

FACTSHEET

SB 285 Wright: Support Judgments, Disabled Veterans Compensation

SB 285 would add Section 3553 to the Family Law Code to recognize existing federal law USC, Title 38, Section 5301, governing third party disbursement of a disabled veterans benefits compensation.

USC, Title 38, Section 5301 reads in part; Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

Veterans' service-connected disability compensation is intended to financially compensate a military veteran disabled in the line of duty. This compensation is not an asset, or property, and should not be used to calculate a veteran's net worth. Disability compensation is awarded to a veteran that has lost some/all physical or mental ability to work, or maintain a daily routine. Veteran's disability compensation is tax exempt and not classified as 'income' by the IRS. VA disability compensation is non-transferable and cannot be awarded to a third party under any legal process whatsoever. Even after the veteran has deposited these funds into their personal bank account they are federally protected from attachment or seizure. Disability compensation belongs solely to the disabled veteran that has suffered the disability.

And it's just not men, it's also disabled female veterans experiencing these problems when they get divorced or declare bankruptcy.

Although United States Code, Title 38, Section 5301 is very clear in its wording and intent, civil court judges nationwide have routinely ignored the U.S. Code and calculated veterans' disability compensation into divorce settlements as a divisible asset or income.

To date only two other states have taken action to clarify Title 38, Section 5301 in their family law codes: West Virginia, H. B. 2546 (By Delegates Shaver, Varner, Swartzmiller and Beach) [Introduced January 9, 2008], and Iowa, HF 170 (Bailey, Whitead, and Windschitl) [Introduced February 2, 2009]. Both bills have passed out of committees by unanimous vote.

The intent is to prevent a case from erroneous trial court an appeals court rulings. Disabled Veterans for the most part can not even afford an attorney at the trial court level let alone the cost of an appeal.

Even appeals courts across the nation have varied in their opinions causing even more confusion. One California case, *Mansell v. Mansell*, 216 Cal. App. 3d 937, 265 Cal. Rptr. 227 (1989) went all the way to the US Supreme Court where the case was reversed and remanded. One legal analysis found:

Res Judicata. Under *Mansell*, a state court order dividing veteran's or military disability benefits is clearly erroneous. But if such an order becomes

final, is the order void? The answer is clearly "no." In *Mansell*, the parties were divorced in California, and the California order actually divided the husband's disability benefits. Some years later, the husband suddenly awoke to the possibility of federal preemption, and moved to set aside the judgment. The California state courts initially assumed that the judgment could be reopened. They nevertheless denied relief, on grounds that federal law permitted the division of disability benefits. The Supreme Court reversed this judgment in its reported decision, but its decision was based upon California's assumption that *res judicata* did not prevent reopening of the judgment. "Whether the doctrine of *res judicata*, as applied in California, should have barred the reopening [the judgment] is a matter of state law over which we have no jurisdiction." 490 U.S. at 586 n.5.

On remand, however, the California court did not reopen the judgment. Instead, it revisited its earlier assumption that *res judicata* did not apply. It held that while the judgment might be erroneous, it was not void, and therefore could not be reopened. *Mansell v. Mansell*, 216 Cal. App. 3d 937, 265 Cal. Rptr. 227 (1989). The husband understandably filed a second petition for certiorari, because the California court had reached the exact same result which the Supreme Court had just rejected. But the Supreme Court refused to hear the case a second time. *Mansell v. Mansell*, 111 S. Ct. 237 (1990). The Court's action shows that *Mansell* is only a rule of substantive federal law, not a rule of subject-matter jurisdiction. Decisions which violate *Mansell* are only erroneous; they are not void.

For these reasons the best way to prevent further injustices to disabled veterans in family law cases is to make clear in our states family law statutes that uphold the intent of the federal law governing this issue.