

112TH CONGRESS
2D SESSION

S. 3270

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to consider the resources of individuals applying for pension that were recently disposed of by the individuals for less than fair market value when determining the eligibility of such individuals for such pension, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2012

Mr. WYDEN (for himself and Mr. BURR) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to require the Secretary of Veterans Affairs to consider the resources of individuals applying for pension that were recently disposed of by the individuals for less than fair market value when determining the eligibility of such individuals for such pension, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. CONSIDERATION BY SECRETARY OF VETERANS**
2 **AFFAIRS OF RESOURCES DISPOSED OF FOR**
3 **LESS THAN FAIR MARKET VALUE BY INDIVID-**
4 **UALS APPLYING FOR PENSION.**

5 (a) VETERANS.—Section 1522 of title 38, United
6 States Code, is amended—

7 (1) in subsection (a)—

8 (A) by inserting “(1)” before “The Sec-
9 retary”; and

10 (B) by adding at the end the following new
11 paragraph:

12 “(2)(A) If a veteran otherwise eligible for payment
13 of pension under section 1513 or 1521 of this title or the
14 spouse of such veteran disposes of covered resources for
15 less than fair market value on or after the look-back date
16 described in subparagraph (C)(i), the Secretary shall deny
17 or discontinue the payment of pension to such veteran
18 under section 1513 or 1521 of this title, as the case may
19 be, for months during the period beginning on the date
20 described in subparagraph (D) and equal to the number
21 of months calculated as provided in subparagraph (E).

22 “(B)(i) For purposes of this paragraph, a covered re-
23 source is any resource that was a part of the corpus of
24 the estate of the veteran or, if the veteran has a spouse,
25 the corpus of the estates of the veteran and of the vet-
26 eran’s spouse, that the Secretary considers that under all

1 the circumstances, if the veteran or spouse had not dis-
2 posed of such resource, it would be reasonable that the
3 resource (or some portion of the resource) be consumed
4 for the veteran’s maintenance.

5 “(ii) For purposes of this paragraph, the Secretary
6 may consider, in accordance with regulations the Sec-
7 retary shall prescribe, a transfer of an asset (including a
8 transfer of an asset to an annuity, trust, or other financial
9 instrument or investment) a disposal of a covered resource
10 for less than fair market value if such transfer reduces
11 the amount in the corpus of the estate of the veteran or,
12 if the veteran has a spouse, the corpus of the estates of
13 the veteran and of the veteran’s spouse, that the Secretary
14 considers, under all the circumstances, would be reason-
15 able to be consumed for the veteran’s maintenance.

16 “(C)(i) The look-back date described in this clause
17 is a date that is 36 months before the date described in
18 clause (ii).

19 “(ii) The date described in this clause is the date on
20 which the veteran applies for pension under section 1513
21 or 1521 of this title or, if later, the date on which the
22 veteran (or the spouse of the veteran) disposes of covered
23 resources for less than fair market value.

24 “(D) The date described in this subparagraph is the
25 first day of the first month in or after which covered re-

1 sources were disposed of for less than fair market value
2 and which does not occur in any other period of ineligi-
3 bility under this paragraph.

4 “(E) The number of months calculated under this
5 subparagraph shall be equal to—

6 “(i) the total, cumulative uncompensated value
7 of all covered resources so disposed of by the veteran
8 (or the spouse of the veteran) on or after the look-
9 back date described in subparagraph (C)(i); divided
10 by

11 “(ii) the amount of the monthly pension that
12 would be payable to the veteran under section 1513
13 or 1521 of this title without consideration of such
14 resources under paragraph (1),

15 rounded, in the case of any fraction, to the nearest whole
16 number, but shall not in any case exceed 36 months.

17 “(F) In the case of a transfer by the spouse of a vet-
18 eran that results in a period of ineligibility for the veteran
19 under this paragraph, the Secretary shall apportion the
20 period (or any portion of the period) among the veteran
21 and the veteran’s spouse if the spouse becomes eligible for
22 pension under this chapter.”;

23 (2) in subsection (b)—

24 (A) by inserting “(1)” before “The Sec-
25 retary”; and

1 (B) by adding at the end the following new
2 paragraph:

3 “(2)(A) If a veteran otherwise eligible for payment
4 of increased pension under subsection (c), (d), (e), or (f)
5 of section 1521 of this title on account of a child, the
6 spouse of the veteran, or the child disposes of covered re-
7 sources for less than fair market value on or after the
8 look-back date described in subparagraph (C)(i), the Sec-
9 retary shall deny or discontinue payment of such increased
10 pension for months during the period beginning on the
11 date described in subparagraph (D) and equal to the num-
12 ber of months calculated as provided in subparagraph (E).

13 “(B)(i) For purposes of this paragraph, a covered re-
14 source is any resource that was a part of the corpus of
15 the estate of the child that the Secretary considers that
16 under all the circumstances, if the veteran, the spouse of
17 the veteran, or the child had not disposed of such resource,
18 it would be reasonable that the resource (or some portion
19 of the resource) be consumed for the child’s maintenance.

20 “(ii) For purposes of this paragraph, the Secretary
21 may consider, in accordance with regulations the Sec-
22 retary shall prescribe, a transfer of an asset (including a
23 transfer of an asset to an annuity, trust, or other financial
24 instrument or investment) a disposal of a covered resource
25 for less than fair market value if such transfer reduces

1 the amount in the corpus of the estate of the child that
2 the Secretary considers, under all the circumstances,
3 would be reasonable to be consumed for the child's mainte-
4 nance.

5 “(C)(i) The look-back date described in this clause
6 is a date that is 36 months before the date described in
7 clause (ii).

8 “(ii) The date described in this clause is the date on
9 which the veteran applies for payment of increased pen-
10 sion under subsection (c), (d), (e), or (f) of section 1521
11 of this title on account of a child or, if later, the date
12 on which the veteran (or the child) disposes of covered
13 resources for less than fair market value.

14 “(D) The date described in this subparagraph is the
15 first day of the first month in or after which covered re-
16 sources were disposed of for less than fair market value
17 and which does not occur in any other period of ineligi-
18 bility under this paragraph.

19 “(E) The number of months calculated under this
20 subparagraph shall be equal to—

21 “(i) the total, cumulative uncompensated value
22 of all covered resources so disposed of by the veteran
23 (or the child) on or after the look-back date de-
24 scribed in subparagraph (C)(i); divided by

1 “(ii) the amount of the increased monthly pen-
2 sion that would be payable to the veteran under sub-
3 section (c), (d), (e), or (f) of section 1521 of this
4 title on account of a child without consideration of
5 such resources under paragraph (1),

6 rounded, in the case of any fraction, to the nearest whole
7 number, but shall not in any case exceed 36 months.”;
8 and

9 (3) by adding at the end the following new sub-
10 section:

11 “(c)(1) The Secretary shall not deny or discontinue
12 payment of pension under section 1513 or 1521 of this
13 title or payment of increased pension under subsection (c),
14 (d), (e), or (f) of section 1521 of this title on account of
15 a child by reason of the application of subsection (a)(2)
16 or (b)(2) of this section to the disposal of resources by
17 an individual to the extent that—

18 “(A) a satisfactory showing is made to the Sec-
19 retary (in accordance with regulations promulgated
20 by the Secretary) that all resources transferred for
21 less than fair market value have been returned to
22 the transferor; or

23 “(B) the Secretary determines, under proce-
24 dures established by the Secretary, that the denial
25 or discontinuance of payment would work an undue

1 hardship as determined on the basis of criteria es-
2 tablished by the Secretary.

3 “(2) At the time a veteran applies for pension under
4 section 1513 or 1521 of this title or increased pension
5 under subsection (c), (d), (e), or (f) of section 1521 of
6 this title on account of a child, and at such other times
7 as the Secretary considers appropriate, the Secretary
8 shall—

9 “(A) inform such veteran of the provisions of
10 subsections (a)(2) and (b)(2) providing for a period
11 of ineligibility for payment of pension under such
12 sections for individuals who make certain disposi-
13 tions of resources for less than fair market value;
14 and

15 “(B) obtain from such veteran information
16 which may be used in determining whether or not a
17 period of ineligibility for such payments would be re-
18 quired by reason of such subsections.”.

19 (b) SURVIVING SPOUSES AND CHILDREN.—Section
20 1543 of such title is amended—

21 (1) in subsection (a)—

22 (A) by redesignating paragraph (2) as
23 paragraph (3);

24 (B) by inserting after paragraph (1) the
25 following new paragraph (2):

1 “(2)(A) If a surviving spouse otherwise eligible for
2 payment of pension under section 1541 of this title dis-
3 poses of covered resources for less than fair market value
4 on or after the look-back date described in subparagraph
5 (C)(i), the Secretary shall deny or discontinue the pay-
6 ment of pension to such surviving spouse under section
7 1541 of this title for months during the period beginning
8 on the date described in subparagraph (D) and equal to
9 the number of months calculated as provided in subpara-
10 graph (E).

11 “(B)(i) For purposes of this paragraph, a covered re-
12 source is any resource that was a part of the corpus of
13 the estate of the surviving spouse that the Secretary con-
14 siders that under all the circumstances, if the surviving
15 spouse had not disposed of such resource, it would be rea-
16 sonable that the resource (or some portion of the resource)
17 be consumed for the surviving spouse’s maintenance.

18 “(ii) For purposes of this paragraph, the Secretary
19 may consider, in accordance with regulations the Sec-
20 retary shall prescribe, a transfer of an asset (including a
21 transfer of an asset to an annuity, trust, or other financial
22 instrument or investment) a disposal of a covered resource
23 for less than fair market value if such transfer reduces
24 the amount in the corpus of the estate of the surviving
25 spouse that the Secretary considers, under all the cir-

1 cumstances, would be reasonable to be consumed for the
2 surviving spouse's maintenance.

3 “(C)(i) The look-back date described in this clause
4 is a date that is 36 months before the date described in
5 clause (ii).

6 “(ii) The date described in this clause is the date on
7 which the surviving spouse applies for pension under sec-
8 tion 1541 of this title or, if later, the date on which the
9 surviving spouse disposes of covered resources for less
10 than fair market value.

11 “(D) The date described in this subparagraph is the
12 first day of the first month in or after which covered re-
13 sources were disposed of for less than fair market value
14 and which does not occur in any other period of ineligi-
15 bility under this paragraph.

16 “(E) The number of months calculated under this
17 subparagraph shall be equal to—

18 “(i) the total, cumulative uncompensated value
19 of all covered resources so disposed of by the sur-
20 viving spouse on or after the look-back date de-
21 scribed in subparagraph (C)(i); divided by

22 “(ii) the amount of the monthly pension that
23 would be payable to the surviving spouse under sec-
24 tion 1541 of this title without consideration of such
25 resources under paragraph (1),

1 rounded, in the case of any fraction, to the nearest whole
2 number, but shall not in any case exceed 36 months.”;
3 and

4 (C) by adding at the end the following new
5 paragraph:

6 “(4)(A) If a surviving spouse otherwise eligible for
7 payment of increased pension under subsection (c), (d),
8 or (e) of section 1541 of this title on account of a child
9 or the child disposes of covered resources for less than fair
10 market value on or after the look-back date described in
11 subparagraph (C)(i), the Secretary shall deny or dis-
12 continue payment of such increased pension for months
13 during the period beginning on the date described in sub-
14 paragraph (D) and equal to the number of months cal-
15 culated as provided in subparagraph (E).

16 “(B)(i) For purposes of this paragraph, a covered re-
17 source is any resource that was a part of the corpus of
18 the estate of the child that the Secretary considers that
19 under all the circumstances, if the surviving spouse or the
20 child had not disposed of such resource, it would be rea-
21 sonable that the resource (or some portion of the resource)
22 be consumed for the child’s maintenance.

23 “(ii) For purposes of this paragraph, the Secretary
24 may consider, in accordance with regulations the Sec-
25 retary shall prescribe, a transfer of an asset (including a

1 transfer of an asset to an annuity, trust, or other financial
2 instrument or investment) a disposal of a covered resource
3 for less than fair market value if such transfer reduces
4 the amount in the corpus of the estate of the child that
5 the Secretary considers, under all the circumstances,
6 would be reasonable to be consumed for the child's mainte-
7 nance.

8 “(C)(i) The look-back date described in this clause
9 is a date that is 36 months before the date described in
10 clause (ii).

11 “(ii) The date described in this clause is the date on
12 which the surviving spouse applies for payment of in-
13 creased pension under subsection (c), (d), or (e) of section
14 1541 of this title on account of a child or, if later, the
15 date on which the surviving spouse (or the child) disposes
16 of covered resources for less than fair market value.

17 “(D) The date described in this subparagraph is the
18 first day of the first month in or after which covered re-
19 sources were disposed of for less than fair market value
20 and which does not occur in any other period of ineligi-
21 bility under this paragraph.

22 “(E) The number of months calculated under this
23 clause shall be equal to—

24 “(i) the total, cumulative uncompensated value
25 of all covered resources so disposed of by the sur-

1 viving spouse (or the child) on or after the look-back
2 date described in subparagraph (C)(i); divided by

3 “(ii) the amount of the increased monthly pen-
4 sion that would be payable to the surviving spouse
5 under subsection (c), (d), or (e) of section 1541 of
6 this title on account of a child without consideration
7 of such resources under paragraph (3),

8 rounded, in the case of any fraction, to the nearest whole
9 number, but shall not in any case exceed 36 months.”;

10 (2) in subsection (b)—

11 (A) by inserting “(1)” before “The Sec-
12 retary”; and

13 (B) by adding at the end the following new
14 paragraph:

15 “(2)(A) If a child otherwise eligible for payment of
16 pension under section 1542 of this title or any person with
17 whom such child is residing who is legally responsible for
18 such child’s support disposes of covered resources for less
19 than fair market value on or after the look-back date de-
20 scribed in subparagraph (C)(i), the Secretary shall deny
21 or discontinue the payment of pension to such child under
22 section 1542 of this title for months during the period be-
23 ginning on the date described in subparagraph (D) and
24 equal to the number of months calculated as provided in
25 subparagraph (E).

1 “(B)(i) For purposes of this paragraph, a covered re-
2 source is any resource that was a part of the corpus of
3 the estate of the child or the corpus of the estate of any
4 person with whom such child is residing who is legally re-
5 sponsible for such child’s support that the Secretary con-
6 siders that under all the circumstances, if the child or per-
7 son had not disposed of such resource, it would be reason-
8 able that the resource (or some portion of the resource)
9 be consumed for the child’s maintenance.

10 “(ii) For purposes of this paragraph, the Secretary
11 may consider, in accordance with regulations the Sec-
12 retary shall prescribe, a transfer of an asset (including a
13 transfer of an asset to an annuity, trust, or other financial
14 instrument or investment) a disposal of a covered resource
15 for less than fair market value if such transfer reduces
16 the amount in the corpus of the estate described in clause
17 (i) that the Secretary considers, under all the cir-
18 cumstances, would be reasonable to be consumed for the
19 child’s maintenance.

20 “(C)(i) The look-back date described in this clause
21 is a date that is 36 months before the date described in
22 clause (ii).

23 “(ii) The date described in this clause is the date on
24 which the child applies for pension under section 1542 of
25 this title or, if later, the date on which the child (or person

1 described in subparagraph (B)) disposes of covered re-
2 sources for less than fair market value.

3 “(D) The date described in this clause is the first
4 day of the first month in or after which covered resources
5 were disposed of for less than fair market value and which
6 does not occur in any other period of ineligibility under
7 this paragraph.

8 “(E) The number of months calculated under this
9 clause shall be equal to—

10 “(i) the total, cumulative uncompensated value
11 of all covered resources so disposed of by the child
12 (or person described in subparagraph (B)) on or
13 after the look-back date described in subparagraph
14 (C)(i); divided by

15 “(ii) the amount of the monthly pension that
16 would be payable to the child under section 1542 of
17 this title without consideration of such resources
18 under paragraph (1),

19 rounded, in the case of any fraction, to the nearest whole
20 number, but shall not in any case exceed 36 months.”;
21 and

22 (3) by adding at the end the following new sub-
23 section:

24 “(c)(1) The Secretary shall not deny or discontinue
25 payment of pension under section 1541 or 1542 of this

1 title or payment of increased pension under subsection (c),
2 (d), or (e) of section 1541 of this title on account of a
3 child by reason of the application of subsection (a)(2),
4 (a)(4), or (b)(2) of this section to the disposal of resources
5 by an individual to the extent that—

6 “(A) a satisfactory showing is made to the Sec-
7 retary (in accordance with regulations promulgated
8 by the Secretary) that all resources transferred for
9 less than fair market value have been returned to
10 the transferor; or

11 “(B) the Secretary determines, under proce-
12 dures established by the Secretary, that the denial
13 or discontinuance of payment would work an undue
14 hardship as determined on the basis of criteria es-
15 tablished by the Secretary.

16 “(2) At the time a surviving spouse or child applies
17 for pension under section 1541 or 1542 of this title or
18 increased pension under subsection (c), (d), or (e) of sec-
19 tion 1541 of this title on account of a child, and at such
20 other times as the Secretary considers appropriate, the
21 Secretary shall—

22 “(A) inform such surviving spouse or child of
23 the provisions of subsections (a)(2), (a)(4), and
24 (b)(2), as applicable, providing for a period of ineli-
25 gibility for payment of pension or increased pension

1 under such sections for individuals who make certain
2 dispositions of resources for less than fair market
3 value; and

4 “(B) obtain from such surviving spouse or child
5 information which may be used in determining
6 whether or not a period of ineligibility for such pay-
7 ments would be required by reason of such sub-
8 sections.”.

9 (c) EFFECTIVE DATE.—Subsections (a)(2), (b)(2),
10 and (c) of section 1522 of title 38, United States Code,
11 as added by subsection (a), and subsections (a)(2), (a)(4),
12 (b)(2), and (c) of section 1543 of such title, as added by
13 subsection (b), shall take effect on the date that is one
14 year after the date of the enactment of this Act and shall
15 apply with respect to payments of pension and increased
16 pension applied for after such date and to payments of
17 pension and increased pension for which eligibility is rede-
18 terminated after such date.

19 (d) ANNUAL REPORTS.—

20 (1) IN GENERAL.—Not later than two years
21 after the date of the enactment of this Act and not
22 less frequently than once each year thereafter
23 through 2023, the Secretary of Veterans Affairs
24 shall submit to the appropriate committees of Con-
25 gress a report on the administration of subsections

1 (a)(2), (b)(2), and (c) of section 1522 of title 38,
2 United States Code, as added by subsection (a), and
3 subsections (a)(2), (a)(4), (b)(2), and (c) of section
4 1543 of such title, as added by subsection (b), dur-
5 ing the most recent 12-month period.

6 (2) ELEMENTS.—Each report submitted under
7 paragraph (1) shall include the following, for the pe-
8 riod covered by the report:

9 (A) The number of individuals who applied
10 for pension under chapter 15 of such title.

11 (B) The number of individuals who re-
12 ceived pension under such chapter.

13 (C) The number of individuals with respect
14 to whom the Secretary denied or discontinued
15 payment of pension under the subsections re-
16 ferred to in paragraph (1).

17 (D) For each individual for whom the Sec-
18 retary denied or discontinued payment of pen-
19 sion under the subsections referred to in para-
20 graph (1)—

21 (i) the age of the individual;

22 (ii) if the individual was denied or dis-
23 continued payment of pension because of a
24 transfer of resources, the value of such
25 transfer; and

1 (iii) such other information relating to
2 such denial or discontinuance as the Sec-
3 retary considers appropriate.

4 (E) Such other information as the Sec-
5 retary considers appropriate.

6 (3) APPROPRIATE COMMITTEES OF CONGRESS
7 DEFINED.—In this subsection, the term “appro-
8 priate committees of Congress” means—

9 (A) the Committee on Veterans’ Affairs
10 and the Select Committee on Aging of the Sen-
11 ate; and

12 (B) the Committee on Veterans’ Affairs of
13 the House of Representatives.

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