

SENATOR RODERICK D. WRIGHT
FACT SHEET
SB 285 – Veteran’s Disability Payments

SB 285 - will amend the Family Law Code to recognize existing federal law USC, Title 38, Section 5301 governing third party disbursement of a disabled veteran’s benefits compensation.

Problem:

Although United States Code, Title 38, Section 5301 is very clear in its wording and intent, civil court judges nationwide, including courts in California have routinely ignored the U.S. Code and calculated veterans’ disability compensation into divorce settlements as a divisible asset and not treated the same as SSI in calculating child support awards. Very often these payments are the only assets a veteran may have. Unlawful attachment creates great hardship for those veterans who rarely have the resources to hire legal help to contest the taking of their benefits.

Background:

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.

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.

To date only two other states have taken action to amend and 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.

Solution: By restating federal law governing veterans disability benefits in the Family Code attorneys, judges and government officials will get clear notice such assets are protected from attachment. This should help avoid unnecessary hardship and litigation for veterans who frequently do not have the legal resources to contest an unlawful seizure.

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