

1 HB706
2 119455-1
3 By Representative Mask
4 RFD: Judiciary
5 First Read: 11-MAR-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.

24 This bill would provide additional factors
25 that the court may consider in determining whether
26 to order a division of military retired pay.

1 This bill would also prohibit disability
2 compensation received by a military member for
3 service-related disabilities from being considered
4 as part of any division of property pursuant to a
5 divorce.

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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, to
12 provide further for the division of retirement benefits in a
13 divorce; to provide that where a court orders a spousal
14 allowance of military retired pay as part of a property
15 settlement pursuant to divorce, the allowance shall be based
16 on rank, pay rate, and years of service at the time of the
17 divorce; to provide additional factors that the court may
18 consider in determining whether to order a division of
19 military retired pay; and to prohibit certain disability
20 compensation from being used in determining a division of
21 property pursuant to a divorce.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

25 "§30-2-51.

26 "(a) If either spouse has no separate estate or if
27 it is insufficient for the maintenance of a spouse, the judge,

1 upon granting a divorce, at his or her discretion, may order
2 to a spouse an allowance out of the estate of the other
3 spouse, taking into consideration the value thereof and the
4 condition of the spouse's family. Notwithstanding the
5 foregoing, the judge may not take into consideration any
6 property acquired prior to the marriage of the parties or by
7 inheritance or gift unless the judge finds from the evidence
8 that the property, or income produced by the property, has
9 been used regularly for the common benefit of the parties
10 during their marriage.

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

17 "(1) The parties have been married for a period of
18 10 years during which the retirement was being accumulated.

19 "(2) The court shall not include in the estate the
20 value of any retirement benefits acquired prior to the
21 marriage including any interest or appreciation of the
22 benefits.

23 "(3) The total amount of the retirement benefits
24 payable to the non-covered spouse shall not exceed 50 percent
25 of the retirement benefits that may be considered by the
26 court.

1 "(c) If the court finds in its discretion that any
2 of the covered spouse's retirement benefits should be
3 distributed to the non-covered spouse, the amount is not
4 payable to the non-covered spouse until the covered spouse
5 begins to receive his or her retirement benefits or reaches
6 the age of 65 years, unless both parties agree to a lump sum
7 settlement of the non-covered spouse's benefits payable in one
8 or more installments.

9 "(d) If the court, in its discretion, determines
10 that it is appropriate to include an allowance of military
11 retired pay in a division of property pursuant to a divorce,
12 the division is subject to subsections (a), (b), and (c)
13 above, and the court shall base the allowance of military
14 retired pay on a percentage calculated at the time of
15 retirement using the rank, pay rate, and years of service of
16 the military member on the date of the final order granting
17 the divorce. Future pay increases attributable to promotion or
18 additional time served by the military member spouse after the
19 final decree of divorce are not subject to division. The
20 former spouse may gain the benefit only of cost-of-living
21 increases received by the military member during his or her
22 years of service as specified in the current pay table for the
23 appropriate rank and pay rate that the military member spouse
24 had achieved as of the date of the final order of divorce.

25 "(e) In addition to the requirements provided in
26 subsections (a), (b), and (c), and using the formula provided
27 in subsection (d), the court may consider all of the following

1 factors in determining the amount of an award of military
2 retirement pay:

3 "(1) The education and work experience the former
4 spouse received during his or her marriage to the military
5 member.

6 "(2) Criminal activity or domestic abuse by either
7 party during the marriage.

8 "(3) Combat service of the military member.

9 "(4) Any career detriment experienced by the former
10 spouse as the result of being married to the military member."

11 Section 2. In determining a division of property or
12 alimony in a divorce, the court may not consider disability
13 compensation received by a party to a divorce from the U.S.
14 Department of Veterans Affairs for service-related injuries.
15 The court may not offset disability income with other assets
16 from the military member.

17 Section 3. This act shall become effective on the
18 first day of the third month following its passage and
19 approval by the Governor, or its otherwise becoming law.