

SENATE BILL REPORT

ESHB 3012

As Reported By Senate Committee On:
Judiciary, February 29, 2008

Title: An act relating to estate distribution documents.

Brief Description: Regarding estate distribution documents.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Ross, Lantz, Rodne and Williams).

Brief History: Passed House: 2/18/08, 95-0.

Committee Activity: Judiciary: 2/29/08 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

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

Staff: Lidia Mori (786-7755)

Background: It is unlawful for anyone not authorized to practice law in this state to market estate distribution documents in or from the state with the exception of financial institutions which are exempt from the prohibition against marketing estate distribution documents by those not authorized to practice law.

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 materials include an offer or agreement to prepare or provide individualized advice about an estate distribution document. A payable on death account is an account that becomes payable to one or more designated beneficiaries upon the death of the depositor. 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.

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. A person who is injured by a violation of the CPA may recover treble damages, costs, and reasonable attorneys' fees.

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 practice of law includes not only legal representation of a client in court, but also legal advice and counsel, and the preparation of legal instruments and contracts. 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.

A person that is not authorized to practice law in this state may gather information or assist in preparing estate distribution documents if that person is employed by someone who is authorized to practice law in this state, and that person does not provide legal advice.

Summary of Bill: Documents, instruments, writings, or marketing materials relating to a transfer on death account established under RCW 21.35 are specifically exempt in the definition of "estate distribution document."

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 on Engrossed Substitute Bill: PRO: Without this legislative change, the common activity of a stockbroker asking a person to fill out a transfer on death beneficiary form is illegal marketing of an estate document nonprobate asset.

Persons Testifying: PRO: Bill Stauffacher, Securities Industry and Financial Markets Assn.