

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 663  
HOUSE BILL 100

AN ACT TO MAKE CERTAIN CHANGES IN THE DISTRIBUTIVE AWARD OF  
VESTED PENSION AND RETIREMENT BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-20(b)(3) reads as rewritten:

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

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

- a. As a lump sum by agreement;
- b. Over a period of time in fixed amounts by agreement; ~~or~~
- c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or
- d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits. The award shall be ~~based upon determined using the proportion of the amount of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, or retirement, rights or deferred compensation benefit, to the total amount of time of employment. Said award shall not be based on contributions made after the separation, but shall include any growth on the amount of the pension or retirement account vested at the time of the separation. In the event the person receiving the distributive award dies, full rights to vested pension, retirement, and other deferred compensation benefits, including military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act, shall belong to the party against whom the award is made. In the event the party against whom the award is made dies, the person receiving the distributive award shall receive no further benefits. The total amount of contributions, years of service and pension, retirement, and other deferred compensation benefits shall be certified by the administrator of the plan or fund involved upon receipt of a court order to do so.~~ The award shall be based on the vested accrued benefit, as

provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the cash benefits by the party person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits.

In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

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

The provisions of this section and G.S. 50-21 shall apply to all ~~retirement, pension,~~ pension, retirement, and other deferred compensation systems—plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to ~~General Statutes Chapters 118, 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes,~~ to the extent of a member's accrued benefit at ~~retirement or withdrawal as determined by the system's or fund's consulting actuary~~ the date of separation, as determined by the court."

Sec. 2. This act shall become effective October 1, 1987, and shall apply only when the action for absolute divorce is filed on or after that date.

In the General Assembly read three times and ratified this the 24th day of July, 1987.