

# **HB 525 HD1**

## **RELATING TO FAMILY COURTS**

Prohibits courts from considering a person's federal veterans disability benefits in determining whether to award support and maintenance allowances or the amount of such allowance to the person's spouse or former spouse. Effective July 1, 2014. (HB525 HD1)

**FAMILY LAW SECTION  
OF THE  
HAWAII STATE BAR ASSOCIATION**

737 Bishop Street Suite 1450  
Honolulu, Hawaii 96813  
www.hawaiifamilylawsection.org

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DYAN K. MITSUYAMA  
[dyan@mitsuyamaandrebbman.com](mailto:dyan@mitsuyamaandrebbman.com)

March 12, 2014

To: Committee on Public Safety, Intergovernmental And Military Affairs  
Senator Will Espero, Chair  
Senator Rosalyn H. Baker, Vice-Chair

From: Dyan K. Mitsuyama, Treasurer and current  
Legislative Committee Chair for the  
Family Law Section, Hawaii State Bar Association

Re: Testimony in Opposition of HB525 HD1  
Hearing: Thursday, March 13, 2014 at 2:45 p.m.

Good afternoon, Chair Espero, Vice Chair Baker and the members of the Committee, I am Dyan K. Mitsuyama, a partner in Mitsuyama & Rebman, LLLC, which is a law firm concentrating in all family law matters. I have been a licensed attorney here in the State of Hawaii for about 15 years now.

Today, as the current Chair of the Legislative Committee of the Family Law Section (FLS) of the Hawaii State Bar Association, I speak for the FLS, which is comprised of approximately 136 licensed attorneys all practicing or expressing an interest in practicing family law, in opposition of HB525 HD1.

First and foremost, we do recognize and appreciate the men and women who have served in the military. A few of our members are actually retired military members and reservists. We truly commend their commitment to defending the rights of others and protecting our country.

However, while this measure seems to have the intent of honoring the veterans by protecting their benefits earned while serving this country, it indirectly HURTS the veterans' former spouses; current spouses; and, their children who need support by prohibiting the court from considering any federal disability benefits awarded to the veteran for service-connected disabilities pursuant to title 38 United States Code Chapter 11.

First, on a practical matter, this measure fails to recognize the spouses and children who sacrifice being married to a military member. Often times military spouses are not able to work or are not able to establish a career due to the multiple change in duty stations, sometimes overseas where language may be a barrier to gaining employment. This is why it is more

common than not that at the time of divorce the civilian spouse needs temporary support of some sort to gain financial independence. Spousal support/alimony is rarely ever permanent here in Hawaii. Many of these military "wives" (as they are more frequently women than men) have not been in the work force for years because they dedicated themselves to raising their children.

Second, veteran's disability benefits are used in determining income for child support purposes, just as social security benefits and workers compensation benefits, which are also sometimes an individual's sole source of income. It is inconsistent to bar the Court to consider it for spousal support, but yet be allowed to use it for child support purposes.

Third, it is also inconsistent to allow the Court in the same statute this measure seeks to amend to weigh multiple factors in awarding spousal support for those cases that do not involve veteran's disability benefits, but yet carve out this exception for one class of the general public. There are many other individuals who are on fixed incomes from other sources, for example, again there are many who only receive social security benefits or worker's compensation benefits or even unemployment compensation. Yet there is no exception for those individuals.

The reason for that is that pursuant to current Hawaii law, spousal support/alimony is based on several factors- one of which is need of the spouse seeking support AND one of which is the ability of the obligor spouse to meet that need. See Hawaii Revised Statute § 580-47. If the veteran's only source of income is disability benefits the likelihood of awarding alimony to the other spouse is highly unlikely. Hawaii Revised Statute § 580-47 already protects veterans and those who cannot afford to pay spousal support/alimony. As such the bill is unnecessary. The measure attempts to take away the Court's ability to weigh all factors in considering spousal support.

Lastly, HB525 will have the effect of reducing a military member's ability to pay spousal support in the eyes of the Court even if that is not the reality of the situation. This Committee should keep in mind also that many individuals who receive veteran's disability benefits are able to work full-time.

In addition, the military member's retirement benefits are waived in an amount equivalent to the veteran's disability benefit award. In other words, it would appear that one would have less disposable income to support a former spouse when in fact that is not the case. This could easily result in more former military spouses and dependents requiring the assistance of welfare programs and taxpayer funds.

*NOTE: The comments and recommendations submitted reflect the position/viewpoint of the Family Law Section of the HSBA. The position/viewpoint has not been reviewed or approved by the HSBA Board of Directors, and is not being endorsed by the Hawaii State Bar Association.*

## Testimony

Carswell J. Ross, Jr. M.A., Chief Master Sergeant, USAF Ret.  
94-1020 Puana Street  
Waipahu, HI 96797

Thursday, March 13, 2014

### Testimony on House Bill 525, HD1, RELATING TO FAMILY COURTS

Good morning Chair Will Espero and Vice Chair Rosalyn Baker and members of the Committee on Public Safety, Intergovernmental and Military Affairs.

I **support** HB 2073, HD1, which prohibits courts from considering a person's federal veterans disability benefits in determining whether to award support and maintenance allowance to the person's spouse or former spouse. Although considering a person's total monetary resources during divorce proceeding is appropriate, Department of Veterans Affairs (VA) disability benefits are not a shared funding source. Disability benefits are granted based upon federal guidelines which include spouse and children. Should the veteran's health improve or become worse the amount of disability payment can go up or down, however the amount awarded by the VA for spouse and child support is fixed. Once the veteran is no longer married, that benefit payment stops. Child payments continue until age 18, 21 or 23 depending on if the child is in school or married. All of these decisions are prescribed by VA regulations. Additionally, a veteran's pension can be reduced by the amount paid by VA for disability.

This is why adoption of HB525, HD1 appropriately places the distribution of VA disability payments on the agency federally mandated to determine payments.

Thank you for the opportunity to submit testimony **in support** of this measure.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 10, 2014 3:45 PM  
**To:** PSMTestimony  
**Cc:** sonnyfernan@msn.com  
**Subject:** Submitted testimony for HB525 on Mar 13, 2014 14:45PM

**HB525**

Submitted on: 3/10/2014

Testimony for PSM on Mar 13, 2014 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Stanley Y. Fernandez Sr.	Individual	Support	No

Comments: In support of HB525

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**Sent:** Wednesday, March 12, 2014 10:06 AM  
**To:** PSMTestimony  
**Cc:** fawnjade712@gmail.com  
**Subject:** Submitted testimony for HB525 on Mar 13, 2014 14:45PM

**HB525**

Submitted on: 3/12/2014

Testimony for PSM on Mar 13, 2014 14:45PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Fawn Jade Koopman	Individual	Oppose	No

Comments: I strongly oppose HB525. This legislation removes the Court's ability to weigh all the factors for determining spousal support and make an informed decision. As a result, it harms the spouses and the children of veterans who receive disability benefits. Thank you for the opportunity to testify.

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