

Provisions in National Defense Authorization Act would cut retirement benefits for former military spouses

Federal laws allow state family court judges to award a fair share of an employee's retirement benefit to a former spouse at divorce. The laws recognize that marriage is an economic partnership and therefore permit state courts to consider both the degree to which former spouses may have relied on their partners' retirement benefits for financial security in old age, and the extent to which the spouses may have made it possible for employees to earn retirement benefits.

Military retirement benefits are no exception. Under the Uniformed Services Former Spouses Protection Act (USFSPA), state court judges are generally allowed to award up to half of a service member's military retirement benefits to a former spouse based on the couple's individual circumstances. The benefit is based on the service member's length of service and rank (salary) at the time of retirement. In calculating a fair share of the benefit, judges typically consider how long the marriage overlapped the member's military service.

The proposed 2017 National Defense Authorization Act would dramatically limit the ability that state family court judges now have to divide military retirement benefits fairly. The divorce provisions in the House and Senate bills (Section 625 of H.R. 4909 and Section 642 of S. 2943) would limit the amount of military members' retirement pay that state courts can award to former spouses to up to half an amount based on the military members' rank and years of service at the time of divorce, rather than at the time of the members' retirement.

This effectively freezes former spouses' retirement benefits as of the dates of their divorces, even though they will have to wait until the service members retire to actually receive benefit payments, and despite the fact that the value of the amounts earned as of the date of divorce are likely to increase significantly between the date of the divorce and the date of retirement.

For example, under the proposed revision of the law, if a member and spouse divorce when the member is a major with ten years of service, and the member goes on to retire as a colonel with twenty years of service, the former spouse will only receive a share of the retirement benefits (based on the length of their marriage during the member's military service) that would be paid out to someone who retired as a major – even though the benefits will not be paid for another ten years.

All other federally-regulated retirement systems allow state court judges to make fair decisions based on state divorce law, a divorcing couple's individual circumstances, and the value of a benefit at the time of retirement.

The divorce provisions in the House and Senate bills are the same. They are just two of many provisions in the National Defense Authorization Act. They were included without public scrutiny or discussion.

Differences in the Senate and House bills have now been reconciled by the Senate-House Conference Committee. If nothing is done to remove the divorce provisions before the final votes in early December, the legislation will be sent to the President to be signed into law.