

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 535
Committee Substitute Favorable 4/10/97

Short Title: Equit. Distrib./Retirement Rts.

(Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO INCLUDE NONVESTED PENSION, RETIREMENT, AND OTHER DEFERRED COMPENSATION RIGHTS AS MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 50 of the General Statutes is amended by adding the following new section to read:

"§ 50-20.1. Pension and retirement benefits.

(a) The award of vested pension, retirement, or other deferred compensation benefits may be made payable:

(1) As a lump sum by agreement;

(2) Over a period of time in fixed amounts by agreement;

(3) By appropriate domestic relations order as a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or

(4) By awarding a larger portion of other assets to the party not receiving the benefits and a smaller share of other assets to the party entitled to receive the benefits.

1 **(b)** The award of nonvested pension, retirement, or other deferred compensation
2 benefits may be made payable:

3 **(1)** As a lump sum by agreement;

4 **(2)** Over a period of time in fixed amounts by agreement; or

5 **(3)** By appropriate domestic relations order as a prorated portion of the
6 benefits made to the designated recipient at the time the party against
7 whom the award is made actually begins to receive the benefits.

8 **(c)** Notwithstanding the provisions of subsections (a) and (b) of this section, the
9 court shall not require the administrator of the fund or plan involved to make any
10 payments until the party against whom the award is made actually begins to receive the
11 benefits unless the plan permits an earlier distribution.

12 **(d)** The award shall be determined using the proportion of time the marriage
13 existed (up to the date of separation of the parties), simultaneously with the employment
14 which earned the vested and nonvested pension, retirement, or deferred compensation
15 benefit, to the total amount of time of employment. The award shall be based on the
16 vested and nonvested accrued benefit, as provided by the plan or fund, calculated as of
17 the date of separation, and shall not include contributions, years of service, or
18 compensation which may accrue after the date of separation. The award shall include
19 gains and losses on the prorated portion of the benefit vested at the date of separation.

20 **(e)** No award shall exceed fifty percent (50%) of the benefits the person against
21 whom the award is made is entitled to receive as vested and nonvested pension,
22 retirement, or other deferred compensation benefits, except that an award may exceed
23 fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or
24 (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or
25 profession; or (iii) it is economically desirable for one party to retain an asset or interest
26 that is intact and free from any claim or interference by the other party; or (iv) more than
27 one pension or retirement system or deferred compensation plan or fund is involved, but
28 the benefits award may not exceed fifty percent (50%) of the total benefits of all the plans
29 added together; or (v) both parties consent. In no event shall an award exceed fifty
30 percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

31 **(f)** In the event the person receiving the award dies, the unpaid balance, if any, of
32 the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate
33 succession, or by beneficiary designation with the plan consistent with the terms of the
34 plan unless the plan prohibits such designation. In the event the person against whom the
35 award is made dies, the award to the recipient shall remain payable to the extent
36 permitted by the pension or retirement system or deferred compensation plan or fund
37 involved.

38 **(g)** The court may require distribution of the award by means of a qualified
39 domestic relations order, or as defined in section 414(p) of the Internal Revenue Code of
40 1986, or by other appropriate order. To facilitate the calculating and payment of
41 distributive awards, the administrator of the system, plan, or fund may be ordered to
42 certify the total contributions, years of service, and pension, retirement, or other deferred
43 compensation benefits payable.

1 (h) This section and G.S. 50-21 shall apply to all pension, retirement, and other
2 deferred compensation plans and funds, including vested and nonvested military pensions
3 eligible under the federal Uniform Services Former Spouses Protection Act, and
4 including funds administered by the State pursuant to Articles 84 through 88 of Chapter
5 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the
6 extent of a member's accrued benefit at the date of separation, as determined by the
7 court."

8 Section 2. G.S. 50-20(b)(1) reads as rewritten:

9 "(1) 'Marital property' means all real and personal property acquired by
10 either spouse or both spouses during the course of the marriage and
11 before the date of the separation of the parties, and presently owned,
12 except property determined to be separate property in accordance with
13 subdivision (2) of this subsection. Marital property includes all vested
14 and nonvested pension, retirement, and other deferred compensation
15 rights, including and vested and nonvested military pensions eligible
16 under the federal Uniformed Services Former Spouses' Protection Act.
17 It is presumed that all property acquired after the date of marriage and
18 before the date of separation is marital property except property which
19 is separate property under subdivision (2) of this subsection. This
20 presumption may be rebutted by the greater weight of the evidence."

21 Section 3. G.S. 50-20(b)(2) reads as rewritten:

22 "(2) 'Separate property' means all real and personal property acquired by a
23 spouse before marriage or acquired by a spouse by bequest, devise,
24 descent, or gift during the course of the marriage. However, property
25 acquired by gift from the other spouse during the course of the marriage
26 shall be considered separate property only if such an intention is stated
27 in the conveyance. Property acquired in exchange for separate property
28 shall remain separate property regardless of whether the title is in the
29 name of the husband or wife or both and shall not be considered to be
30 marital property unless a contrary intention is expressly stated in the
31 conveyance. The increase in value of separate property and the income
32 derived from separate property shall be considered separate property.
33 All professional licenses and business licenses which would terminate
34 on transfer shall be considered separate property. ~~The expectation of~~
35 ~~nonvested pension, retirement, or other deferred compensation rights shall be~~
36 ~~considered separate property."~~

37 Section 4. G.S. 50-20(b)(3) reads as rewritten:

38 "(3) 'Distributive award' means payments that are payable either in a lump
39 sum or over a period of time in fixed amounts, but shall not include
40 alimony payments or other similar payments for support and
41 maintenance which are treated as ordinary income to the recipient under
42 the Internal Revenue Code.

~~The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:~~

- ~~a. As a lump sum by agreement;~~
- ~~b. Over a period of time in fixed amounts by agreement;~~
- ~~c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or~~
- ~~d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.~~

~~Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).~~

~~In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to~~

1 the extent permitted by the pension or retirement system or deferred
2 compensation plan or fund involved.

3 The Court may require distribution of the award by means of a
4 qualified domestic relations order, as defined in Section 414(p) of the
5 Internal Revenue Code of 1986. To facilitate the calculation and
6 payment of distributive awards, the administrator of the system, plan or
7 fund may be ordered to certify the total contributions, years of service,
8 and pension, retirement, or other deferred compensation benefits
9 payable.

10 The provisions of this section and G.S. 50-21 shall apply to all
11 pension, retirement, and other deferred compensation plans and funds,
12 including military pensions eligible under the Federal Uniform Services
13 Former Spouses Protection Act, and including funds administered by
14 the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters
15 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the
16 extent of a member's accrued benefit at the date of separation, as
17 determined by the court."

18 Section 5. G.S. 50-20(c) reads as rewritten:

19 "(c) There shall be an equal division by using net value of marital property unless
20 the court determines that an equal division is not equitable. If the court determines that an
21 equal division is not equitable, the court shall divide the marital property equitably.
22 Factors the court shall consider under this subsection are as follows:

- 23 (1) The income, property, and liabilities of each party at the time the
24 division of property is to become effective;
- 25 (2) Any obligation for support arising out of a prior marriage;
- 26 (3) The duration of the marriage and the age and physical and mental health
27 of both parties;
- 28 (4) The need of a parent with custody of a child or children of the marriage
29 to occupy or own the marital residence and to use or own its household
30 effects;
- 31 (5) The expectation of ~~nonvested~~ pension, retirement, or other deferred
32 compensation ~~rights, which is separate property;~~ rights that are not marital
33 property;
- 34 (6) Any equitable claim to, interest in, or direct or indirect contribution
35 made to the acquisition of such marital property by the party not having
36 title, including joint efforts or expenditures and contributions and
37 services, or lack thereof, as a spouse, parent, wage earner or
38 homemaker;
- 39 (7) Any direct or indirect contribution made by one spouse to help educate
40 or develop the career potential of the other spouse;
- 41 (8) Any direct contribution to an increase in value of separate property
42 which occurs during the course of the marriage;
- 43 (9) The liquid or nonliquid character of all marital property;

- 1 (10) The difficulty of evaluating any component asset or any interest in a
2 business, corporation or profession, and the economic desirability of
3 retaining such asset or interest, intact and free from any claim or
4 interference by the other party;
- 5 (11) The tax consequences to each party;
- 6 (11a) Acts of either party to maintain, preserve, develop, or expand; or to
7 waste, neglect, devalue or convert such marital property, during the
8 period after separation of the parties and before the time of distribution;
9 and
- 10 (12) Any other factor which the court finds to be just and proper."
- 11 Section 6. This act becomes effective October 1, 1997, and applies to actions
12 for equitable distribution filed on and after that date.