

1 HB186
2 114974-1
3 By Representative Gaston
4 RFD: Judiciary
5 First Read: 12-JAN-10

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8 SYNOPSIS: Under existing law, upon granting a
9 divorce, if either spouse has no separate estate or
10 if the estate is insufficient for the maintenance
11 of a spouse, the court, in its discretion, may
12 include in a division of property the present value
13 of future or current retirement benefits subject to
14 certain additional conditions.

15 This bill would specifically provide that
16 where a court orders a division of military retired
17 pay pursuant to a divorce, the court shall use the
18 military member's rank, pay rate, and years of
19 service at the time of the divorce. This bill would
20 also specify that future pay increases attributable
21 to promotion or additional time served by the
22 military member spouse would not be subject to
23 property division.

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25 A BILL
26 TO BE ENTITLED
27 AN ACT

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To amend Section 30-2-51, Code of Alabama 1975, to provide further for the division of retirement benefits in a divorce; and to provide that where a court orders a spousal allowance of military retired pay as part of a property settlement pursuant to divorce, the allowance shall be based on rank, pay rate, and years of service at the time of the divorce.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§30-2-51.

"(a) If either spouse has no separate estate or if it is insufficient for the maintenance of a spouse, the judge, upon granting a divorce, at his or her discretion, may order to a spouse an allowance out of the estate of the other spouse, taking into consideration the value thereof and the condition of the spouse's family. Notwithstanding the foregoing, the judge may not take into consideration any property acquired prior to the marriage of the parties or by inheritance or gift unless the judge finds from the evidence that the property, or income produced by the property, has been used regularly for the common benefit of the parties during their marriage.

"(b) The judge, at his or her discretion, may include in the estate of either spouse the present value of any future or current retirement benefits, that a spouse may

1 have a vested interest in or may be receiving on the date the
2 action for divorce is filed, provided that the following
3 conditions are met:

4 "(1) The parties have been married for a period of
5 10 years during which the retirement was being accumulated.

6 "(2) The court shall not include in the estate the
7 value of any retirement benefits acquired prior to the
8 marriage including any interest or appreciation of the
9 benefits.

10 "(3) The total amount of the retirement benefits
11 payable to the non-covered spouse shall not exceed 50 percent
12 of the retirement benefits that may be considered by the
13 court.

14 "(c) If the court finds in its discretion that any
15 of the covered spouse's retirement benefits should be
16 distributed to the non-covered spouse, the amount is not
17 payable to the non-covered spouse until the covered spouse
18 begins to receive his or her retirement benefits or reaches
19 the age of 65 years, unless both parties agree to a lump sum
20 settlement of the non-covered spouse's benefits payable in one
21 or more installments.

22 "(d) If the court, in its discretion, determines
23 that it is appropriate to include an allowance of military
24 retired pay in a division of property pursuant to a divorce,
25 the division is subject to subsections (a), (b), and (c)
26 above, and the court shall base the allowance of military
27 retired pay on a percentage calculated at the time of

1 retirement using the rank, pay rate, and years of service of
2 the military member on the date of the final order granting
3 the divorce. Future pay increases attributable to promotion or
4 additional time served by the military member spouse after the
5 final decree of divorce are not subject to division. The
6 former spouse may gain the benefit only of cost-of-living
7 increases received by the military member during his or her
8 years of service as specified in the current pay table for the
9 appropriate rank and pay rate that the military member spouse
10 had achieved as of the date of the final order of divorce."

11 Section 2. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.