

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 535

Short Title: Equit. Distrib./Retirement Rts.

(Public)

Sponsors: Representatives Hackney; Russell, Baddour, and Alexander.

Referred to: Judiciary II.

March 18, 1997

A BILL TO BE ENTITLED

1 AN ACT TO INCLUDE NONVESTED PENSION, RETIREMENT, AND OTHER
2 DEFERRED COMPENSATION RIGHTS AS MARITAL PROPERTY, AS
3 RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH
4 CAROLINA BAR ASSOCIATION.
5

6 The General Assembly of North Carolina enacts:

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

9 **"§ 50-20.1. Pension and retirement benefits.**

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

12 (1) As a lump sum by agreement;

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

14 (3) As a prorated portion of the benefits made to the designated recipient at
15 the time the party against whom the award is made actually begins to
16 receive the benefits; or

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

1 Notwithstanding the foregoing, the court shall not require the administrator of the fund or
2 plan involved to make any payments until the party against whom the award is made
3 actually begins to receive the benefits unless the plan permits an earlier distribution.

4 (b) The award shall be determined using the proportion of time the marriage
5 existed, (up to the date of separation of the parties), simultaneously with the employment
6 which earned the vested and nonvested pension, retirement, or deferred compensation
7 benefit, to the total amount of time of employment. The award shall be based on the
8 vested and nonvested accrued benefit, as provided by the plan or fund, calculated as of
9 the date of separation, and shall not include contributions, years of service, or
10 compensation which may accrue after the date of separation. The award shall include
11 gains and losses on the prorated portion of the benefit vested at the date of separation.

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

23 (d) In the event the person receiving the award dies, the unpaid balance, if any, of
24 the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate
25 succession, or by beneficiary designation with the plan consistent with the terms of the
26 plan unless the plan prohibits such designation. In the event the person against whom the
27 award is made dies, the award to the recipient shall remain payable to the extent
28 permitted by the pension or retirement system or deferred compensation plan or fund
29 involved.

30 (e) The court may require distribution of the award by means of a qualified
31 domestic relations order, or as defined in section 414(p) of the Internal Revenue Code of
32 1986. To facilitate the calculating and payment of distributive awards, the administrator
33 of the system, plan, or fund may be ordered to certify the total contributions, years of
34 service, and pension, retirement, or other deferred compensation benefits payable.

35 (f) This section and G.S. 50-21 shall apply to all pension, retirement, and other
36 deferred compensation plans and funds, including vested and nonvested military pensions
37 eligible under the federal Uniform Services Former Spouses Protection Act, and
38 including funds administered by the State pursuant to Articles 84 through 88 of Chapter
39 58 and Chapters 120, 127A, 128, 135, 143, 143G, and 147 of the General Statutes, to the
40 extent of a member's accrued benefit at the date of separation, as determined by the
41 court."

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

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

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

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

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

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

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

- 37 a. ~~As a lump sum by agreement;~~
38 b. ~~Over a period of time in fixed amounts by agreement;~~
39 c. ~~As a prorated portion of the benefits made to the designated~~
40 ~~recipient at the time the party against whom the award is made~~
41 ~~actually begins to receive the benefits; or~~

1 d. By awarding a larger portion of other assets to the party not
2 receiving the benefits, and a smaller share of other assets to the
3 party entitled to receive the benefits.

4 Notwithstanding the foregoing, the court shall not require the
5 administrator of the fund or plan involved to make any payments until
6 the party against whom the award is made actually begins to receive the
7 benefits unless a plan under the Employee Retirement Income Security
8 Act (ERISA) permits earlier distribution. The award shall be determined
9 using the proportion of time the marriage existed, (up to the date of
10 separation of the parties), simultaneously with the employment which
11 earned the vested pension, retirement, or deferred compensation benefit,
12 to the total amount of time of employment. The award shall be based on
13 the vested accrued benefit, as provided by the plan or fund, calculated as
14 of the date of separation, and shall not include contributions, years of
15 service or compensation which may accrue after the date of separation.
16 The award shall include gains and losses on the prorated portion of the
17 benefit vested at the date of separation. No award shall exceed fifty
18 percent (50%) of the benefits the person against whom the award is
19 made is entitled to receive as vested pension, retirement, or other
20 deferred compensation benefits, except that an award may exceed fifty
21 percent (50%) if (i) other assets subject to equitable distribution are
22 insufficient; or (ii) there is difficulty in distributing any asset or any
23 interest in a business, corporation, or profession; or (iii) it is
24 economically desirable for one party to retain an asset or interest that is
25 intact and free from any claim or interference by the other party; or (iv)
26 more than one pension or retirement system or deferred compensation
27 plan or fund is involved, but the benefits awarded may not exceed fifty
28 percent (50%) of the total benefits of all the plans added together; or (v)
29 both parties consent. In no event shall an award exceed fifty percent
30 (50%) if a plan prohibits an award in excess of fifty percent (50%).

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

39 The Court may require distribution of the award by means of a
40 qualified domestic relations order, as defined in Section 414(p) of the
41 Internal Revenue Code of 1986. To facilitate the calculation and
42 payment of distributive awards, the administrator of the system, plan or
43 fund may be ordered to certify the total contributions, years of service,

1 and pension, retirement, or other deferred compensation benefits
2 payable.

3 The provisions of this section and G.S. 50-21 shall apply to all
4 pension, retirement, and other deferred compensation plans and funds,
5 including military pensions eligible under the Federal Uniform Services
6 Former Spouses Protection Act, and including funds administered by
7 the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters
8 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the
9 extent of a member's accrued benefit at the date of separation, as
10 determined by the court."

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

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

- 16 (1) The income, property, and liabilities of each party at the time the
17 division of property is to become effective;
- 18 (2) Any obligation for support arising out of a prior marriage;
- 19 (3) The duration of the marriage and the age and physical and mental health
20 of both parties;
- 21 (4) The need of a parent with custody of a child or children of the marriage
22 to occupy or own the marital residence and to use or own its household
23 effects;
- 24 (5) The expectation of ~~nonvested pension, retirement, or other deferred~~
25 ~~compensation rights, which is separate property; rights that are not marital~~
26 property;
- 27 (6) Any equitable claim to, interest in, or direct or indirect contribution
28 made to the acquisition of such marital property by the party not having
29 title, including joint efforts or expenditures and contributions and
30 services, or lack thereof, as a spouse, parent, wage earner or
31 homemaker;
- 32 (7) Any direct or indirect contribution made by one spouse to help educate
33 or develop the career potential of the other spouse;
- 34 (8) Any direct contribution to an increase in value of separate property
35 which occurs during the course of the marriage;
- 36 (9) The liquid or nonliquid character of all marital property;
- 37 (10) The difficulty of evaluating any component asset or any interest in a
38 business, corporation or profession, and the economic desirability of
39 retaining such asset or interest, intact and free from any claim or
40 interference by the other party;
- 41 (11) The tax consequences to each party;
- 42 (11a) Acts of either party to maintain, preserve, develop, or expand; or to
43 waste, neglect, devalue or convert such marital property, during the

1 period after separation of the parties and before the time of
2 distribution; and
3 (12) Any other factor which the court finds to be just and proper."
4 Section 6. This act becomes effective October 1, 1997, and applies to actions
5 for equitable distribution filed on and after that date.