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**SUBSTITUTE SENATE BILL 5343**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Judiciary (originally sponsored by Senators Regala, Carrell, and Kline)

READ FIRST TIME 02/25/09.

1       AN ACT Relating to exempting certified public accountants and  
2 enrolled agents from the restrictions on marketing estate distribution  
3 documents for certain purposes; and amending RCW 19.295.005,  
4 19.295.010, and 19.295.020.

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

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

8       The legislature finds the practice of using "living trusts" as a  
9 marketing tool by persons who are not authorized to practice law, who  
10 are not acting directly under the supervision of a person authorized to  
11 practice law, ~~((or))~~ who are not a financial institution, or who are  
12 not properly credentialed and regulated professionals as specified  
13 under RCW 19.295.020 (5) and (6) for purposes of gathering information  
14 for the preparation of an estate distribution document to be a  
15 deceptive means of obtaining personal asset information and of  
16 developing and generating leads for sales to senior citizens. The  
17 legislature further finds that this practice endangers the financial  
18 security of consumers and may frustrate their estate planning  
19 objectives. Therefore, the legislature intends to prohibit the

1 marketing of services related to preparation of estate distribution  
2 documents by persons who are not authorized to practice law or who are  
3 not a financial institution.

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

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

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

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

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

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

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

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

34 (3) "Financial institution" means a bank holding company registered  
35 under federal law, a bank, trust company, mutual savings bank, savings  
36 bank, savings and loan association or credit union organized under

1 state or federal law, or any affiliate, subsidiary, officer, or  
2 employee of a financial institution.

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

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

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

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

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

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

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

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

31 (6) This chapter does not apply to an individual who is an enrolled  
32 agent enrolled to practice before the internal revenue service pursuant  
33 to Treasury Department Circular No. 230 for purposes of gathering  
34 information for the preparation of an estate distribution document.

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