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TO: Representative Karl Rhoads, Chair
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House Committee on Judiciary

FROM: Dyan M. Medeiros
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HEARING DATE AND TIME: January 21, 2014 at 2:00 p.m.

RE: Testimony in Opposition to HB525

Good afternoon Representative Rhoads, Representative Har, and members of the Committee. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice in Family Law for fifteen (15) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am here today to testify against HB525.

I recognize and appreciate the sacrifice and dedication of the men and women who serve in our military. They deserve our utmost respect and gratitude. That being said, HB525 creates problems that will hurt the spouses and children of veterans who receive disability benefits and discriminates against disabled people who are not veterans. Moreover, I do not believe this bill is necessary to protect those disabled veterans who truly need all of their veterans' disability benefits to support themselves. The laws governing spousal support in Hawai'i already provide that protection.

First, veterans' disability benefits are considered income for child support purposes. There is no logical basis to deem veterans' disability benefits to be income for one purpose (i.e. child support) but not another (i.e. spousal support). Moreover, although it may seem like excluding veterans' disability benefits from income for spousal support purposes will not affect children, that is simply untrue. Child support does not provide for 100% of a child's needs. Both parents are responsible for contributing to their child's needs. If custodial parents are denied spousal support that they need in order to support themselves and their children, that will certainly affect the children's standard of living.

Second, it is important to understand that spousal support in Hawai'i is awarded based on the factors identified in Hawai'i Revised Statutes

§580-47(a) and caselaw. Simply put, alimony is awarded based on need. The Court first considers whether the requesting party needs alimony after taking into account the property awarded to that party in the divorce (including the income producing capability of that property) and that party's own income. If the requesting party doesn't need alimony, no alimony is awarded. If the requesting party demonstrates a need for alimony, the Court next considers the ability of the other spouse to pay alimony while meeting his or her own need. If the other spouse doesn't have the ability to pay alimony and support himself or herself, there will be no award for alimony.

It is also important to know that spousal support is almost never a lifetime award. Generally, alimony awards are temporary and for a period of time the Court feels necessary to allow the recipient to become economically self-sufficient.

It is common for spouses of military members either not to work or not to have been able to build a career due to changes in duty stations, deployments, caring for children, etc. It is also common, therefore, for them to need some financial assistance either during or after a divorce in order to become economically self-sufficient. This can be achieved either through property division, spousal support, or both.

HB525 is unnecessary because if a veteran is so disabled that he or she requires all of their income (including their veterans' disability benefits) to support themselves, the Court will not award spousal support. However, many veterans are able to work in addition to receiving disability benefits. In that case, the Court may decide, after examining all of the circumstances (including the requesting spouse's work history and obligations), that an award of spousal support is appropriate. The Court may also decide, based on the property division award or other factors, that an award of spousal support is not appropriate. HB525, however, takes away the Court's ability to weigh all the factors and make an informed decision.

Third, it is important to understand the difference between property division and spousal support as they apply to military retired pay (i.e. military pensions) and veterans' disability benefits. Under federal law, veterans' disability benefits are not subject to property division in a divorce case. In contrast, military pensions (just like civilian pensions) are subject to property division in a divorce case.

Dividing a military pension as part of a property division award provides both the military member and the former spouse with a stream of income after the member's retirement. The division is based on a percentage that is determined by the length of the member's service during the parties' marriage. The income is shared until either the retired member or the former spouse dies. Since veterans' disability benefits are not subject to property division under federal law, former spouses do not share in veterans' disability benefits for their lifetime following a divorce.

It is important for this Committee to understand that military members must often waive an equivalent amount of their retired pay/pension in order to receive veterans' disability benefits. For example, if a military member is entitled to receive \$2,000.00 in retired pay and is found to also be entitled to \$700.00 in veterans' disability benefits, the member will have to waive \$700.00 of his retired pay. In other words, the member will receive \$1,300.00 in retired pay and \$700.00 in veterans' disability benefits for a total of \$2,000.00. Practically speaking, if the military member's retired pay is divided as property in a divorce, the former spouse will only receive a percentage of the reduced retired pay (i.e. \$1,300.00) rather than a percentage of the original retired pay of \$2,000.00.

HB525 now seeks to say that the "extra" \$700.00 can't even be considered for spousal support purposes. Because of the complicated relationship between military retired pay and veterans' disability benefits, 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 will result in fewer spousal support awards even if the former spouse actually needs support and even if the military member actually has the ability to contribute to that support. Because alimony is awarded based on need, this could easily result in more former military spouses and dependents requiring the assistance of welfare programs and taxpayer funds.

Finally, there are many people in our society who are not military members but who receive disability benefits due to physical or mental disabilities. Their disability benefits are considered income for alimony (and child support) purposes. In establishing preferential treatment for veterans' disability benefits, HB525 discriminates against those other people who receive disability benefits.

Thank you for the opportunity to testify in opposition to HB525.