

The Uniformed Service Member's Voice in Government
NATIONAL ASSOCIATION FOR UNIFORMED SERVICES
Hawaii Chapter (HI-1)
January 31, 2015

TESTIMONY IN SUPPORT OF HOUSE BILL 806 WITH COMMENTS
RELATING TO MILITARY BENEFITS

HOUSE COMMITTEE ON VETERANS, MILITARY, INTERNATIONAL
AFFAIRS & CULTURE AND THE ARTS

HEARING ON MONDAY, FEBRUARY 2ND AT 9:00AM,
IN CONFERENCE ROOM 309

Aloha Chair Cachola and Vice Chair Ito: Thank you for providing us with this opportunity to testify in support of House Bill 806. On Capitol Hill the National Association for Uniformed Services (NAUS) is "The Service Member's Voice in Government." Here, in the great State of Hawaii, NAUS Hawaii Chapter (HI-1) serves at the will and pleasure of our nation's largest per-capita uniformed services community..

NAUS Hawaii Chapter (HI-1) is extremely grateful for your committee's noble efforts to exempt Federal Title 38 United States Code chapter 11 related disability benefits, from claims of creditors, attachment, levy, or seizure under any legal or equitable process, as provided by federal law; and prohibiting their being awarded to any other person.

Arizona and most recently Wyoming addressed this issue in their legislatures. In addition to the protections our HB 806 propose, these States prohibit indemnification of those who would claim access to the subject disability benefits, in a divorce action.

NAUS Hawaii Chapter (HI-1) respectfully urges this committee to consider:

- a. including the legislative example set by the Arizona and Wyoming legislatures, regarding claimant indemnification and
- b. legislatively encouraging our courts to defer judgment to the United State's Veterans Administration's equitable disability compensation apportionment policy, before imposing scheduled support payments, in accordance with Title 42 United States Code section 659(h)(1)(A)(ii)(V), for support claimed by a subject disabled veteran's dependent children, custodian/guardian and spouse.

NAUS Hawaii Chapter respectfully encourages this committee to consider including both of our aforementioned additional legislative protections in the proposed revised Chapter 571, Hawaii Revised Statutes. This legislative action will most certainly strengthen our State's support for the intent of United States Code, Title 10, Section 1408(a)(4)(B), and be much appreciated by our divorcing disabled veterans and military personnel.

Thank you for being here for us,

D Egge

Dennis Egge; Chapter President



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TO: Representative Romy Cachola, Chair
Representative Ken Ito, Vice-Chair
House Committee on Veterans, Military, International Affairs & Culture
and the Arts

FROM: Dyan M. Medeiros
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HEARING DATE AND TIME: February 2, 2015 at 9:00 a.m.

RE: Testimony in Opposition to HB806

Good morning Representative Cachola, Representative Ito, 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 sixteen (16) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I submit this testimony today against HB806.

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 as do their families. That being said, HB806 creates problems that will hurt the spouses and children of veterans who receive disability benefits. Moreover, I do not believe this bill is necessary to protect veterans' disability benefits. The laws governing property division in Hawai'i already provide that protection. All this bill will do is place the spouse of a veteran who is receiving disability benefits at a greater disadvantage than other spouses.

Under federal and Hawai'i law, veterans' disability benefits cannot be treated as property in a divorce case and then divided. Under current law, however, the Court can at least consider all assets of the marital estate (including but not limited to separate property and the existence of military disability benefits) when it divides the marital estate. This ability to consider all assets is intended to allow the Court to determine an equitable division of property in divorce cases. For example, if a spouse has \$1,000,000.00 that isn't subject to property division (such property protected by a pre-nuptial agreement) and the remainder of the marital estate is worth \$500,000.00, should the spouse with \$1,000,000.00 in separate property be awarded one-half (1/2) of the remaining property as well? That is for the Court to decide but

if the Court can't even consider the existence of the \$1,000,000.00 of separate property, the Court will likely award both parties \$250,000.00 from the marital estate. That will leave one spouse in a much less favorable financial position that may not have occurred had the Court considered all assets.

HB806, however, seeks to remove the existence of veterans' disability benefits from the Court's consideration. In other words, HB806 seeks to force the Court to pretend that veterans' disability benefits don't exist and then proceed to divide the marital estate. The problem with this "pretense" is it could result in a military member receiving much more from the marital estate than his or her spouse simply because the very existence of military disability payments is being ignored. And, that could place the former spouse (and possibly the parties' children) in financially untenable positions.

In sum, there is simply no reason to remove the Court's discretion in this matter. The Court can't award a portion of a veterans' disability benefits to his or her former spouse. What this bill seeks to do is give veterans who receive disability benefits an advantage in divorce cases that aren't available to veterans who aren't receiving disability benefits or even to non-veterans' who are receiving disability benefits.

Thank you for the opportunity to testify in opposition to HB806.