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3 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR HB328  
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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 Under existing law, the Alabama Fraudulent  
20 Transfer Act prohibits the fraudulent transfer of  
21 assets.

22 This bill would eliminate the requirement  
23 that the parties have been married for 10 years  
24 before the court may award retirement benefits.

25 This bill would allow the court to use any  
26 equitable method of valuing, dividing, or

1 distributing to benefits, but the noncovered spouse  
2 could receive no more than 50 percent of the  
3 benefits considered by the court.

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

9 This bill would clarify that a transfer  
10 includes those transfers made pursuant to a divorce  
11 settlement or domestic settlement for purposes of  
12 the Alabama Fraudulent Transfer Act.

13  
14 A BILL  
15 TO BE ENTITLED  
16 AN ACT  
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18 To amend Sections 8-9A-1 and 30-2-51, Code of  
19 Alabama 1975, to clarify that the definition of transfer for  
20 purposes of the Alabama Fraudulent Transfer Act includes  
21 transfers of assets made pursuant to a divorce settlement or  
22 domestic settlement and to make those amendatory  
23 clarifications retroactive; to provide for an allowance upon  
24 divorce of certain retirement benefits; to provide further for  
25 the circumstances in which the court may make an allowance;

1 and to provide further for the valuation of retirement  
2 benefits; and to provide for the obligations of each party.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 8-9A-1 and 30-2-51, Code of  
5 Alabama 1975, are amended to read as follows:

6 "§8-9A-1.

7 "As used in this chapter, the following words have  
8 the following meanings:

9 "(1) AFFILIATE.

10 "a. A person who directly or indirectly owns,  
11 controls, or holds with power to vote, 20 percent or more of  
12 the outstanding voting securities of the debtor, other than a  
13 person who holds the securities,

14 "1. As a fiduciary or agent without sole  
15 discretionary power to vote the securities; or

16 "2. Solely to secure a debt, if the person has not  
17 exercised the power to vote;

18 "b. A corporation 20 percent or more of whose  
19 outstanding voting securities are directly or indirectly  
20 owned, controlled, or held with power to vote, by the debtor  
21 or a person who directly or indirectly owns, controls, or  
22 holds, with power to vote, 20 percent or more of the  
23 outstanding voting securities of the debtor, other than a  
24 person who holds the securities,

25 "1. As a fiduciary or agent without sole power to  
26 vote the securities; or

1           "2. Solely to secure a debt, if the person has not  
2 in fact exercised the power to vote;

3           "c. A person whose business is operated by the  
4 debtor under a lease or other agreement or a person  
5 substantially all of whose assets are controlled by the  
6 debtor, or

7           "d. A person who operates the debtor's business  
8 under a lease or other agreement or controls substantially all  
9 of the debtor's assets.

10           "(2) ASSET. Property of a debtor, but the term does  
11 not include:

12           "a. Property to the extent it is encumbered by a  
13 valid lien;

14           "b. Property to the extent it is generally exempt  
15 under nonbankruptcy law; or

16           "c. An interest in property held in tenancy in  
17 common for life with cross contingent remainder to the  
18 survivor in fee to the extent it is not subject to process by  
19 a creditor holding a claim against only one tenant.

20           "(3) CLAIM. A right to payment, whether or not the  
21 right is reduced to judgment, liquidated, unliquidated, fixed,  
22 contingent, matured, unmatured, disputed, undisputed, legal,  
23 equitable, secured, or unsecured, and specifically shall  
24 include the nonpayment of child support pursuant to a court  
25 order.

26           "(4) CREDITOR. A person who has a claim.

1           "(5) DEBT. Liability on a claim.

2           "(6) DEBTOR. A person who is liable on a claim.

3           "(7) INCLUDES. Is not a limiting term.

4           "(8) INSIDER. Includes:

5           "a. If the debtor is an individual,

6           "1. A relative of the debtor or of a general partner

7 of the debtor;

8           "2. A partnership in which the debtor is a general

9 partner;

10           "3. A general partner in a partnership described in

11 subparagraph 2; or

12           "4. A corporation of which the debtor is a director,

13 officer, or person in control;

14           "b. If the debtor is a corporation,

15           "1. A director of the debtor;

16           "2. An officer of the debtor;

17           "3. A person in control of the debtor;

18           "4. A partnership in which the debtor is a general

19 partner;

20           "5. A general partner in a partnership described in

21 subparagraph 4; or

22           "6. A relative of a general partner, director,

23 officer, or person in control of the debtor,

24           "c. If the debtor is a partnership,

25           "1. A general partner in the debtor;

1           "2. A relative of a general partner in, a general  
2 partner of, or a person in control of the debtor;

3           "3. Another partnership in which the debtor is a  
4 general partner;

5           "4. A general partner in a partnership described in  
6 subparagraph 3; or

7           "5. A person in control of the debtor.

8           "d. An affiliate, or an insider of an affiliate as  
9 if the affiliate were the debtor; and

10          "e. A managing agent of the debtor.

11          "(9) LIEN. A charge against or an interest in  
12 property to secure payment of a debt or performance of an  
13 obligation, and includes a security interest created by  
14 agreement, a judicial lien obtained by legal or equitable  
15 process or proceedings, a common law lien, or a statutory  
16 lien.

17          "(10) PERSON. An individual, partnership,  
18 corporation, association, organization, government, or  
19 governmental subdivision or agency, business trust, estate,  
20 trust, or any other legal or commercial entity.

21          "(11) PROPERTY. Both real and personal property,  
22 whether tangible or intangible, and any interest in property  
23 whether legal or equitable and includes anything that may be  
24 the subject of ownership.

25          "(12) RELATIVE. An individual related by  
26 consanguinity within the third degree as determined by the

1 common law, a spouse, or an individual related to a spouse  
2 within the third degree as so determined, and includes an  
3 individual in an adoptive relationship within the third  
4 degree.

5 "(13) TRANSFER. Every mode, direct or indirect,  
6 absolute or conditional, voluntary or involuntary, of  
7 disposing of or parting with an asset or an interest in an  
8 asset, and includes payment of money, release, lease, and  
9 creation of a lien or other encumbrance. The term includes a  
10 transfer made pursuant to a divorce settlement or domestic  
11 settlement, whether or not the divorce settlement or domestic  
12 settlement, or the terms thereof, is approved by a court or  
13 incorporated into the terms of an order, judgment, or decree.

14 "(14) VALID LIEN. A lien that is effective against  
15 the holder of a judicial lien subsequently obtained by legal  
16 or equitable process or proceedings.

17 "§30-2-51.

18 "(a) If either spouse has no separate estate or if  
19 it is insufficient for the maintenance of a spouse, the judge,  
20 upon granting a divorce, at his or her discretion, may order  
21 to a spouse an allowance out of the estate of the other  
22 spouse, taking into consideration the value thereof and the  
23 condition of the spouse's family. Notwithstanding the  
24 foregoing, the judge may not take into consideration any  
25 property acquired prior to the marriage of the parties or by  
26 inheritance or gift unless the judge finds from the evidence

1 that the property, or income produced by the property, has  
2 been used regularly for the common benefit of the parties  
3 during their marriage.

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

10 ~~"(1) The parties have been married for a period of~~  
11 ~~10 years during which the retirement was being accumulated.~~

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

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

20 ~~"(c) If the court finds in its discretion that any~~  
21 ~~of the covered spouse's retirement benefits should be~~  
22 ~~distributed to the non-covered spouse, the amount is not~~  
23 ~~payable to the non-covered spouse until the covered spouse~~  
24 ~~begins to receive his or her retirement benefits or reaches~~  
25 ~~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.

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

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

20           "(e) Unless otherwise prohibited by state or federal  
21 law, a court may enter any order designed to protect or  
22 preserve the legal interest of either spouse in retirement  
23 benefits, including any order to prevent, or to compensate a  
24 spouse for, the deprivation or dissipation of a legal share of  
25 any retirement benefits due to the act or omission of the  
26 other spouse and any order necessary to enforce the property

1 division of such benefits. Notwithstanding the foregoing, a  
2 court may not enter any order modifying the terms of any  
3 retirement benefits or enlarging the benefits payable under  
4 the terms of a retirement plan."

5           Section 2. The amendment to Section 8-9A-1, Code of  
6 Alabama 1975, made in Section 1 of this act providing that a  
7 transfer made pursuant to a divorce settlement or domestic  
8 settlement falls within the definition of transfer for  
9 purposes of the Uniform Fraudulent Transfer Act, is  
10 declaratory of, and does not constitute a change in, existing  
11 law. To the extent necessary to carry out the intent of the  
12 Legislature, this act shall be applied retroactively.

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