

# HOUSE BILL ANALYSIS

## SB 5108

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**Title:** An act relating to the transfer of a community property interest in an individual retirement account at death.

**Brief Description:** Transferring certain interests in individual retirement accounts.

**Sponsors:** Senators Roach and Johnson.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Staff:** Edie Adams (786-7180).

**Background:** The federal Employee Retirement Income Security Act (ERISA) governs pension, retirement, and employee benefit plans. ERISA prohibits the assignment or transfer of a pension, retirement, or employee benefit plan, except for transfers between spouses pursuant to a "qualified domestic relations order" (QDRO). A QDRO is a court order entered under a state's domestic relations laws.

As interpreted by the Ninth Circuit Court, ERISA's anti-transfer provision prohibits a deceased spouse from transferring, by will or intestate succession, his or her community property interest in the other spouse's pension benefits. Thus, a spouse may receive his or her community property interest in the other spouse's pension or retirement plan only through a decree of dissolution and property settlement, or if the account-holder spouse predeceases the nonaccount-holder spouse. The Ninth Circuit Court concluded that ERISA preempts any state community property law to the contrary.

A pension, retirement, or employee benefit plan covered by ERISA may not be assigned or transferred unless done pursuant to a QDRO. ERISA, however, does not cover some types of Individual Retirement Accounts (IRAs). Therefore, state community property law could provide, without being preempted by ERISA, that a deceased spouse's community property interest in the surviving spouse's IRA may be accessed by the deceased spouse's estate.

In Washington, pension and retirement benefits earned during marriage are community property. It is unclear whether the community property interest of a spouse in the other spouse's pension or retirement plan is transferable at death either by will or by the law of intestate succession. Washington courts have indicated in dicta that a nonaccount-holder spouse's community property interest in the pension of

the account-holder spouse is not terminated upon the death of the nonaccount-holder spouse.

Washington statutory law provides that the right of a person to a pension, annuity, retirement benefit, or employee benefit plan is exempt from execution, attachment, garnishment, or seizure under legal process, except pursuant to a qualified domestic relations order or a court order providing maintenance and support. Arguably, this language could preclude the estate of a deceased spouse from accessing his or her community property interest in the other spouse's IRA.

**Summary of Bill:** The exemption from garnishment, attachment, or execution for pensions, retirement benefits, or employee benefit plans shall not be construed as a termination or limitation of a spouse's community property interest in the other spouse's individual retirement account.

When the nonaccount-holder spouse dies, his or her community property interest in the account-holder spouse's IRA may be transferred to the nonaccount-holder spouse's estate, testamentary trust, *inter vivos* trust, or other successor pursuant to the last will or the law of intestate succession.

The right of a beneficiary of the nonaccount-holder spouse's community property interest in an IRA is exempt from execution, attachment, and garnishment.

Consent by the nonaccount-holder spouse to a beneficiary designation by the account-holder spouse with respect to an IRA shall not be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonaccount-holder spouse's community property interest in the IRA absent clear and convincing evidence to the contrary.

An IRA includes an individual retirement account and individual retirement annuity as described in Section 408 of the Internal Revenue Code of 1986 and an individual retirement bond as described in Section 409 of the Internal Revenue Code as in effect prior to January 1, 1984.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

Office of Program Research