

# **THE UNIFORMED SERVICES DIVORCE EQUITY ACT**

## **A BILL**

**To amend title 10, United States Code, to revise the rules relating to the court-ordered apportionment of the retired pay of members of the uniformed services to former spouses, and for other purposes.**

**Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,**

### **SECTION 1. SHORT TITLE.**

**This Act may be cited as the 'Uniformed Services Divorce Equity Act of 2009'.**

### **SEC. 2. PROPORTIONATE DIVISION OF RETIRED PAY FOR FORMER SPOUSES.**

**Section 1408(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:**

**'(5)(A) In the case of a court order issued on or after the date of the enactment of the Uniformed Services Divorce Equity Act of 2009 in which the court, pursuant to paragraph (1), provides for treatment of the disposable retired pay of a member as property of the member and the member's spouse, the court (unless otherwise expressly provided for by a spousal agreement) shall award the spouse or former spouse a share of such retired pay as follows:**

**'(i) If the spouse or former spouse was married to the member throughout the service of the member that is creditable for computation of retired pay, a share equal to 50 percent of the disposable retired pay of the member.**

**'(ii) If the spouse or former spouse was not married to the member throughout the service of the member that is creditable for computation of retired pay, a share equal to that proportion of 50 percent of the disposable retired pay of the member that is the proportion that--**

**'(I) the number of days of the marriage of the former spouse to the participant during periods of such creditable service bears to the total number of days of such creditable service; or**

**'(II) in the case of a member for whom retired pay is payable under chapter 1223 of this title, the number of points credited under section**

**12733 of this title for computation of the member's retired pay that accrued during the period of marriage bears to the total number of points credited under that section for computation of the member's retired pay.**

**`(B) In subparagraph (A), the term `spousal agreement' means an agreement between a member and the member's spouse or former spouse that--**

**`(i) is in writing, is signed by the parties, and is notarized; and**

**`(ii) has not been modified by court order.'**

### **SEC. 3. DURATION OF PAYMENT OF RETIRED PAY TO FORMER SPOUSES.**

**(a) LIMITATION-** Section 1408(c) of title 10, United States Code, is amended by adding after paragraph (5), as added by section 2, the following new paragraph:

**`(6)(A) If the period of the marriage during which time the member was qualifying for retired pay through military service is less than 240 months, payments under paragraph (1) shall be made by the member to the former spouse for a period equal to the number of months of the marriage during which time the member was qualifying for retired pay through military service, except that, in the case of payments made pursuant a court order of divorce, dissolution, annulment, or legal separation issued after the date of the enactment of Uniformed Services Divorce Equity Act of 2003, such payments shall terminate upon the remarriage of the former spouse, if such remarriage occurs before the end of such period.**

**`(B) If the period of the marriage during which time the member was qualifying for retired pay through military service is 240 months or more, payments under paragraph (1) shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.'**

**(b) TERMINATION OF DEPARTMENT OF DEFENSE PAYMENTS-** Section 1408(d)(4) of such title is amended--

**(1) by inserting `(A)' after `(4)'; and**

**(2) by adding at the end the following:**

**`(B) In the case of payments from the disposable retired pay of a member pursuant to this section that are subject to termination by reason of subsection (c)(6)(A), the Secretary concerned shall terminate such payments--**

**`(i) upon written request of the member, if information in possession of the Secretary or provided by the member is sufficient for the Secretary to conclude that the provisions for termination under subsection (c)(6)(A) are satisfied; or**

**`(ii) upon effective service of a court order modifying the court order under which the payments to the member's spouse or former spouse have been made.'**

**(c) TRANSITION PROVISION-**

**(1) MARRIAGES TERMINATED BEFORE ENACTMENT- With respect to a court order issued before the date of the enactment of this Act, if the length of the marriage before the court order during which time the member was qualifying for retired pay through military service was less than 240 months--**

**(A) if payments by the member to the spouse or former spouse as of the date of the enactment of this Act have been made for less than the number of months of the marriage during which time the member was qualifying for retired pay through military service, payments shall continue in the amount specified in the court order until such payments have been made for the number of months of the marriage during which time the members was qualifying for retired pay through military service, but in no event shall such payments terminate by reason of this paragraph sooner than the end of the 24-month period beginning on the date of the enactment of this Act; and**

**(B) if payments by the member to the former spouse as of the date of the enactment of this Act have been made for a period equal to or greater than the number of months of the marriage during which time the member was qualifying for retired pay through military service, payments shall terminate 24 months after the date of the enactment of this Act, unless sooner terminated under some other provision of law.**

**(2) APPLICABILITY OF DOD TERMINATION PROVISIONS-**

**Subparagraph (B) of subsection (d)(4) of section 1408 of title 10, United States Code, as added by subsection (b), shall apply to the provisions of**

paragraph (1) of this subsection in the same manner as to subsection (c)(6)(A) of such section 1408, as added by subsection (a).

**(3) COURT ORDER DEFINED-** In this subsection, the term `court order' has the meaning given that term in section 1408(a)(2) of title 10, United States Code.

#### **SEC. 4. AWARD OF RETIRED PAY TO BE BASED ON RETIREE'S LENGTH OF SERVICE AND PAY GRADE AT TIME OF DIVORCE.**

Section 1408(c) of title 10, United States Code, is amended by adding after paragraph (6), as added by section 3(a), the following new paragraph:

**`(7) In the case of a member as to whom a final decree of divorce, dissolution, annulment, or legal separation is issued on or after the date of the enactment of the Uniformed Services Divorce Equity Act of 2009 and before the date when the member begins to receive retired pay, the disposable retired pay of the member that a court may treat in the manner described in paragraph (1) shall be computed based on the pay grade and the length of service of the member while married to the spouse or former spouse that are creditable toward entitlement to basic pay and to retired pay as of the date of the final decree. Amounts so calculated shall be increased by the cumulative percentage of increases in retired pay between the date of the final decree and the effective date of the member's retirement.'**

#### **SEC. 5. PROHIBITION ON COURT ORDERING PAYMENTS BEFORE RETIREMENT BASED ON IMPUTATION OF RETIRED PAY.**

Section 1408(c)(3) of title 10, United States Code, is amended--

**(1) by inserting `(A)' after `(3)'; and**

**(2) by adding at the end the following:**

**`(B) After the date of the enactment of the Uniformed Services Divorce Equity Act of 2009, a court may not order a member to make payments to a spouse or former spouse before the date of the member's retirement based upon an imputation of a property interest in future retired pay.'**

#### **SEC. 6. LIMITATION ON TIME FOR SEEKING DIVISION OF RETIRED PAY.**

**(a) IN GENERAL-** Section 1408(c)(4) of title 10, United States Code, is amended--

(1) by inserting '(A)' after '(4)'; and

(2) by adding at the end the following new subparagraph:

(B) In order to be eligible to receive payments from the disposable retired pay of a member in the manner described in paragraph (1), the member's spouse or former spouse must obtain a court order for the treatment of the disposable retired pay of the member as property of the member and the member's spouse not later than two years after the date of a final decree of divorce, dissolution, annulment, or legal separation, including a court ordered, ratified, or approved property settlement incident to such a decree.'

(b) PROSPECTIVE APPLICATION- The amendment made by subsection (a) shall apply with respect to final decrees of divorce, dissolution, annulment, or legal separation issued on or after the date of the enactment of this Act.

(c) IMPLEMENTATION- With respect to payments to a spouse or former spouse from a member's disposable retired pay pursuant to a final decree of divorce, dissolution, annulment, or legal separation issued before the date of the enactment of this Act, if more than two years have elapsed between the date of the final decree of divorce, dissolution, annulment, or legal separation and the issuance of a court order for the apportionment of the disposable retired pay of a member, a court may not order that payments of retired pay to a former spouse be made retroactive to the date of the final decree of divorce, dissolution, annulment, or legal separation.

#### **SEC. 7. TERMINATION OF LIABILITY FOR PAYMENTS TO FORMER SPOUSES.**

Subsection 1408(d)(4)(A) of title 10, United States Code, as redesignated by section 3(b)(1), is amended by inserting 'and liability therefor' after 'section'.

#### **SEC. 8. PROHIBITION ON APPORTIONMENT OF DISABILITY PAY.**

(a) IN GENERAL- Subsection 1408(e)(4) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

(C) Notwithstanding any other provision of law, a court may not treat as part of the disposable retired pay of a member under this section or as part of amounts to be paid by a member pursuant to legal processes under

**section 459 of the Social Security Act (42 U.S.C. 659) for the purpose of alimony payments to a former spouse, amounts that--**

**`(i) are deducted from the retired pay of such member as a result of a waiver of retired pay required by law in order to receive disability compensation under title 38; or**

**`(ii) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability list).'**

**(b) AMENDMENTS TO SOCIAL SECURITY ACT- Section 459(h) of the Social Security Act (42 U.S.C. 659(h)) is amended--**

**(1) in paragraph (1)(A)(ii)(V), by striking all that follows `Armed Forces' and inserting a semicolon; and**

**(2) by adding at the end the following new paragraph:**

**`(3) LIMITATIONS WITH RESPECT TO COMPENSATION PAID TO VETERANS FOR SERVICE-CONNECTED DISABILITIES- Notwithstanding any other provision of this subsection--**

**`(A) compensation described in paragraph (1)(A)(ii)(V) shall not be subject to withholding pursuant to this section--**

**`(i) for payment of alimony; or**

**`(ii) for payment of child support if the individual is fewer than 60 days in arrears in payment of the support; and**

**`(B) not more than 50 percent of any payment of compensation described in paragraph (1)(A)(ii)(V) may be withheld pursuant to this section.'**

**(c) EFFECTIVE DATE- The amendments made by subsections (a) and (b) shall apply to court orders and legal processes issued on or after June 25, 1981. In the case of a court order or legal process issued before the date of the enactment of this Act, such amendments shall apply only with respect to retired pay payable for months beginning on or after the date of the enactment of this Act.**

**SEC. 9. TECHNICAL CORRECTIONS.**

**(a) GENDER-NEUTRAL REFERENCES-** Section 1408 of title 10, United States Code, is amended as follows:

**(1)** Subsection (c)(1) is amended by striking `the member and his spouse' and inserting `the member and the member's spouse'.

**(2)** Subsection (c)(4)(A) is amended by striking `his' each place it appears and inserting `the member's'.

**(3)** Subsection (d)(5) is amended by striking `the member and his spouse' and inserting `the member and the member's spouse'.

**(4)** Subsection (g) is amended by striking `his' and inserting `the member's'.

**(b) DATE OF ENACTMENT REFERENCE-** Subsection (d)(6) of such section is amended by striking `on or after the date of the enactment of this paragraph' and inserting `after August 21, 1996,'.

**(c) SUBSECTION CAPTION-** The heading for subsection (e) of such section is amended to read as follows: `MULTIPLE COURT ORDERS- '.