

# HOUSE BILL REPORT

## HB 1019

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As Passed House:  
January 10, 1996

**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:** Representative Padden.

**Brief History:**

**Committee Activity:**

Law & Justice: 1/11/95, 1/17/95, 1/24/95, 1/25/95 [DP].

**Floor Activity:**

Passed House: 2/17/95, 93-0;

Passed House: 1/10/96, 94-0.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass. Signed by 15 members: Representatives Padden, Chair; Delvin, Vice Chair; Hickel, Vice Chair; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith and Veloria.

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

**Background:** A 1991 Ninth Circuit Court decision, Albamis v. Roper, ruled that the federal Employee Retirement Income Security Act (ERISA), as amended by the Retirement Equity Act (REA), precludes the assignment or transfer by a deceased spouse of his or her community property interest in the surviving spouse's pension benefits. ERISA provides one exception to the prohibition on assignment or transfer: transfers between spouses pursuant to a "qualified domestic relations order" (QDRO). Thus, a nonaccount holder spouse may receive his or her community property interest in the account holder spouse's pension 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 that allows a nonaccount holder spouse to transfer his or her community property interest in the account holder spouse's pension upon the death of the nonaccount holder spouse.

Any pension, retirement, or employee benefit plans 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 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.

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. 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, in RCW 6.15.020, that the right of a person to a pension, annuity, retirement benefit, or the right under an employee benefit plan is exempt from execution, attachment, garnishment, or seizure by or under any 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 nonaccount holder spouse from accessing the nonaccount holder spouse's community property interest in an IRA.

**Summary of Bill:** Nothing contained in RCW 6.15.020 (3), (4), or (5) shall be construed as a termination or limitation of a spouse's community property interest in an individual retirement account of the other spouse. The nonaccount holder spouse may transfer, at death, the community property interest in the account holder spouse's individual retirement account 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 individual retirement account 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 individual retirement account shall not be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonaccount holder spouse's community property interest in the individual retirement account absent clear and convincing evidence to the contrary.

An individual retirement account 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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This bill clarifies that a nonaccount holder spouse, at death, may transfer his or her community property interest in the individual retirement account of the other spouse to a named beneficiary.

**Testimony Against:** None.

**Testified:** Dean Butler, Washington State Bar Association (pro).