

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 397
Committee Substitute Favorable 5/9/91

Short Title: Equit. Distrib./Retirement.

(Public)

Sponsors:

Referred to:

March 28, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE COURTS TO EQUITABLY
DIVIDE PENSION, RETIREMENT, AND DEFERRED COMPENSATION PLAN
BENEFITS.

The General Assembly of North Carolina enacts:

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

"(b) For purposes of this section:

(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property in accordance with subdivision (2) of this section. Marital property includes all vested pension, retirement, and other deferred compensation rights, including military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act.

(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall

1 not be considered to be marital property unless a contrary intention is
2 expressly stated in the conveyance. The increase in value of separate
3 property and the income derived from separate property shall be
4 considered separate property. All professional licenses and business
5 licenses which would terminate on transfer shall be considered
6 separate property. The expectation of nonvested pension, retirement, or
7 other deferred compensation rights shall be considered separate
8 property.

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

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

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

24 Notwithstanding the foregoing, the court shall not require the
25 administrator of the fund or plan involved to make any payments until
26 the party against whom the award is made actually begins to receive
27 the ~~benefits.~~ benefits unless a plan under the Employee Retirement
28 Income Security Act (ERISA) permits earlier distribution. The award
29 shall be determined using the proportion of time the marriage existed,
30 (up to the date of separation of the parties), simultaneously with the
31 employment which earned the vested pension, retirement, or deferred
32 compensation benefit, to the total amount of time of employment. The
33 award shall be based on the vested accrued benefit, as provided by the
34 plan or fund, calculated as of the date of separation, and shall not
35 include contributions, years of service or compensation which may
36 accrue after the date of separation. The award shall include gains and
37 losses on the prorated portion of the benefit vested at the date of
38 separation. No award shall exceed fifty percent (50%) of the benefits
39 the person against whom the award is made is entitled to receive as
40 vested pension, retirement, or other deferred compensation ~~benefits.~~
41 benefits, except that an award may exceed fifty percent (50%) if:

- 42 a. No other assets can be found with which to balance the award
43 of equitable distribution; or

1 b. More than one pension or retirement system or deferred
2 compensation plan or fund is involved, but the benefits awarded
3 may not exceed fifty percent (50%) of the total benefits of all
4 the plans added together.

5 Notwithstanding the foregoing, the award shall not exceed fifty
6 percent (50%) unless a plan permits an award in excess of fifty percent
7 (50%).

8 In the event the person receiving the award dies, the unpaid
9 balance, if any, of the award shall pass to the beneficiaries of the
10 recipient by will, if any, or by intestate ~~succession~~-succession, or by
11 beneficiary designation with the plan consistent with the terms of the
12 plan unless the plan prohibits such a designation. In the event the
13 person against whom the award is made dies, the award to the recipient
14 shall remain payable to the extent permitted by the pension or
15 retirement system or deferred compensation plan or fund involved.

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

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

31 Sec. 2. This act becomes effective October 1, 1991, and applies to actions for
32 equitable distribution pending or filed on or after that date.