

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 397

Short Title: Equit. Distrib./Retirement.

(Public)

Sponsors: Representatives Hackney; and Mercer.

Referred to: Judiciary III.

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 not be considered to be marital property unless a contrary intention is

1 expressly stated in the conveyance. The increase in value of separate
2 property and the income derived from separate property shall be
3 considered separate property. All professional licenses and business
4 licenses which would terminate on transfer shall be considered
5 separate property. The expectation of nonvested pension, retirement, or
6 other deferred compensation rights shall be considered separate
7 property.

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

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

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

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

1 In the event the person receiving the award dies, the unpaid
2 balance, if any, of the award shall pass to the beneficiaries of the
3 recipient by will, if any, or by intestate ~~succession~~ succession to the
4 extent permitted by the pension or retirement system or deferred
5 compensation plan or fund involved. In the event the person against
6 whom the award is made dies, the award to the recipient shall remain
7 payable to the extent permitted by the pension or retirement system or
8 deferred compensation plan or fund involved.

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

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

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