

1 **H. B. 2411**

2
3 (By Delegates Shaver, Varner and Swartzmiller)
4 [Introduced January 12, 2011; referred to the
5 Committee on Veterans' Affairs and Homeland Security.]
6
7
8
9

10 A BILL to amend and reenact §48-5-510 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §48-7-101; and to amend
12 and reenact §48-8-103 and §48-8-105, all relating to excluding
13 disability income received by a veteran from the United States
14 Department of Veterans' Affairs for service related injuries
15 from any calculation used to determine spousal support.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section §48-5-510 of the Code of West Virginia, 1931, as
18 amended, be amended and reenacted; that §48-7-101 be amended and
19 reenacted; and that §48-8-103 and §48-8-105 be amended and
20 reenacted, all to read as follows:

21 **ARTICLE 5. DIVORCE.**

22 **§48-5-510. Consideration of financial factors in ordering**
23 **temporary relief.**

1 (a) In ordering temporary relief under the provisions of this
2 Part 5, the court shall consider the financial needs of the
3 parties, the present income of each party from any source, their
4 income-earning abilities and the respective legal obligations of
5 each party to support himself or herself and to support any other
6 persons. Notwithstanding any other provision of this code to the
7 contrary, disability income received by a veteran from the United
8 States Department of Veterans' Affairs for service related injuries
9 is not income for purposes of this article.

10 (b) Except in extraordinary cases supported by specific
11 findings set forth in the order granting relief, payments of
12 temporary spousal support and temporary child support are to be
13 made from a party's income and not from the corpus of a party's
14 separate estate, and an award of such relief shall not be
15 disproportionate to a party's ability to pay as disclosed by the
16 evidence before the court: *Provided*, That child support shall be
17 established in accordance with the child support guidelines set
18 forth in article thirteen of this chapter. *Provided, however, That*
19 the corpus of the estate of a veteran receiving disability income
20 for service related injuries cannot be used as a means of replacing
21 the value of the disability income.

22 **ARTICLE 7. EQUITABLE DISTRIBUTION OF PROPERTY.**

23 PART 1. MARITAL PROPERTY DISPOSITION.

24 **§48-7-101. Equal division of marital property.**

1 (a) Except as otherwise provided in this section, upon every
2 judgment of annulment, divorce or separation, the court shall
3 divide the marital property of the parties equally between the
4 parties.

5 (b) Notwithstanding any other provision of this code to the
6 contrary, disability income received by a veteran from the United
7 States Department of Veterans' Affairs for service related injuries
8 shall not be considered as property for the purposes of this
9 article.

10 **ARTICLE 8. SPOUSAL SUPPORT.**

11 **§48-8-103. Payment of spousal support.**

12 (a) Upon ordering a divorce or granting a decree of separate
13 maintenance, the court may require either party to pay spousal
14 support in the form of periodic installments, or a lump sum, or
15 both, for the maintenance of the other party. Payments of spousal
16 support are to be ordinarily made from a party's income, but when
17 the income is not sufficient to adequately provide for those
18 payments, the court may, upon specific findings set forth in the
19 order, order the party required to make those payments to make them
20 from the corpus of his or her separate estate. An award of spousal
21 support shall not be disproportionate to a party's ability to pay
22 as disclosed by the evidence before the court. Notwithstanding
23 any other provision of this code to the contrary, disability income
24 received by a veteran from the United States Department of

1 Veterans' Affairs for service related injuries is not income for
2 purposes of this article. Nor can the corpus of the estate of a
3 veteran receiving disability income for service related injuries be
4 used as a means of replacing the value of the disability income.

5 (b) At any time after the entry of an order pursuant to the
6 provisions of this article, the court may, upon motion of either
7 party, revise or alter the order concerning the maintenance of the
8 parties, or either of them, and make a new order concerning the
9 same, issuing it forthwith, as the altered circumstances or needs
10 of the parties may render necessary to meet the ends of justice.

11 **§48-8-105. Rehabilitative spousal support.**

12 (a) The court may award rehabilitative spousal support for a
13 limited period of time to allow the recipient spouse, through
14 reasonable efforts, to become gainfully employed. When awarding
15 rehabilitative spousal support, the court shall make specific
16 findings of fact to explain the basis for the award, giving due
17 consideration to the factors set forth in section ~~8-103~~ one hundred
18 three of this article.

19 (b) An award of rehabilitative spousal support is appropriate
20 when the dependent spouse evidences a potential for self-support
21 that could be developed through rehabilitation, training or
22 academic study.

23 ~~(b)~~ (c) The court may modify an award of rehabilitative
24 spousal support if a substantial change in the circumstances under

1 which rehabilitative spousal support was granted warrants
2 terminating, extending or modifying the award or replacing it with
3 an award of permanent spousal support. In determining whether a
4 substantial change of circumstances exists which would warrant a
5 modification of a rehabilitative spousal support award, the court
6 may consider a reassessment of the dependent spouse's potential
7 work skills and the availability of a relevant job market, the
8 dependent spouse's age, health and skills, the dependent spouse's
9 ability or inability to meet the terms of the rehabilitative plan
10 and other relevant factors as provided ~~for~~ in section ~~8-103~~ one
11 hundred three of this article.

NOTE: The purpose of this bill is to exclude disability income received by a veteran from the United States Department of Veterans' Affairs for service related injuries from any calculation used to determine spousal support.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.