
Defense Report

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The Division of Military Retired Pay In a Divorce—It Must Be Done Fairly

No other occupation in the United States can lay claim to as many disadvantages as those found in a military career. Repeated and long-term exposure to danger, frequent and lengthy family separations and a standard of living that fluctuates between genteel poverty and something only slightly better frequently combine to create extreme marital tension.

In recent months, there has been a high level of interest in the way military retired pay should be treated in divorce settlements. The application of state law and the individual attitudes of some judges have resulted in a number of settlements that have been patently unfair to the former spouses of retirees. Similarly, the failure of some judges to observe the provisions of the Soldiers and Sailors Relief Act, which are designed to protect the service members when their assignment or duties make it impossible to be present to defend themselves in court actions, have brought frequent instances of settlements unfair to active duty service members.

So-called "remedial" legislation, which would clearly permit state judges to award as much as 50 percent of a former service member's retired pay to a divorced spouse, is now making its way through the U.S. Senate, and it appears likely that the House of Representatives will eventually follow suit. Former spouses are pleased with the prospect of gaining a share of retired pay they say was earned during their marriages. Divorced military members, either active or retired, are understandably unhappy.

Observers not quite so close to the debate, but interested in fair play for all concerned, are disappointed that the Senate bill does not reinforce the protective aspects of the Soldiers and Sailors Relief Act. There is also some objection to the fact that the division of retired pay would take place after the retiree had paid the taxes on the whole amount.

If this legislation eventually becomes law, it will be up to the judges in the state courts to administer it fairly, according to the circumstances that lie behind each individual divorce. Failure to do so can only result in more hardship and continued controversy.