

1 HB328
2 166222-4
3 By Representatives Coleman and Jones
4 RFD: Judiciary
5 First Read: 25-FEB-16

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8 SYNOPSIS: Under existing law, a court may order an
9 allowance up to 50 percent of the present or future
10 value of retirement benefits of a person to his or
11 her spouse upon divorce if the parties have been
12 married for at least 10 years and if certain other
13 conditions are met. Under existing law, when the
14 court orders an allowance of retirement benefits of
15 one spouse to another upon divorce, no amount is
16 payable until the covered spouse begins to receive
17 benefits unless the parties agree to a lump sum
18 settlement.

19 This bill would eliminate the requirement
20 that the parties have been married for 10 years
21 before the court may award retirement benefits.

22 This bill would allow the court to use any
23 equitable method of valuing, dividing, or
24 distributing to benefits, but the noncovered spouse
25 could receive no more than 50 percent of the
26 benefits considered by the court.

1 This bill would provide that each party
2 would bear equally the burden or benefit of passive
3 appreciation or depreciation of the retirements
4 during the time between the award of benefits and
5 their distribution.

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Section 30-2-51, Code of Alabama 1975,
12 relating to allowance upon divorce of certain retirement
13 benefits; to provide further for the circumstances in which
14 the court may make an allowance; and to provide further for
15 the valuation of retirement benefits; and to provide for the
16 obligations of each party.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Section 30-2-51, Code of Alabama 1975, is
19 amended to read as follows:

20 "§30-2-51.

21 "(a) If either spouse has no separate estate or if
22 it is insufficient for the maintenance of a spouse, the judge,
23 upon granting a divorce, at his or her discretion, may order
24 to a spouse an allowance out of the estate of the other
25 spouse, taking into consideration the value thereof and the
26 condition of the spouse's family. Notwithstanding the
27 foregoing, the judge may not take into consideration any

1 property acquired prior to the marriage of the parties or by
2 inheritance or gift unless the judge finds from the evidence
3 that the property, or income produced by the property, has
4 been used regularly for the common benefit of the parties
5 during their marriage.

6 ~~"(b) The judge, at his or her discretion, may~~
7 ~~include in the estate of either spouse the present value of~~
8 ~~any future or current retirement benefits, that a spouse may~~
9 ~~have a vested interest in or may be receiving on the date the~~
10 ~~action for divorce is filed, provided that the following~~
11 ~~conditions are met:~~

12 ~~"(1) The parties have been married for a period of~~
13 ~~10 years during which the retirement was being accumulated.~~

14 ~~"(2) The court shall not include in the estate the~~
15 ~~value of any retirement benefits acquired prior to the~~
16 ~~marriage including any interest or appreciation of the~~
17 ~~benefits.~~

18 ~~"(3) The total amount of the retirement benefits~~
19 ~~payable to the non-covered spouse shall not exceed 50 percent~~
20 ~~of the retirement benefits that may be considered by the~~
21 ~~court.~~

22 ~~"(c) If the court finds in its discretion that any~~
23 ~~of the covered spouse's retirement benefits should be~~
24 ~~distributed to the non-covered spouse, the amount is not~~
25 ~~payable to the non-covered spouse until the covered spouse~~
26 ~~begins to receive his or her retirement benefits or reaches~~
27 ~~the age of 65 years, unless both parties agree to a lump sum~~

1 ~~settlement of the non-covered spouse's benefits payable in one~~
2 ~~or more installments.~~

3 "(b) The marital estate is subject to equitable
4 division and distribution. Unless the parties agree otherwise,
5 and except as otherwise provided by federal or state law, the
6 marital estate includes any interest, whether vested or
7 unvested, either spouse has acquired, received, accumulated,
8 or earned during the marriage in any and all individual,
9 joint, or group retirement benefits including, but not limited
10 to, any retirement plans, retirement accounts, pensions,
11 profit-sharing plans, savings plans, annuities, or other
12 similar benefit plans from any kind of employment, including,
13 but not limited to, self employment, public or private
14 employment, and military employment.

15 "(1) Notwithstanding the foregoing, unless the
16 parties agree otherwise, the total amount of the retirement
17 benefits payable to the noncovered spouse shall not exceed 50
18 percent of the retirement benefits that may be considered by
19 the court.

20 "(2) Any party asserting that all or a portion of
21 his or her interest in any retirement benefits is excluded
22 from the marital estate shall bear the burden of proving that
23 fact and the value or amount of the excluded interest,
24 including any active or passive income or appreciation on that
25 interest.

26 "(c) The court may use any method of valuing,
27 dividing, and distributing an interest in retirement benefits

1 that is equitable under the circumstances of the case so long
2 as the overall division and distribution of the marital
3 property remains equitable to the parties. Nothing in this
4 section shall be construed to require a court to divide or
5 distribute any amount, or any percentage, of one spouse's
6 retirement benefits to the other spouse.

7 "(d) Any passive increase or decrease in the value
8 of retirement benefits from the effective date of the award to
9 the date of distribution shall accrue to, or be borne by, the
10 parties on a pro rata basis. Passive increases or decreases
11 are increases or decreases resulting from fluctuations in the
12 value of the assets regarding a retirement benefit and
13 cost-of-living adjustments made pursuant to the terms of a
14 retirement benefit, but do not include any increases or
15 decreases resulting from contributions, withdrawals, or
16 accruals to a retirement benefit attributable to any period,
17 after the effective date of the award.

18 "(e) Unless otherwise prohibited by state or federal
19 law, a court may enter any order designed to protect or
20 preserve the legal interest of either spouse in retirement
21 benefits, including any order to prevent, or to compensate a
22 spouse for, the deprivation or dissipation of a legal share of
23 any retirement benefits due to the act or omission of the
24 other spouse and any order necessary to enforce the property
25 division of such benefits. Notwithstanding the foregoing, a
26 court may not enter any order modifying the terms of any

1 retirement benefits or enlarging the benefits payable under
2 the terms of a retirement plan."

3 Section 2. This act shall become effective on
4 January 1, 2017, following its passage and approval by the
5 Governor, or its otherwise becoming law.