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SENATE BILL DRS35190-LU-75A

Short Title: Revise Equitable Distribution Laws. (Public)

Sponsors: Senator Britt (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REVISE THE LAWS PERTAINING TO EQUITABLE DISTRIBUTION.  
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 50-20.1 reads as rewritten:

5 "**§ 50-20.1. ~~Pension and retirement~~ Pension, retirement, and deferred compensation**  
6 **benefits.**

7 (a) The ~~award-distribution~~ of vested marital pension, retirement, or ~~other~~-deferred  
8 compensation benefits may be made ~~payable~~:payable by any of the following means:

9 (1) As a lump sum ~~by agreement~~; from the plan, program, system, or fund for  
10 those benefits subject to subdivision (d)(2) of this section.

11 (2) Over a period of time in fixed amounts ~~by agreement~~; from the plan, program,  
12 system, or fund for those benefits subject to subdivision (d)(2) of this section.

13 (3) ~~By appropriate domestic relations order as~~ As a prorated portion of the  
14 benefits made to the designated recipient (i) at the time the party against whom  
15 the award is made-participant-spouse is eligible to receive the benefits, (ii) at  
16 the time the participant-spouse actually begins to receive the benefits;  
17 or (iii) at the participant-spouse's earliest retirement age, if  
18 permitted by the plan, program, system, or fund. For purposes of this section,  
19 "participant-spouse" means the spouse who is a participant in the plan,  
20 program, system, or fund.

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

24 (5) As a lump sum, or over a period of time in fixed amounts, by agreement.

25 (b) The ~~award-distribution~~ of nonvested marital pension, retirement, or ~~other~~-deferred  
26 compensation benefits may be made ~~payable~~:payable by any of the following means:

27 (1) As a lump sum ~~by agreement~~; agreement.

28 (2) Over a period of time in fixed amounts ~~by agreement~~; or agreement.

29 (3) ~~By appropriate domestic relations order as~~ As a prorated portion of the  
30 benefits made to the designated recipient (i) at the time the party against whom  
31 the award is made-participant-spouse is eligible to receive the benefits, (ii) at  
32 the time the participant-spouse actually begins to receive the benefits; benefits,  
33 or (iii) at the participant-spouse's earliest retirement age, if permitted by the  
34 plan, program, system, or fund.

35 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, the court  
36 shall not require the administrator of the ~~fund or plan~~ plan, program, system, or fund involved to



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1 make any payments until the party against whom the award is made actually begins to receive  
2 the benefits unless the plan permits an earlier distribution or distributions to the nonparticipant  
3 spouse, except as permitted by the terms of the plan, program, system, or fund.

4 (d) ~~The award~~ When the amount of the benefit payable by the plan, program, system, or  
5 fund to the participant-spouse is determined in whole or part by the length of time of the  
6 participant-spouse's employment, the marital portion shall be determined using the proportion of  
7 time the marriage existed (up to the date of separation of the ~~parties~~), parties) simultaneously  
8 with the total time of the employment which earned the ~~vested and nonvested pension, retirement,~~  
9 ~~or deferred compensation benefit,~~ benefit subject to equitable distribution, to the total amount of  
10 time of ~~employment.~~ employment, which earned the benefit subject to equitable distribution. The  
11 ~~award determination~~ shall be based on the vested and nonvested accrued benefit, as provided by  
12 the ~~plan or~~ plan, program, system, or fund, calculated as of the date of separation, and shall not  
13 include contributions, years of service, or compensation which may accrue after the date of  
14 separation. The award shall include gains and losses on the prorated portion of the benefit vested  
15 at the date of ~~separation.~~ separation and cost of living adjustments and similar enhancements to  
16 the participant's benefit. Notwithstanding G.S. 50-20 or G.S. 50-21, if the court makes the award  
17 payable pursuant to subdivision (a)(3) or (b)(3) of this section and the court divides the marital  
18 portion of the benefit equally between the participant-spouse and non-participant spouse, the  
19 court shall not be required to determine the total value of the marital benefits before classifying  
20 and distributing the benefits. However, neither party shall be prohibited from presenting evidence  
21 of the total value of any marital benefits or of any benefits that are separate property of either  
22 spouse. When a pension, retirement, or deferred compensation plan, program, system or fund, or  
23 an applicable statute, limits or restricts the amount of the benefit subject to equitable distribution  
24 by a state court, the award shall be determined using the proportion of time the marriage existed  
25 (up to the date of separation of the parties) simultaneously with the total time of the employment  
26 which earned the benefit subject to equitable distribution to the total time of employment, as  
27 limited or restricted by the plan, program, system, fund, or statute that earned the benefit subject  
28 to equitable distribution.

29 (d1) When the amount of the benefit payable by the plan, program, system, or fund is not  
30 determined in whole or part by the length of time of the participant-spouse's employment, but is  
31 instead based on contributions and held in one or more accounts with readily determinable  
32 balances, including, but not limited to, individual retirement accounts and defined contribution  
33 plans, such as those within the definitions of Internal Revenue Code Sections 401(k), 403(b),  
34 408, 408A, or 457, the court shall not determine the award using the fraction described in  
35 subsection (d) of this section. The court instead shall determine the marital portion of the benefit  
36 by determining the amount of the account balance that is due to contributions made or earned  
37 during the marriage and before separation, together with the income, gains, losses, appreciation,  
38 and depreciation accrued on those contributions. If sufficient evidence is not presented to the  
39 court to allow the court to make this determination, the court shall then determine the marital  
40 portion of the benefit by using the fraction described in subsection (d) of this section, namely, by  
41 using the proportion of time the marriage existed (up to the date of separation of the parties)  
42 simultaneously with the employment which earned the benefit subject to equitable distribution  
43 to the total amount of time of employment. In either event, the award shall be based on the vested  
44 and nonvested accrued benefit as of the date of separation, together with the income, gains,  
45 losses, appreciation, and depreciation accrued after the date of separation on the  
46 date-of-separation benefits. However, the award shall not include contributions that may accrue  
47 or be made after the date of separation, or any income, gains, losses, appreciation, and  
48 depreciation accrued on those contributions.

49 (e) No award shall exceed fifty percent (50%) of the benefits the person against whom  
50 the award is made is entitled to receive as vested and nonvested pension, retirement, or ~~other~~  
51 deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other

1 assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing  
2 any asset or any interest in a business, corporation, or profession; or (iii) it is economically  
3 desirable for one party to retain an asset or interest that is intact and free from any claim or  
4 interference by the other party; or (iv) more than one pension or retirement system or deferred  
5 compensation ~~plan-plan, program, system,~~ or fund is involved, but the benefits award may not  
6 exceed fifty percent (50%) of the 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 ~~plan-plan, program, system,~~  
8 ~~or fund~~ prohibits an award in excess of fifty percent (50%).

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

16 (f1) Whenever the award is made payable pursuant to subdivision (a)(3) or (b)(3) of this  
17 section, and the pension or retirement or deferred compensation plan, program, system, or fund  
18 permits the use of a "separate interest" approach in the order, there shall be a presumption,  
19 rebuttable by the greater weight of the evidence, that the "separate interest" approach shall be  
20 used to divide the benefit in question. For purposes of this section, the phrase "separate interest"  
21 approach means any method of dividing pension or retirement system or deferred compensation  
22 benefits in which the nonparticipant spouse, the spouse not a participant in the plan, program,  
23 system or fund in question, receives an interest that allows the nonparticipant spouse to receive  
24 benefits in a manner independent, in whole or part, of the benefits received by the participant  
25 spouse, or to make elections concerning the receipt of benefits independently of the elections  
26 made by the participant spouse.

27 (f2) Whenever the pension or retirement or deferred compensation benefit is distributed  
28 pursuant to subdivision (a)(3) or (b)(3) of this section in an order that does not employ the  
29 "separate interest" approach, the court may, considering the length of the marriage and the ages  
30 of the parties, (i) award all or a portion of a survivor annuity to the nonparticipant spouse or  
31 former spouse and (ii) allocate the cost of providing the survivor annuity between the parties.  
32 The survivor annuity awarded by the court, if any, shall be allocated in accordance with the terms  
33 of the retirement plan, program, system, or fund.

34 (f3) Whenever the pension or retirement or deferred compensation plan, program, system,  
35 or fund does not automatically provide pre-retirement survivor annuity protection for the  
36 nonparticipant spouse, the court shall order pre-retirement survivor annuity protection for the  
37 nonparticipant spouse if permitted by the plan, program, system, or fund.

38 (f4) The court may allocate equally between the parties any fees assessed by a plan,  
39 program, system, or fund in order to process any domestic relations order or qualified domestic  
40 relations order.

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

47 (h) This section and G.S. 50-21 shall apply to all vested and nonvested pension,  
48 retirement, and other deferred compensation plans and plans, programs, systems, or funds,  
49 including vested and nonvested military pensions eligible under the federal Uniform Services  
50 Former Spouses Protection Act, and including funds administered by the State pursuant to  
51 Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of

1 ~~the General Statutes, to the extent of a member's accrued benefit at the date of separation, as~~  
2 ~~determined by the court, including, but not limited to, uniformed services retirement programs,~~  
3 ~~federal government plans, state government plans, local government plans, Railroad Retirement~~  
4 ~~Act pensions, executive benefit plans, church plans, charitable organization plans, individual~~  
5 ~~retirement accounts within the definitions of Internal Revenue Code Sections 408 and 408A, and~~  
6 ~~accounts within the definitions of Internal Revenue Code Sections 403(b), 401(k), or 457.~~

7 (i) If a plan, program, system, or fund deems unacceptable an order providing for a  
8 distribution of pension, retirement, or deferred compensation benefits, then the court may upon  
9 motion of a party enter a subsequent order clarifying or correcting its prior order, as may be  
10 necessary to comply with the specific technical requirements of the plan, program, system, or  
11 fund.

12 (j) Notwithstanding any other provision of this Chapter, a claim may be filed, either as a  
13 separate civil action or as a motion in the cause in an action brought pursuant to this Chapter, for  
14 an order effectuating the distribution of pension, retirement, or deferred compensation benefits  
15 provided for in a valid written agreement, as defined in G.S. 50-20(d), whether or not a claim for  
16 equitable distribution has been filed or adjudicated. The court may enter an order effectuating the  
17 distribution provided for in the valid written agreement."

18 **SECTION 2.** This act becomes effective October 1, 2019, and applies to  
19 distributions on or after that date.