

SENATE BILL REPORT

SSB 5343

As Passed Senate, March 12, 2009

Title: An act relating to exempting certified public accountants and enrolled agents from the restrictions on marketing estate distribution documents for certain purposes.

Brief Description: Exempting specified persons from restrictions on marketing estate distribution documents.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Regala, Carrell and Kline).

Brief History:

Committee Activity: Judiciary: 2/06/09, 2/24/09 [DPS].

Passed Senate: 3/12/09, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5343 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles, Roach and Tom.

Staff: Kim Johnson (786-7472)

Background: It is unlawful for anyone who is not authorized to practice law in this state to market estate distribution documents. An estate distribution document is one of the following documents, prepared for a specific person or as marketing materials for distribution to any person: will, trust, living trust, or other agreement fixing the terms of sale of a decedent's interest in any property at or following the decedent's death. "Market" means an offer or agreement to prepare or gather information for preparation, or to provide individualized advice about an estate distribution document.

Financial institutions, such as banks, trust companies, and credit unions are exempt from the prohibition against marketing estate distribution documents by those not authorized to practice law.

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 unauthorized marketing of estate distribution documents is also a per se violation of the state Consumer Protection Act. A person who is injured by a violation of the Consumer Protection Act may recover treble damages, costs, and reasonable attorneys' fees.

A certified public accountant (CPA) is a person holding a public accountant license certified by the Washington State Board of Accountancy. Certified public accountants provide a range of services to clients, including accounting assistance, the issuance of reports on financial statement, management and financial advisory services, tax preparation, and estate or financial planning.

Summary of Substitute Bill: Certified or licensed public accountants and enrolled agents gathering information for the preparation of an estate distribution document are exempt from the law proscribing the marketing of estate distribution documents.

"Gathering information for the preparation of an estate distribution document" is defined as collecting data, facts, figures, records, and other particulars about a specific person or persons for the preparation of an estate planning document, but it does not include the collection of such information for clients in the customary and usual course of financial, tax, and associated planning.

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 Original Bill: PRO: The bill that protected the marketing of estate distribution documents impacted CPAs' authority to collect information from their clients for the purpose of assisting them to prepare to meet with their attorney to prepare an estate distribution document. CPAs are regulated by a state board and state statutes and as such there is a high degree of professional accountability and oversight. The only reason the Washington State Board of Accountancy got involved in this issue is our concern over whether our licensees can continue to perform activities that they have been for their clients for years now.

We worked very closely with the Attorney General's (AG) Consumer Protection unit to craft a narrow clarification recognizing the work that CPAs do for their clients to prep for legal estate planning. We have great concerns whether the AG will support broadening the bill to include other entities who are not regulated by the state or the Board of Accountancy.

CON: Certified Financial Planners are a set of planners that are certified to draft plans for our clients. We do not prepare legal documents and do not give legal advice. We help our clients consider tax liability/benefits. CPAs are not the only group of professionals that provide financial planning assistance to clients in the preparation of our clients meeting with an attorney to create an estate distribution document. My concern is with the definition of "gathering information" that the interpretation of the existing act now applies to some of the

work we do for our clients. We strongly oppose only CPAs being exempted under this legislation. Again, we don't draft legal documents, we draft plans and as professionals should be included in this bill's exemption.

OTHER: Enrolled Agents (EA) are federally-licensed tax practitioners and are empowered by the U.S. Department of Treasury to represent taxpayers before all administrative levels of the Internal Revenue Service. EAs also gather financial information and should be included in the clarification language in this bill.

Accredited Tax Preparers, Accredited Tax Advisors, and Accredited Business Accountants all meet stringent academic, testing, and continuing education requirements. We serve our clients' needs and have ethical guidelines too. We have helped our clients meet their estate distribution goals by gathering information and providing the information with our suggestions to their attorney. There is no need to now require that in order to do some of the work we do to also have our clients engage a CPA.

Persons Testifying: PRO: Richard Sweeney, Washington State Board of Accountancy; Lisa Thatcher, Washington State Certified Public Accountants.

CON: Don Holt, Washington Association of Accountants; Gary Smith, Independent Business Association; James Suits, Jr., certified financial planner.

OTHER: Carl Warren, certified financial planner; Stephen Dilworth, David Flood, Washington State Society of Enrolled Agents.