

SENATE BILL REPORT

SB 5849

As of February 24, 2011

Title: An act relating to estates and trusts.

Brief Description: Concerning estates and trusts.

Sponsors: Senators Prentice and Parlette.

Brief History:

Committee Activity: Ways & Means:

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: SSB 6831 was enacted in 2010 in order to provide a rule of construction in interpreting formula clauses in wills and trusts that referred to the federal estate tax or generation-skipping transfer tax exemption amounts. The purpose of the bill was to deal with the issue in 2010 where there was no federal estate tax. Since there was no estate tax, there was no exemption amount, so the formula clauses did not work.

SSB 6831 created a rebuttable presumption that the decedent intended, when using a formula clause, the estate tax and generation-skipping transfer tax exemption amounts be equal to what they were when the applicable federal tax was last in effect, *i.e.*, \$3.5 million on December 31, 2009.

December 17, 2010, Congress retroactively reenacted the estate tax and generation-skipping transfer tax provisions to January 1, 2010. At the same time, Congress increased these exemptions to \$5 million also retroactive to January 1, 2010.

As a result, for decedents dying after December 31, 2009, and before December 18, 2010, it is not clear if formula clauses used in wills and trusts would result in a presumed exemption amount of \$3.5 million or \$5 million.

Summary of Bill: For estates of decedents dying after December 31, 2009, and before December 18, 2010, the act:

1. Allows for the introduction of extrinsic evidence in order to determine what was the testator's or grantor's intent regarding a formula clause based on the federal

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estate tax or generation-skipping transfer tax exemptions, even if the will is not ambiguous.

2. Removes the presumption created by SSB 6831 that the formula amount mentioned in paragraph #1 above is \$3.5 million. It also allows for construction of the formula as meaning \$3.5 million or \$5 million based on the decedent's intent.
3. Changes the time limit for bringing a judicial construction action under RCW 11.108.080 to two years following the death of the decedent's death, as opposed to one year.
4. In order to conform to federal disclaimer law, it extends the time to make a qualified disclaimer of property passing from an estate of decedent dying after December 31, 2009, and prior to December 18, 2010, to the later of nine months following the date of death or September 17, 2010.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.