

VDPa Introduction - June 21, 2010

A Bill

[FINAL DRAFT - 6/28/10]

Veterans Disability Protection Act of 2010 (VDPa)

State Statutes preempted by Federal Statutes constantly eliminate and erode veterans' disability benefits

States have no laws regarding veteran's disability benefits because veterans' statutes are drafted, and controlled by the Federal Government. Veterans like other citizens must come under the laws of Local, State and the Federal Government. By extracting veterans' disability benefits, State and Local governments violate Statutes enacted by the Federal Government constantly. I speak specifically of the Federal Statutes, which govern military disability benefits only. State and Local governments enact no laws regarding the governing of military disability benefits therefore those laws are preempted by Federal Statutes.

Article VI, § 2, of the United States Constitution provides that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land." This Supremacy Clause essentially means that the national government, in exercising any of the powers enumerated in the Constitution, must prevail over any conflicting or inconsistent state exercise of power. The federal preemption doctrine is a judicial response to the conflict between federal and state legislation. When it is clearly established that a federal law preempts a state law, the state law must be declared invalid.

The section of law which is the substance of this bill that has been law in effect since the it was enacted by the Twentieth Congress, Session 1, CH 55 in 1828, codified by United States Code, Title 38, § 5301. The beginning paragraph (a)(1) codifies the essence of the statute by demonstrating the nonassignability and exempt status of a service members military disability benefits by stating, "*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.*"

A state law may be struck down even when it does not explicitly conflict with federal law, if a court finds that Congress has legitimately occupied the field with federal legislation. Questions in this area require important state and federal interests. Problems arise when Congress fails to make its purpose explicit, which is often the case. The court must then draw inferences based on the presumed objectives of federal law and the supposed impact of related State Action. Unfortunately for veterans this is where the problem begins. Congress enacted the statute but it is up to States where the actual claims exist to interpret the law. Because there is no State regulation of military benefits whatsoever Federal statutes preempt but are disregarded when veterans are the subjects.

Problems associated with this process are as follows:

A veteran is in a position whereby he is to pay certain benefits from his military pay and is in the Superior Court of a particular state. The state judges only observe the full pay of the veteran and nothing more. Therefore the judge may adjudicate a certain portion of the veterans pay in violation of USC Title 38, § 5301. This occurs on a consistent basis simply because state court judges have no idea of the existence or significance of military disability pay and are not concerned as long as they have access to funds of the veteran.

Initial reason for the law

The **TWENTIETH CONGRESS. Session. 1 CH 55 1828** was very explicit when it said, "CHAP. LIII " *An Act for the relief of certain surviving officers and soldiers of the army of the revolution. Sec. 4. And be it further enacted,* That the pay allowed by this act shall, under the direction of the Secretary Treasury, be paid to the officer or soldier entitled thereto, or to their authorized attorney, as such places and days as said secretary may direct; and that no foreign officer shall be entitled to said pay, nor shall any officer or soldier receive the same, until he furnish to said secretary satisfactory evidence that he is entitled to the same conformity to the provisions of this act; and the pay allowed by this act shall not, in any, be transferable or liable to attachment, levy, or seizure, by any legal process whatever, but shall inure wholly to the personal benefit of the officer or soldier entitled to the same by this act.

The reason Congress felt so strongly about the disabled veteran and their benefits was because they knew they were earned on the battlefield, a results most severe and horrendous to any human endurance. Amputees, brain and spinal cord injuries, severe burns and disfiguring scars, are all devastating injuries from the battlefield. Congress concluded that these benefits were to be separate benefits and should endure above all others awarded by the U.S. Government. There was no doubt this line of duty benefits resulting from being in the line of duty should be tax free with no strings attached a premise that has not changed since the 1800's.

The negative effects of lack of State Court guidance on the Federal Law

Over the past 30 years State court judges have violated veterans' rights and ignored the Federal law by awarding veteran disability compensation to a number of unauthorized persons. A veteran's disability compensation has been relegated to paying alimony and support, or anything else the court can inject or suffer the embarrassment of jail. Wheelchair, bed bound, handicapped and near dead veterans are being stripped of their benefits in record numbers. Eventually veterans are left sick, handicapped and dying after the courts have stripped them of any remaining dignity.

Proposal for the Federal government to give guidance to State courts and prevent the derogation of military disability benefits

Whenever a veteran comes before a state judicial body the following procedures should prevent violation of the federal statute. (1) It should be ascertained whether or not the person is a veteran; (2) There should be a determination as to whether the veteran has been awarded military disability pay; (3) determine what percentage and what amount of the veterans total pay is military disability pay; (4) exclude any portion of the veteran's military disability pay from the adjudication of any claim; (5) continue with the original action.