

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 397
Committee Substitute Favorable 5/9/91
Senate Judiciary II Committee Substitute Adopted 7/9/92

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

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

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

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

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

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

1 corporation, or profession; or (iii) it is economically desirable for one
2 party to retain an asset or interest that is intact and free from any claim
3 or interference by the other party; or (iv) more than one pension or
4 retirement system or deferred compensation plan or fund is involved,
5 but the benefits awarded may not exceed fifty percent (50%) of the
6 total benefits of all the plans added together; or (v) both parties
7 consent. In no event shall an award exceed fifty percent (50%) if a
8 plan prohibits an award in excess of fifty percent (50%).

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

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

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

32 Sec. 2. This act becomes effective October 1, 1992, and applies to actions for
33 equitable distribution pending or filed on or after that date.