlawful for anyone who is not authorized to practice law in this state to market estate distribution documents in or from the state. The unauthorized marketing of such documents is also a violation of the CPA. "Estate distribution documents" are documents such as wills or trusts that have either been prepared for a specific person or have been prepared as marketing materials. Such documents do not include payable on death accounts in a financial institution. Marketing includes an offer or agreement to prepare or provide individualized advice about an estate distribution document. A person who is not authorized to practice law in this state may nonetheless gather information or assist in preparing estate distribution documents if he or she is employed by someone who is authorized to practice law in this state and he or she does not provide legal advice. The act does not apply to financial institutions.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill is very similar to the Senate version that was passed out by this committee. The only difference is that this bill exempts financial institutions. This bill is Attorney General request legislation. It clarifies the law pertaining to the marketing of estate distribution documents by specifically stating what is prohibited.

Persons Testifying: PRO: Steve Larson, Washington Attorney General's Office.