

Rep(s). By Representative Coleman

HB208

ENROLLED, An Act,

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

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

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

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

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

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

"(b) The marital estate is subject to equitable division and distribution. Unless the parties agree otherwise, and except as otherwise provided by federal or state law, the marital estate includes any interest, whether vested or unvested, either spouse has acquired, received, accumulated, or earned during the marriage in any and all individual, joint, or group retirement benefits including, but not limited to, any retirement plans, retirement accounts, pensions, profit-sharing plans, savings plans,

annuities, or other similar benefit plans from any kind of employment, including, but not limited to, self employment, public or private employment, and military employment.

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

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

"(c) The court may use any method of valuing, dividing, and distributing an interest in retirement benefits that is equitable under the circumstances of the case so long as the overall division and distribution of the marital property remains equitable to the parties. Nothing in this section shall be construed to require a court to divide or distribute any amount, or any percentage, of one spouse's retirement benefits to the other spouse.

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

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

Section 2. This act shall become effective on January 1, 2018, following its passage and approval by the Governor, or its otherwise becoming law.