

108TH CONGRESS
1ST SESSION

S. 1616

To amend the Employee Retirement Income Security Act of 1974 to prevent the preemption of State community property law as it relates to non-forfeitable accrued retirement benefits.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2003

Ms. LANDRIEU introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 to prevent the preemption of State community property law as it relates to nonforfeitable accrued retirement benefits.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. STATE COMMUNITY PROPERTY LAW RIGHT TO**
4 **RETIREMENT BENEFITS NOT PREEMPTED BY**
5 **ERISA.**

6 (a) IN GENERAL.—Section 514(b) of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1144(b)) is amended—

1 (1) by redesignating paragraphs (8) and (9) as
2 (9) and (10), respectively; and

3 (2) by inserting after paragraph (7) the fol-
4 lowing:

5 “(8)(A) Except as provided in subparagraph (B), if—

6 “(i) under the community property laws of any
7 State the spouse of a participant of a pension plan
8 is entitled to any portion of the participant’s non-
9 forfeitable accrued benefit; and

10 “(ii) the spouse’s interest in such benefit under
11 such laws passed to an individual other than the
12 participant by reason of the death of the spouse;

13 then subsection (a) shall not apply to an order issued by
14 a court of such State disposing of such interest.

15 “(B) Nothing in subparagraph (A) shall be construed
16 to allow a claim—

17 “(i) for a benefit directly from a pension plan;

18 “(ii) against a qualified joint and survivor an-
19 nuity or qualified pre-retirement survivor annuity of
20 a surviving spouse of the participant; or

21 “(iii) against the participant during his or her
22 lifetime.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this Act shall apply to orders regarding the estates of de-
3 cedents dying after the date of enactment of this Act.

○