

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 1359  
Judiciary

(Delegate Frank)

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Family Law - Marital Property - Military Pensions

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This bill requires a court that transfers ownership of an interest in a military pension to order that any direct payments to a former spouse under the federal Uniformed Services Former Spouses' Protection Act (USFSPA) must terminate on the remarriage of the former spouse.

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Fiscal Summary

**State Effect:** None. The bill will not directly affect State finances or operations.

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

**Small Business Effect:** None.

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Analysis

**Current Law:** Neither State law nor the USFSPA requires the termination of retirement benefits on the remarriage of the recipient spouse.

“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.

A former spouse who is awarded an ownership interest in a military pension is eligible for direct payments from the Department of Defense (through the Defense Finance and Accounting Service) of the awarded share of retired pay if the parties were married for at least 10 years during which the military member completed at least 10 years of creditable services. The USFSPA requires any direct payments to a former spouse from the retired pay of a military member to terminate in accordance with the terms of the applicable court order, but not later than the date of the member's death or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

**Background:** USFSPA was enacted in 1982 to give state courts the authority to treat military retired pay as marital property.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), U.S. Department of Defense, Department of Legislative Services

**Fiscal Note History:** First Reader - March 17, 2010  
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