

108TH CONGRESS  
1ST SESSION

# H. R. 1111

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.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2003

Mr. BALLENGER (for himself, Mr. ANDREWS, Mr. SANDLIN, Mr. SOUDER, Mr. BEAUPREZ, Mr. GOODE, Mr. GRIJALVA, Mr. LAHOOD, Mrs. MYRICK, Mr. CUNNINGHAM, and Mr. HOSTETTLER) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Uniformed Services  
5 Divorce Equity Act of 2003”.

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

3 Section 1408(c) of title 10, United States Code, is  
4 amended by adding at the end the following new para-  
5 graph:

6 “(5)(A) In the case of a court order issued on or after  
7 the date of the enactment of the Uniformed Services Di-  
8 vorce Equity Act of 2003 in which the court, pursuant  
9 to paragraph (1), provides for treatment of the disposable  
10 retired pay of a member as property of the member and  
11 the member’s spouse, the court (unless otherwise expressly  
12 provided for by a spousal agreement) shall award the  
13 spouse or former spouse a share of such retired pay as  
14 follows:

15 “(i) If the spouse or former spouse was married  
16 to the member throughout the service of the member  
17 that is creditable for computation of retired pay, a  
18 share equal to 50 percent of the disposable retired  
19 pay of the member.

20 “(ii) If the spouse or former spouse was not  
21 married to the member throughout the service of the  
22 member that is creditable for computation of retired  
23 pay, a share equal to that proportion of 50 percent  
24 of the disposable retired pay of the member that is  
25 the proportion that—

1 “(I) the number of days of the marriage of  
 2 the former spouse to the participant during pe-  
 3 riods of such creditable service bears to the  
 4 total number of days of such creditable service;  
 5 or

6 “(II) in the case of a member for whom re-  
 7 tired pay is payable under chapter 1223 of this  
 8 title, the number of points credited under sec-  
 9 tion 12733 of this title for computation of the  
 10 member’s retired pay that accrued during the  
 11 period of marriage bears to the total number of  
 12 points credited under that section for computa-  
 13 tion of the member’s retired pay.

14 “(B) In subparagraph (A), the term ‘spousal agree-  
 15 ment’ means an agreement between a member and the  
 16 member’s spouse or former spouse that—

17 “(i) is in writing, is signed by the parties,  
 18 and is notarized; and

19 “(ii) has not been modified by court  
 20 order.”.

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

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

1       “(6)(A) If the period of the marriage during which  
2 time the member was qualifying for retired pay through  
3 military service is less than 240 months, payments under  
4 paragraph (1) shall be made by the member to the former  
5 spouse for a period equal to the number of months of the  
6 marriage during which time the member was qualifying  
7 for retired pay through military service, except that, in  
8 the case of payments made pursuant a court order of di-  
9 vorce, dissolution, annulment, or legal separation issued  
10 after the date of the enactment of Uniformed Services Di-  
11 vorce Equity Act of 2003, such payments shall terminate  
12 upon the remarriage of the former spouse, if such remar-  
13 riage occurs before the end of such period.

14       “(B) If the period of the marriage during which time  
15 the member was qualifying for retired pay through mili-  
16 tary service is 240 months or more, payments under para-  
17 graph (1) shall terminate in accordance with the terms  
18 of the applicable court order, but not later than the date  
19 of the death of the member or the date of the death of  
20 the spouse or former spouse to whom payments are being  
21 made, whichever occurs first.”.

22       (b) TERMINATION OF DEPARTMENT OF DEFENSE  
23 PAYMENTS.—Section 1408(d)(4) of such title is amend-  
24 ed—

25               (1) by inserting “(A)” after “(4)”; and

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

2 “(B) In the case of payments from the disposable re-  
3 tired pay of a member pursuant to this section that are  
4 subject to termination by reason of subsection (c)(6)(A),  
5 the Secretary concerned shall terminate such payments—

6 “(i) upon written request of the member, if in-  
7 formation in possession of the Secretary or provided  
8 by the member is sufficient for the Secretary to con-  
9 clude that the provisions for termination under sub-  
10 section (c)(6)(A) are satisfied; or

11 “(ii) upon effective service of a court order  
12 modifying the court order under which the payments  
13 to the member’s spouse or former spouse have been  
14 made.”.

15 (c) TRANSITION PROVISION.—

16 (1) MARRIAGES TERMINATED BEFORE ENACT-  
17 MENT.—With respect to a court order issued before  
18 the date of the enactment of this Act, if the length  
19 of the marriage before the court order during which  
20 time the member was qualifying for retired pay  
21 through military service was less than 240 months—

22 (A) if payments by the member to the  
23 spouse or former spouse as of the date of the  
24 enactment of this Act have been made for less  
25 than the number of months of the marriage

1 during which time the member was qualifying  
2 for retired pay through military service, pay-  
3 ments shall continue in the amount specified in  
4 the court order until such payments have been  
5 made for the number of months of the marriage  
6 during which time the members was qualifying  
7 for retired pay through military service, but in  
8 no event shall such payments terminate by rea-  
9 son of this paragraph sooner than the end of  
10 the 24-month period beginning on the date of  
11 the enactment of this Act; and

12 (B) if payments by the member to the  
13 former spouse as of the date of the enactment  
14 of this Act have been made for a period equal  
15 to or greater than the number of months of the  
16 marriage during which time the member was  
17 qualifying for retired pay through military serv-  
18 ice, payments shall terminate 24 months after  
19 the date of the enactment of this Act, unless  
20 sooner terminated under some other provision  
21 of law.

22 (2) APPLICABILITY OF DOD TERMINATION PRO-  
23 VISIONS.—Subparagraph (B) of subsection (d)(4) of  
24 section 1408 of title 10, United States Code, as  
25 added by subsection (b), shall apply to the provisions

1 of paragraph (1) of this subsection in the same man-  
 2 ner as to subsection (c)(6)(A) of such section 1408,  
 3 as added by subsection (a).

4 (3) COURT ORDER DEFINED.—In this sub-  
 5 section, the term “court order” has the meaning  
 6 given that term in section 1408(a)(2) of title 10,  
 7 United States Code.

8 **SEC. 4. AWARD OF RETIRED PAY TO BE BASED ON RETIR-**  
 9 **EE’S LENGTH OF SERVICE AND PAY GRADE**  
 10 **AT TIME OF DIVORCE.**

11 Section 1408(c) of title 10, United States Code, is  
 12 amended by adding after paragraph (6), as added by sec-  
 13 tion 3(a), the following new paragraph:

14 “(7) In the case of a member as to whom a final de-  
 15 cree of divorce, dissolution, annulment, or legal separation  
 16 is issued on or after the date of the enactment of the Uni-  
 17 formed Services Divorce Equity Act of 2003 and before  
 18 the date when the member begins to receive retired pay,  
 19 the disposable retired pay of the member that a court may  
 20 treat in the manner described in paragraph (1) shall be  
 21 computed based on the pay grade and the length of service  
 22 of the member while married to the spouse or former  
 23 spouse that are creditable toward entitlement to basic pay  
 24 and to retired pay as of the date of the final decree.  
 25 Amounts so calculated shall be increased by the cumu-

1 lative percentage of increases in retired pay between the  
2 date of the final decree and the effective date of the mem-  
3 ber's retirement.”.

4 **SEC. 5. PROHIBITION ON COURT ORDERING PAYMENTS BE-**  
5 **FORE RETIREMENT BASED ON IMPUTATION**  
6 **OF RETIRED PAY.**

7 Section 1408(c)(3) of title 10, United States Code,  
8 is amended—

9 (1) by inserting “(A)” after “(3)”; and

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

11 “(B) After the date of the enactment of the Uni-  
12 formed Services Divorce Equity Act of 2003, a court may  
13 not order a member to make payments to a spouse or  
14 former spouse before the date of the member's retirement  
15 based upon an imputation of a property interest in future  
16 retired pay.”.

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

19 (a) IN GENERAL.—Section 1408(c)(4) of title 10,  
20 United States Code, is amended—

21 (1) by inserting “(A)” after “(4)”; and

22 (2) by adding at the end the following new sub-  
23 paragraph:

24 “(B) In order to be eligible to receive payments from  
25 the disposable retired pay of a member in the manner de-



1 scribed in paragraph (1), the member's spouse or former  
2 spouse must obtain a court order for the treatment of the  
3 disposable retired pay of the member as property of the  
4 member and the member's spouse not later than two years  
5 after the date of a final decree of divorce, dissolution, an-  
6 nulment, or legal separation, including a court ordered,  
7 ratified, or approved property settlement incident to such  
8 a decree.'".

9 (b) PROSPECTIVE APPLICATION.—The amendment  
10 made by subsection (a) shall apply with respect to final  
11 decrees of divorce, dissolution, annulment, or legal separa-  
12 tion issued on or after the date of the enactment of this  
13 Act.

14 (c) IMPLEMENTATION.—With respect to payments to  
15 a spouse or former spouse from a member's disposable re-  
16 tired pay pursuant to a final decree of divorce, dissolution,  
17 annulment, or legal separation issued before the date of  
18 the enactment of this Act, if more than two years have  
19 elapsed between the date of the final decree of divorce,  
20 dissolution, annulment, or legal separation and the  
21 issuance of a court order for the apportionment of the dis-  
22 posable retired pay of a member, a court may not order  
23 that payments of retired pay to a former spouse be made  
24 retroactive to the date of the final decree of divorce, dis-  
25 solution, annulment, or legal separation.

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

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

6 **SEC. 8. PROHIBITION ON APPORTIONMENT OF DISABILITY**  
7 **PAY.**

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

11 “(C) Notwithstanding any other provision of law, a  
12 court may not treat as part of the disposable retired pay  
13 of a member under this section or as part of amounts to  
14 be paid by a member pursuant to legal processes under  
15 section 459 of the Social Security Act (42 U.S.C. 659)  
16 for the purpose of alimony payments to a former spouse,  
17 amounts that—

18 “(i) are deducted from the retired pay of such  
19 member as a result of a waiver of retired pay re-  
20 quired by law in order to receive disability com-  
21 pensation under title 38; or

22 “(ii) in the case of a member entitled to retired  
23 pay under chapter 61 of this title, are equal to the  
24 amount of retired pay of the member under that  
25 chapter computed using the percentage of the mem-  
26 ber’s disability on the date when the member was re-

1       tired (or the date on which the member’s name was  
2       placed on the temporary disability list).”.

3       (b) AMENDMENTS TO SOCIAL SECURITY ACT.—Sec-  
4       tion 459(h) of the Social Security Act (42 U.S.C. 659(h))  
5       is amended—

6               (1) in paragraph (1)(A)(ii)(V), by striking all  
7       that follows “Armed Forces” and inserting a semi-  
8       colon; and

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

11              “(3) LIMITATIONS WITH RESPECT TO COM-  
12      PENSATION PAID TO VETERANS FOR SERVICE-CON-  
13      NECTED DISABILITIES.—Notwithstanding any other  
14      provision of this subsection—

15              “(A) compensation described in paragraph  
16      (1)(A)(ii)(V) shall not be subject to withholding  
17      pursuant to this section—

18              “(i) for payment of alimony; or

19              “(ii) for payment of child support if  
20      the individual is fewer than 60 days in ar-  
21      rears in payment of the support; and

22              “(B) not more than 50 percent of any pay-  
23      ment of compensation described in paragraph  
24      (1)(A)(ii)(V) may be withheld pursuant to this  
25      section.”.

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

9       **SEC. 9. TECHNICAL CORRECTIONS.**

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

12               (1) Subsection (c)(1) is amended by striking  
 13 “the member and his spouse” and inserting “the  
 14 member and the member’s spouse”.

15               (2) Subsection (c)(4)(A) is amended by striking  
 16 “his” each place it appears and inserting “the mem-  
 17 ber’s”.

18               (3) Subsection (d)(5) is amended by striking  
 19 “the member and his spouse” and inserting “the  
 20 member and the member’s spouse”.

21               (4) Subsection (g) is amended by striking “his”  
 22 and inserting “the member’s”.

23       (b) DATE OF ENACTMENT REFERENCE.—Subsection  
 24 (d)(6) of such section is amended by striking “on or after

1 the date of the enactment of this paragraph” and inserting  
2 “after August 21, 1996,”.

3 (c) SUBSECTION CAPTION.—The heading for sub-  
4 section (e) of such section is amended to read as follows:  
5 “MULTIPLE COURT ORDERS.—”.

○