

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1185
Judiciary

(Delegate Anderson)

Family Law - Marital Property - Military Pensions

This bill requires a court that transfers ownership of an interest in a military pension pursuant to an annulment or absolute divorce to base the transfer on the rank and years of service of the member on the day the annulment or divorce decree is granted using the current value of the rank and years of services at the time of retirement. The bill prohibits from being considered as marital property: (1) an interest in the portion of a military pension derived from military service before a marriage and (2) an interest in the portion of a military pension derived from pay increases attributable to promotion or additional time served by the member of the military after an annulment or a divorce decree is granted.

Fiscal Summary

State Effect: None. Any change in the way ownership of an interest in military pensions is valued and transferred in family law cases will not materially affect State finances, including the State Retirement and Pension System.

Local Effect: None. The bill will not materially affect circuit court operations or finances.

Small Business Effect: None.

Analysis

Current Law: “Marital property” is property, however titled, that is acquired by one or both parties during the marriage. Marital property includes any interest in real property held by the parties as tenants in the entirety unless the real property is excluded by valid

agreement. Marital property does not include property acquired before the marriage, acquired by inheritance or gift from a third party, excluded by valid agreement, or property that is directly traceable to any of these sources.

In a proceeding for annulment or an absolute divorce, if there is a dispute as to whether certain property is marital property, the court determines which property is marital property. A military pension is considered in the same manner as any other pension or retirement benefit. Moreover, the court is required to determine the value of all marital property. It is not, however, required to determine the value of a pension, retirement, profit sharing, or deferred compensation plan unless a party has given notice that he/she intends to present evidence of the value of the benefits and objects to a distribution of the retirement benefits on an “if, as, and when” basis. This basis recognizes that the value of a pension cannot be ascertained with certainty until retirement, and therefore awards the nonemployee spouse a percentage share of any future payments the employee spouse receives as payable to the nonemployee spouse if, as, and when paid to the employee spouse.

In an action for annulment or divorce, after the court determines which property is marital property and the value of that property, the court may transfer an ownership interest in specified types of marital property, including ownership of an interest in a pension, retirement, profit sharing, or deferred compensation plan, and/or grant a monetary award. The transfer or grant is an adjustment of the equity of the parties regarding the marital property, regardless of an alimony award.

The court must determine the terms for a monetary award or transfer of a property interest, or both, after considering each of the following factors:

- the contributions of each party to the family’s well-being;
- the value of all property interests of each party;
- each party’s economic circumstances at the time of the award;
- the circumstances contributing to the parties’ estrangement;
- the duration of the marriage;
- the age of each party;
- each party’s mental and physical condition;

- how and when the specific marital property or property interest was acquired;
- the contribution by either party of nonmarital property to the acquisition of real property held as tenants by the entirety by the parties;
- any award of alimony or other provision regarding family use personal property or the family home; and
- any other factor the court considers necessary or appropriate to reach a fair and equitable monetary award or transfer of a property interest.

Background: The Uniformed Services Former Spouses' Protection Act (USFSPA) was enacted in 1982 to give state courts the authority to treat military retired pay as marital property. The USFSPA does not require courts to base an allocation of retired pay on the member's rank and years of creditable service at the time of divorce. The Department of Defense (DOD) has noted that because of the unique features of the military retirement system, it is often difficult for courts to value military retired pay at the time of divorce or separation. Therefore, state courts typically award a percentage of the member's retired pay as of the date the member retires. DOD has recommended amending USFSPA to require courts to provide that all awards of military retired pay be based on the member's rank and years of service at the time of divorce, so that the benefits from future promotions and longevity pay earned by the military member after the divorce are not treated as marital property.

Additional Information

Prior Introductions: None.

Cross File: SB 850 (Senators Peters and Astle) - Judicial Proceedings.

Information Source(s): Department of Defense, Department of Legislative Services

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Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510