
SENATE BILL 5343

State of Washington 61st Legislature 2009 Regular Session

By Senators Regala, Carrell, and Kline

Read first time 01/20/09. Referred to Committee on Judiciary.

1 AN ACT Relating to exempting certified public accountants from the
2 restrictions on marketing estate distribution documents for certain
3 purposes; and amending RCW 19.295.005, 19.295.010, and 19.295.020.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 19.295.005 and 2007 c 67 s 1 are each amended to read
6 as follows:

7 The legislature finds the practice of using "living trusts" as a
8 marketing tool by persons who are not authorized to practice law, who
9 are not acting directly under the supervision of a person authorized to
10 practice law, ((~~or~~)) who are not a financial institution, or who are
11 not a certificate holder or licensee regulated under chapter 18.04 RCW
12 for purposes of gathering information for the preparation of an estate
13 distribution document to be a deceptive means of obtaining personal
14 asset information and of developing and generating leads for sales to
15 senior citizens. The legislature further finds that this practice
16 endangers the financial security of consumers and may frustrate their
17 estate planning objectives. Therefore, the legislature intends to
18 prohibit the marketing of services related to preparation of estate

1 distribution documents by persons who are not authorized to practice
2 law or who are not a financial institution.

3 This chapter is not intended to limit consumers from (~~receiving~~)
4 obtaining legitimate estate planning (~~services~~) documents, including
5 "living trusts," from those authorized to practice law; but is intended
6 to prohibit persons not licensed to engage in the practice of law from
7 the unscrupulous practice of marketing legal (~~services~~) documents as
8 a means of targeting senior citizens for financial exploitation.

9 **Sec. 2.** RCW 19.295.010 and 2008 c 161 s 1 are each amended to read
10 as follows:

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

13 (1) "Market" or "marketing" includes every offer, contract, or
14 agreement to prepare or gather information for the preparation of, or
15 to provide, individualized advice about an estate distribution
16 document.

17 (2) "Estate distribution document" means any one or more of the
18 following documents, instruments, or writings prepared, or intended to
19 be prepared, for a specific person or as marketing materials for
20 distribution to any person, other than documents, instruments,
21 writings, or marketing materials relating to a payable on death account
22 established under RCW 30.22.040(9) or a transfer on death account
23 established under chapter 21.35 RCW:

24 (a) Last will and testament or any writing, however designated,
25 that is intended to have the same legal effect as a last will and
26 testament, and any codicil thereto;

27 (b) Revocable and irrevocable inter vivos trusts and any instrument
28 which purports to transfer any of the trustor's current and/or future
29 interest in real or personal property thereto;

30 (c) Agreement that fixes the terms and provisions of the sale of a
31 decedent's interest in any real or personal property at or following
32 the date of the decedent's death.

33 (3) "Financial institution" means a bank holding company registered
34 under federal law, a bank, trust company, mutual savings bank, savings
35 bank, savings and loan association or credit union organized under
36 state or federal law, or any affiliate, subsidiary, officer, or
37 employee of a financial institution.

1 (4) "Gathering information for the preparation of an estate
2 distribution document" means collecting data, facts, figures, records,
3 and other particulars about a specific person or persons for the
4 preparation of an estate planning document, but does not include the
5 collection of such information for clients in the customary and usual
6 course of financial, tax, and associated planning by a certificate
7 holder or licensee regulated under chapter 18.04 RCW.

8 (5) "Person" means any natural person, corporation, partnership,
9 limited liability company, firm, or association.

10 **Sec. 3.** RCW 19.295.020 and 2007 c 67 s 3 are each amended to read
11 as follows:

12 (1) Except as provided in subsection (2) of this section, it is
13 unlawful for a person to market estate distribution documents, directly
14 or indirectly, in or from this state unless the person is authorized to
15 practice law in this state.

16 (2) A person employed by someone authorized to practice law in this
17 state may gather information for, or assist in the preparation of,
18 estate distribution documents as long as that person does not provide
19 any legal advice.

20 (3) This chapter applies to any person who markets estate
21 distribution documents in or from this state. Marketing occurs in this
22 state, whether or not either party is then present in this state, if
23 the offer originates in this state or is directed into this state or is
24 received or accepted in this state.

25 (4) This chapter does not apply to any financial institution.

26 (5) This chapter does not apply to a certificate holder or licensee
27 regulated under chapter 18.04 RCW for purposes of gathering information
28 for the preparation of an estate distribution document.

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