

# Expert Legislative Report: Analysis and Proposal for the WyoVA Fraud Exception Act

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## I. Introduction and Legislative Intent: *The WyoVA Fraud Exception Act*

### A. Executive Summary: *Responding to Egregious Harm*

The State of Wyoming maintains a critical interest in protecting its residents from severe financial exploitation, fraud, and domestic abuse. Current state law governing the disposition of property in divorce proceedings, specifically Wyoming Statute § 20-2-114, rigorously adheres to federal preemption doctrines established by the United States Supreme Court regarding Veterans Affairs (VA) disability compensation. This strict adherence, codified in W.S. § 20-2-114(b), prevents Wyoming courts from utilizing VA disability benefits, or assets acquired using them, even when these funds are demonstrably instrumentalized in a severe, calculated, and long-term "predatory scheme of multi-generational fraud, financial abuse, or criminal violence" against a former spouse or caregiver.

This report proposes a legislative bill, designated the WyoVA Fraud Exception Act, aimed at amending W.S. § 20-2-114 to introduce a new, narrowly tailored, and high-threshold exception. The fundamental purpose of this amendment is to allow Wyoming courts to award equitable restitution to the injured party for quantifiable financial damages directly caused by the veteran's fraudulent scheme. This legislative solution is strategically framed as a remedy for tortious misconduct and criminal abuse, thereby maintaining a clear legal distinction from the federally preempted field of marital property division or indemnification. The proposed amendment is a direct legislative response to fact patterns, such as those implied by the Petition for Writ of Mandamus and Prohibition referenced in the underlying inquiry, where existing legal structures fail to provide a remedy for the abuse of federal immunity.

**B. Legislative Findings and Declaration of Policy:** The Legislature finds that egregious financial misconduct, often intertwined with domestic violence, represents a profound threat to the economic stability and safety of vulnerable residents. Financial abuse is recognized as a specific form of domestic abuse, encompassing behaviors such as stealing money, withholding information and access to family resources, forcing transactions, or restricting a partner from working or attending school. The state asserts a compelling interest, rooted in its inherent police power, in ensuring that victims of such calculated criminal conduct receive appropriate restitution.

The current statutory language in W.S. § 20-2-114(b) prohibits courts from considering federal disability benefits, or indemnifying the spouse for lost military retirement resulting from the VA disability waiver. While this protects the integrity of federal law and the veteran's entitlement, it inadvertently creates a perverse shield for veteran perpetrators of financial crime. When VA benefits, or assets purchased with those benefits, are used not merely as marital property but as the tool or fruit of a systematic and long-running fraudulent endeavor, the state's duty to remedy that criminal act takes precedence.

It is important to note that state law already recognizes the principle that property protections can be vitiated by fraudulent conduct. For instance, separate property is not generally exempt from attachment if that property was conveyed in fraud of a spouse's creditors. This proposed exception extends the foundational equitable principle that no legal protection, including federal immunity, should be permitted to serve as a guarantee for illicit enrichment derived from criminal conduct, especially against family members or caregivers. The policy objective is not to divide the veteran's service-earned benefits, but to remedy the specific damages inflicted by the veteran acting as a tortfeasor and financial abuser.

**C. Analysis of Legal Strategy and Policy Catalyst:** The highly specific nature of the abuse described—a "predatory scheme of multi-generational fraud"—demands a statutory remedy capable of addressing calculated, long-term harm. This suggests a pattern of behavior far exceeding typical marital waste or dissolution disagreements, often involving a planned effort to steal property, exert financial control, or use coercion over an extended duration. This bill is fundamentally an attempt to create a common law or statutory tort remedy specifically tailored for the abuse of federal immunity. Furthermore, the Department of Veterans Affairs itself acknowledges concepts of fraud and misuse regarding benefits. Federal regulations define fraud related to eligibility as intentional misrepresentation or failure to disclose pertinent facts for the purpose of obtaining or retaining benefits. Even more relevant is the concept of "misuse," which can occur when a benefit purchase is not in the beneficiary's best interest, particularly if additional factors indicate the purchase purposefully did not benefit the beneficiary. If the federal system recognizes that benefits can be misused to the detriment of the beneficiary, the state possesses a robust policy basis to assert its authority to remedy such misuse when it actively and criminally harms a third party, such as a spouse or caregiver. Focusing the proposed exception on the veteran's fraudulent use of the benefit post-receipt, rather than the process of securing it, reinforces the state's legitimate jurisdiction over domestic financial abuse.

## II. The Jurisdictional Conflict: Navigating Federal Preemption:

Any state legislation that addresses the treatment of VA disability benefits in divorce proceedings must successfully navigate the strict requirements of the federal Supremacy Clause and the doctrine of preemption. This requires a precise understanding of the boundaries set by federal statutes and Supreme Court case law.

**A. Federal Immunity and the Supremacy Clause Barrier:** Federal law grants significant protection to VA disability benefits. Title 38, United States Code, Section 5301(a) stipulates that payments are exempt from taxation and are generally non-assignable and immune from attachment, levy, or seizure. The critical legal barrier was established by the U.S. Supreme Court in *Mansell v. Mansell* (1989), which held that the federal Uniformed Services Former Spouses' Protection Act (USFSPA) exempted any portion of military retirement pay waived by a service member to receive disability benefits from being treated as divisible property upon divorce. This principle was rigorously reaffirmed in *Howell v. Howell* (2017), which clarified that state courts are preempted from attempting to circumvent the federal statute, even by ordering the veteran to indemnify the former spouse for the lost retirement share using other separate property. The Court viewed such state action as attempting to nullify the objectives of Congress in exercising its enumerated military powers.

Wyoming's current statute, W.S. § 20-2-114(b), is highly protective of federal immunity and explicitly incorporates the requirements of these Supreme Court precedents.

Subsection (b) states that a court shall not:

- \* Consider the benefits themselves.
- \* Indemnify the former spouse for the waiver or reduction in military retirement.
- \* Award any other income or property of the veteran to compensate the spouse for the waiver or reduction.

This prohibition on awarding "any other income or property" as compensation for the lost retirement share is exceptionally broad and represents a legislative commitment to avoiding judicial creativity that might risk a preemption challenge. Consequently, the proposed amendment must be drafted with painstaking precision to ensure the awarded restitution is distinctly characterized.

## **B. The Strategy of Avoidance: *Tort Compensation vs. Property Division***

To survive a constitutional challenge, the proposed statute must avoid all legal terminology associated with "property division," "marital assets," "community property," or "indemnification for lost retirement." The strategy involves shifting the legal focus from the veteran's status as a party to a marital contract (governed by preempted property laws) to the veteran's status as a criminal actor or tortfeasor (governed by state police powers).

A strategic foundation exists in the established family support exception. Federal law, as recognized in *Rose v. Rose* and numerous state cases, permits VA benefits to be counted as income for the purpose of calculating child support and alimony, and in some jurisdictions, even allows garnishment for family support obligations. This exception is permissible because it serves the distinct, paramount state interest of ensuring the welfare and support of dependents, a goal recognized by the Supreme Court as outweighing the anti-attachment clause.

The WyoVA Fraud Exception Act follows a similar strategy by asserting the state's inherent power to provide remedies for common law torts, severe financial abuse, and criminal violence. When the protected VA benefits are used as the direct instrument of a criminal act—for example, by concealing their existence or using them to purchase assets that are then fraudulently titled or dissipated—the state is not attempting to divide marital wealth; it is imposing a civil remedy for a crime committed within its borders.

The judicial mechanism best suited to this remedy is the imposition of an equitable lien or constructive trust on assets that can be demonstrably traced back to the fraudulently utilized VA benefits. While direct garnishment of the monthly VA benefit stream for non-support purposes is prohibited, if the veteran uses the benefits to purchase a specific, valuable asset (such as real estate) and that transaction is part of the overall predatory scheme to defraud the former spouse of his or her own resources, the court may impose a lien on that tangible asset. This action targets the proceeds of the tort, not the federal disbursement itself, ensuring that the remedy is proportional and narrowly applied.

### **III. Defining the Elements of Egregious Misconduct: High-Threshold**

**Definitions:** To ensure that the WyoVA Fraud Exception Act is reserved exclusively for truly severe misconduct and to defend against claims of judicial overreach, the statutory definitions must be exceptionally narrow and the evidentiary burden must be high.

#### **A. Mandatory Evidentiary Standard: *Clear and Convincing Evidence***

Standard marital property division in Wyoming typically operates under the preponderance of the evidence standard. However, to justify carving out an exception to federal immunity, especially one dealing with intentional malfeasance, the statute must mandate a heightened burden of proof. Therefore, the finding of a "predatory scheme" and the resulting financial loss must be proven by clear and convincing evidence. This heightened standard produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. In the context of financial abuse, this standard is appropriate for findings of recklessness, oppression, fraud, or malice. By requiring this standard, the Legislature assures both state and

federal courts that the exception will only be utilized in instances where the veteran's misconduct is proven to be extreme and calculated, thereby protecting the veteran's federal rights from being casually disregarded.

## **B. Defining the Elements of the Predatory Scheme**

The term "predatory scheme" must be defined to require proof of intentionality and pattern, moving beyond simple financial mistakes or typical spousal disagreements. A "predatory scheme" is defined as a calculated pattern or course of conduct spanning a minimum of one year, intended to exploit the financial resources or legal vulnerability of the spouse or former spouse, specifically utilizing the protected status of the federal benefits as an instrument of that exploitation.

The scheme must include elements that demonstrate high intent, such as:

\* **Concealment or Misrepresentation of VA Asset Acquisition:** Intentional deceit regarding the source or use of VA benefits to acquire or shield specific assets from legitimate family financial obligations.

\* **Economic Coercion:** Maintaining total control over household finances, stealing the former spouse's separate property, or forcing reliance through threats or withholding necessary physical resources, including food, medications, or shelter.

\* **Asset Diversion and Dissipation:** Intentionally wasting, hiding, or transferring VA-purchased assets outside the household's legitimate benefit, potentially qualifying as misuse under the spirit of VA regulations.

This focus on scienter (the intent to defraud) is crucial. To warrant overriding federal preemption, the state must prove the veteran acted with malicious or fraudulent intent directed at the specific financial harm to the spouse, establishing the action as remedial for tort, rather than merely punishing marital misconduct.

## **C. Addressing Multi-Generational Fraud and Violence**

The term "multi-generational fraud" is intended to target the severe, long-term nature of harm implied by the legislative request. It is defined as a predatory scheme whose execution involves the intentional deceit of children or dependent family members to facilitate the financial abuse or exploitation of the spouse or former spouse. This element ensures the exception is reserved for systemic abuse patterns that leverage family structures for criminal gain.

Furthermore, the statute incorporates the link to criminal violence or financial abuse, recognizing that economic abuse is often an integral part of an overall pattern of domestic violence used to gain or maintain power and control. Findings of financial abuse must incorporate standard definitions, such as those related to ruining credit or preventing employment. Linking the financial remedy to findings of proven domestic violence or criminal abuse further solidifies the state's exercise of its police power. A final critical point involves limiting judicial discretion. While Wyoming courts are generally afforded broad equitable discretion in property disposition, instructing them to make a "just and equitable" division, the new amendment must limit that discretion regarding the fraud exception. If the judge is given excessive latitude, a preemption challenge could succeed by arguing the court is using judicial convenience to nullify federal law. Therefore, the bill must state that the court may consider the benefits only to compensate for the proven, traceable loss, making the exception narrowly defined and mandatory only upon meeting the high evidentiary standards.

#### **IV. Proposed Bill Text: Amendment of W.S. § 20-2-114**

The following text represents the proposed legislative bill, meticulously structured to comply with Wyoming legislative formatting requirements and strategically worded to defend against federal preemption challenges.

##### **A. Wyoming Legislative Format Requirements**

BILL NO. HB [Number]

CATCH TITLE: WyoVA Fraud Exception Act

SPONSOR(S): [Name(s) of Legislator(s)]

A BILL for

AN ACT relating to domestic relations; amending the disposition of property statutes in divorce proceedings; creating a narrow, specific, and high-threshold exception to the prohibition against considering federal veteran disability benefits; establishing standards for equitable restitution for financial damages resulting from a predatory scheme of multi-generational fraud, financial abuse, or criminal violence; defining terms; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WYOMING:

B. Section 1. W.S. 20-2-114 is amended and re-enacted to read:

20-2-114. Disposition of property to be equitable; factors; alimony generally.

(a) Except as provided in subsection (b) and (c) of this section, in granting a divorce, the court shall make such disposition of the property of the parties as appears just and equitable, having regard for the respective merits of the parties and the condition in which they will be left by the divorce, the party through whom the property was acquired and the burdens imposed upon the property for the benefit of either party and children.

The court may decree to either party reasonable alimony out of the estate of the other having regard for the other's ability to pay and may order so much of the other's real estate or the rents and profits thereof as is necessary be assigned and set out to either party for life, or may decree a specific sum be paid by either party.

(b) In making a disposition of property pursuant to this section, a court shall not do any of the following:

(i) Consider any federal disability benefits awarded to a veteran for service-connected disabilities pursuant to title 38, chapter 11 of the United States Code;

(ii) Indemnify a veteran's spouse or former spouse for any waiver or reduction in military retirement or retainer pay related to receipt of veteran disability benefits pursuant to title 38, chapter 11 of the United States Code;

(iii) Award any other income or property of the veteran to the veteran's spouse or former spouse as compensation for any waiver or reduction in military retirement or retainer pay related to receipt of veteran disability benefits pursuant to title 38, chapter 11 of the United States Code.

(c) Exception for Equitable Restitution in Cases of Proven Predatory Schemes.

(i) Notwithstanding the limitations set forth in subsection (b) of this section, a court presiding over a dissolution of marriage or legal separation may consider federal disability benefits awarded to a veteran for service-connected disabilities pursuant to title 38, chapter 11 of the United States Code, or assets demonstrably acquired using such benefits, solely for the purpose of granting equitable restitution to a spouse or former spouse for quantifiable financial damages directly and proximately caused by the veteran's predatory scheme of multi-generational fraud, financial abuse, or criminal violence.

(ii) A court shall not grant relief under this subsection unless the petitioning party proves, by clear and convincing evidence, that the veteran engaged in a predatory scheme of multi-generational fraud, financial abuse, or criminal violence, resulting in demonstrable financial loss to the spouse or former spouse.

(iii) Any award of equitable restitution granted under this subsection shall be strictly limited to the monetary value of the quantifiable financial loss proximately caused by the veteran's scheme, and shall not exceed the traceable value of the benefits or assets derived therefrom.

(iv) An award under this subsection shall not be characterized as, or construed as, a division of marital property, an award of indemnification, or compensation for any waiver or reduction in military retirement or retainer pay related to the receipt of veteran disability benefits.

(v) For purposes of this subsection:

(A) “Financial abuse” means the deliberate withholding, stealing, control, or dissipation of funds or assets belonging to the spouse or the marital estate through deceit, coercion, or misrepresentation, including but not limited to, forced transactions, ruining the spouse’s credit, or preventing employment or education, where such actions are part of a pattern of domestic abuse.

(B) “Predatory scheme” means a calculated pattern or course of conduct spanning more than one (1) year intended to exploit the financial resources or legal vulnerability of the spouse or former spouse, utilizing the protected status of the federal benefits as an instrument of that exploitation, which may include the fraudulent concealment or titling of assets purchased with such benefits.

(C) “Multi-generational fraud” means a predatory scheme whose execution involves the intentional deceit of children or dependent family members to facilitate the financial abuse or exploitation of the spouse or former spouse.

### **C. Section 2. Effective Date.**

This act shall take effect ninety (90) days after the adjournment of the session of the Legislature at which it was enacted.

## **V. Mechanisms for Judicial Implementation and Equitable Relief**

The successful implementation of W.S. § 20-2-114(c) requires Wyoming courts to adhere to specific procedural and remedial mechanisms designed to satisfy the strict requirements for legal viability.

### **A. Judicial Fact-Finding Requirements**

To ensure that the narrow scope of the exception is maintained, the trial court decree must contain explicit, detailed findings of fact supported by clear and convincing evidence. These findings must specifically identify:

\* The dates, nature, and sustained pattern of the predatory scheme.

\* The specific VA benefits or derived assets that were instrumental in or the subject of the fraudulent scheme.

\* The precise, calculated monetary loss suffered by the petitioning spouse, establishing the quantifiable financial loss.

This requirement for specific, high-standard fact-finding serves two major purposes. First, it ensures the exception is not mistakenly applied to generalized marital misconduct or waste. Second, it creates a robust record for appellate review, which is necessary when challenging a matter where state law potentially infringes upon a preemptive federal statute.

### **B. Applying Equitable Remedies to Traceable Assets**

The remedy must be strictly limited to equitable restitution, defined as restoring the injured party to the financial position held prior to the fraud, making the award based on demonstrable loss, not entitlement.

The primary tools for relief should be the constructive trust and the equitable lien. If a veteran fraudulently uses VA benefits to purchase a specific, titled asset (such as the marital residence or an investment vehicle), the court may impose a constructive trust upon that asset, requiring the veteran to hold the property for the benefit of the injured spouse, up to the value of the damages caused by the scheme. This action is directed at the proceeds of the tort, and the tracing requirement—that the asset was demonstrably acquired using the fraudulently utilized benefits—is mandatory.

It is essential that the court recognizes the limitation on direct garnishment. Except where existing federal law permits garnishment for ongoing family support (alimony or child support), the court may not levy the restitution award against the veteran's future stream of VA payments. The court's action must remain focused on the asset derived from the misuse or the veteran's separate, non-VA property, up to the amount of the proven loss.

### **C. Avoiding the Indemnification Trap (The Howell Problem)**

The most significant preemption defense resides in the statutory "Firewall" language of W.S. § 20-2-114(c)(iv), which explicitly states the award shall not be compensation for any waiver of military retirement.

Judicial implementation must strictly enforce this proportionality requirement. The judge must demonstrate that the restitution awarded is proportional only to the financial damages resulting from the fraud itself, independent of any lost share of military retirement pay due to the VA waiver. For example, if a veteran's waiver causes the former spouse to lose \$100,000 in retirement benefits over time, but the fraud scheme only caused \$20,000 in damages through asset dissipation, the court's award is capped

at \$20,000 in restitution for the fraud, and cannot be used to indirectly compensate the \$100,000 retirement loss.

Furthermore, the new fraud exception must not be conflated with the established, separate authority of the court to consider VA benefits as income when calculating ongoing alimony or child support. The Act must be understood as providing an independent, extraordinary remedy for past financial crime, not as expanding existing support law.

## **VI. Conclusion and Recommendation: Defense Against Constitutional Challenge**

### **A. Summary of Legal Strategy**

The WyoVA Fraud Exception Act is predicated on a measured legislative assertion of state sovereignty. It operates on the principle that the protection Congress intended for veterans' benefits against ordinary contract and debt claims, and marital property division, was not intended to shield a veteran who utilizes those benefits as a specific instrument to perpetrate a criminal financial tort against a former spouse or caregiver. The strategy relies entirely on:

\* High Evidentiary Burden: The clear and convincing standard.

\* Narrow Definitions: Reserving the application for schemes of calculated, long-term abuse.

\* Limited Remedy: Restricting the award to equitable restitution for traceable, quantifiable financial loss, explicitly rejecting any characterization as property division or indemnification.

This approach asserts that state police power to address criminal financial abuse and domestic violence constitutes a vital state interest that operates outside the preempted field of domestic relations property law, while meticulously adhering to the limitations set by Mansell and Howell.

### **B. Analysis of Preemption Constraints and Solutions**

The primary risk associated with this legislation involves a Supremacy Clause challenge arguing that Wyoming is using a common-law or statutory tort doctrine to achieve a result explicitly prohibited by federal statute, a circumvention warned against in federal filings related to preemption. The legislative defense lies in emphasizing that the state is not enforcing a marital contract right, but rather remedying a severe, intentional wrong. By focusing on the fraudulent misuse of the benefit post-receipt and tying the remedy to quantifiable damages, the state is acting within its reserved powers.

The following table summarizes the crucial legal tightrope walk required by the proposed legislation, showing how the Act distinguishes its remedy from those that have been federally prohibited.

**Table of Federal Preemption and the Doctrine of Avoidance**

<b>Legal Action</b>	<b>Federal Precedent (Mansell/Howell)</b>	<b>Wyo. Stat. § 20-2-114(b) (Current Law)</b>	<b>Status in Proposed Act (W.S. § 20-2-114(c))</b>	<b>Rationale for Distinction</b>
Treating VA Disability as Divisible Property	Preempted/Prohibited	Prohibited	Prohibited (Explicitly by (c)(iv))	The award is classified as tort restitution, not marital property division
Indemnification for Lost Military Retirement	Preempted/Prohibited	Prohibited	Prohibited (Explicitly by (c)(iv))	The award must address the specific financial damages of the fraud, independent of the retirement waiver loss.
Considering VA Benefits as Income for Support	Permitted (Rose v. Rose)	Permitted (Generally for alimony/support)	Unaffected	This is a separate, established exception to anti-attachment laws.
Imposing Equitable Lien for Fraud Damages	Untested/Open Legal Question	Prohibited (Impliedly by (b)(iii))	Permitted (Strict Conditions (c)(i))	The court addresses the state police power to remedy fraud/tort, targeting the proceeds of the crime.
Evidentiary Burden for Claim	Preponderance of Evidence (Typical Divorce)	Preponderance of Evidence (Typical Divorce)	Clear and Convincing Evidence (Mandated (c)(ii))	Narrows the exception, justifying state action only for severe, highly proven misconduct.

The detailed drafting requirements necessary to maintain this legal distinction are further broken down in the following table, illustrating how each clause of the new subsection (c) acts as a legal safeguard.

**Table of Statutory Language Breakdown: W.S. § 20-2-114(c)**

<b>Statutory Section</b>	<b>Key Operative Language</b>	<b>Legal Rationale &amp; Required Proof</b>
W.S. § 20-2-114(c)(i) (Authority)	The court may consider benefits or assets... solely for the purpose of granting equitable restitution... for quantifiable financial damages directly and proximately caused by the veteran's predatory scheme	Limits judicial action to a specific, loss-based remedy (restitution), excluding general property division. Establishes the prerequisite of direct causation by tortious conduct
W.S. § 20-2-114(c)(ii) (Standard)	Proves, by clear and convincing evidence, that the veteran engaged in a predatory scheme..	Mandates the highest civil standard of proof to safeguard the narrowness of the exception and reinforce its extraordinary nature
W.S. § 20-2-114(c)(iii) (Limitation)	Award shall be strictly limited to the monetary value of the quantifiable financial loss... and shall not exceed the traceable value of the benefits or assets derived therefrom.	Enforces traceability and proportionality, compelling the court to address the specific financial injury caused by the scheme.
W.S. § 20-2-114(c)(iv) (Firewall)	Award shall not be characterized as, or construed as, a division of marital property, an award of indemnification, or compensation for any waiver...	Provides the legislative instruction that explicitly forbids the preempted actions, serving as the core constitutional defense mechanism against the Howell ruling.

**C. Recommendation**

The passage of the WyoVA Fraud Exception Act is strongly recommended. It provides an essential legislative correction to remedy the limited, but profoundly damaging, instances where federal VA benefit immunity has been exploited and weaponized to perpetuate systemic financial and domestic abuse against former spouses and

caregivers. The proposed statutory framework achieves this necessary social purpose while utilizing rigorous legal safeguards—specifically the clear and convincing evidence standard and the strict tracing requirement—to meticulously adhere to the boundaries set by Mansell and Howell. This Act aligns Wyoming domestic relations law with the state's fundamental duty to protect victims of severe fraud without infringing upon the legitimate federal goals of supporting disabled veterans.