

SENATE BILL REPORT

SB 5108

As Passed Senate, February 28, 1997

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.

Brief History:

Committee Activity: Law & Justice: 1/27/97, 2/5/97 [DP].
Passed Senate, 2/28/97, 47-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Fairley, Hargrove, Haugen, Kline, Long, McCaslin, Stevens and Zarelli.

Staff: Martin Lovinger (786-7443)

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

Any pension, retirement, or employee benefit plans covered by the federal Employee Retirement Income Security Act (ERISA) may not be assigned or transferred unless done pursuant to a qualified domestic relations order. 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 nonaccount holder spouse has a community property interest in the surviving spouse's IRA which may be accessed by the estate of the nonaccount holder spouse.

Summary of Bill: The nonaccount holder spouse may transfer, at death, the community property interest in the account holder spouse's IRA 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.

Consent by the nonaccount holder spouse to a beneficiary designation by the account holder spouse with respect to an IRA is not 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This is probably the law in Washington now, but the bill will eliminate any ambiguity.

Testimony Against: None.

Testified: Watson Blair, Washington State Bar Association (pro).