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## A BILL FOR AN ACT

RELATING TO MILITARY BENEFITS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that when a veteran  
2 receives a disability rating, the veteran may collect disability  
3 benefits. To prevent "double-dipping", the veteran is required  
4 to waive the veteran's retirement salary to the extent the  
5 veteran receives disability benefits. If the veteran is  
6 divorced and receives a disability rating after the divorce,  
7 then the waiver of the veteran's retirement salary can  
8 effectively lower the amount of spousal support payment to the  
9 former spouse, since disability pay cannot be awarded to an ex-  
10 spouse. Courts have addressed this issue by requiring the  
11 veteran to indemnify the former spouse for the difference.

12           The purpose of this Act is to prohibits courts from  
13 indemnifying or awarding any other income or property of the  
14 veteran to the veteran's spouse or former spouse for any  
15 prejudgment or postjudgment waiver or reduction in military  
16 retirement or retainer pay related to receipt of disability  
17 benefits awarded to the veteran.



1 SECTION 2. Chapter 571, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§571- Divorce; division of property; military  
5 retirement benefits; disability-related waiver. In making a  
6 disposition of property pursuant to section 510-9 or 580-47, or  
7 any other provision of law relating to the dissolution of  
8 marriage, a court shall not:

9 (1) Indemnify a veteran's spouse or former spouse; or

10 (2) Award any other income or property of the veteran to  
11 the veteran's spouse or former spouse;

12 for any prejudgment or postjudgment waiver or reduction in  
13 military retirement or retainer pay related to receipt of  
14 disability benefits awarded to the veteran for service-connected  
15 disabilities pursuant to title 38 United States Code chapter  
16 11."

17 SECTION 3. Section 510-9, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§510-9 Divorce; division of property. In the event of  
20 the dissolution of marriage by decree of any court of competent  
21 jurisdiction[7] and subject to section 571- , community



1 property shall be divided between the parties by the court  
2 granting the decree, in such proportions as the court, from the  
3 facts in the case, deems just and equitable, and such division  
4 shall be subject to revision on appeal in all respects including  
5 the exercise of discretion by the court below."

6 SECTION 4. Section 580-47, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) Upon granting a divorce, or thereafter if, in  
9 addition to the powers granted in subsections (c) and (d),  
10 jurisdiction of those matters is reserved under the decree by  
11 agreement of both parties or by order of court after finding  
12 that good cause exists, the court may make any further orders as  
13 shall appear just and equitable (1) compelling the parties or  
14 either of them to provide for the support, maintenance, and  
15 education of the children of the parties; (2) compelling either  
16 party to provide for the support and maintenance of the other  
17 party; (3) subject to section 571- , finally dividing and  
18 distributing the estate of the parties, real, personal, or  
19 mixed, whether community, joint, or separate; and (4)  
20 allocating, as between the parties, the responsibility for the  
21 payment of the debts of the parties whether community, joint, or



1 separate, and the attorney's fees, costs, and expenses incurred  
2 by each party by reason of the divorce. In making these further  
3 orders, the court shall take into consideration: the respective  
4 merits of the parties, the relative abilities of the parties,  
5 the condition in which each party will be left by the divorce,  
6 the burdens imposed upon either party for the benefit of the  
7 children of the parties, the concealment of or failure to  
8 disclose income or an asset, or violation of a restraining order  
9 issued under section 580-10(a) or (b), if any, by either party,  
10 and all other circumstances of the case. In establishing the  
11 amounts of child support, the court shall use the guidelines  
12 established under section 576D-7. Provision may be made for the  
13 support, maintenance, and education of an adult or minor child  
14 and for the support, maintenance, and education of an  
15 incompetent adult child whether or not the petition is made  
16 before or after the child has attained the age of majority. In  
17 those cases where child support payments are to continue due to  
18 the adult child's pursuance of education, the agency, three  
19 months prior to the adult child's nineteenth birthday, shall  
20 send notice by regular mail to the adult child and the custodial  
21 parent that prospective child support will be suspended unless



1 proof is provided by the custodial parent or adult child to the  
2 child support enforcement agency, prior to the child's  
3 nineteenth birthday, that the child is presently enrolled as a  
4 full-time student in school or has been accepted into and plans  
5 to attend as a full-time student for the next semester a post-  
6 high school university, college, or vocational school. If the  
7 custodial parent or adult child fails to do so, prospective  
8 child support payments may be automatically suspended by the  
9 child support enforcement agency, hearings officer, or court  
10 upon the child reaching the age of nineteen years. In addition,  
11 if applicable, the agency, hearings officer, or court may issue  
12 an order terminating existing assignments against the  
13 responsible parent's income and income assignment orders.

14 In addition to any other relevant factors considered, the  
15 court, in ordering spousal support and maintenance, shall  
16 consider the following factors:

- 17 (1) Financial resources of the parties;
- 18 (2) Ability of the party seeking support and maintenance  
19 to meet his or her needs independently;
- 20 (3) Duration of the marriage;
- 21 (4) Standard of living established during the marriage;



- 1           (5) Age of the parties;
- 2           (6) Physical and emotional condition of the parties;
- 3           (7) Usual occupation of the parties during the marriage;
- 4           (8) Vocational skills and employability of the party
- 5                 seeking support and maintenance;
- 6           (9) Needs of the parties;
- 7           (10) Custodial and child support responsibilities;
- 8           (11) Ability of the party from whom support and maintenance
- 9                 is sought to meet his or her own needs while meeting
- 10                the needs of the party seeking support and
- 11                maintenance;
- 12          (12) Other factors which measure the financial condition in
- 13                which the parties will be left as the result of the
- 14                action under which the determination of maintenance is
- 15                made; and
- 16          (13) Probable duration of the need of the party seeking
- 17                support and maintenance.

18           The court may order support and maintenance to a party for  
19 an indefinite period or until further order of the court;  
20 provided that in the event the court determines that support and  
21 maintenance shall be ordered for a specific duration wholly or



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1 partly based on competent evidence as to the amount of time  
 2 which will be required for the party seeking support and  
 3 maintenance to secure adequate training, education, skills, or  
 4 other qualifications necessary to qualify for appropriate  
 5 employment, whether intended to qualify the party for a new  
 6 occupation, update or expand existing qualification, or  
 7 otherwise enable or enhance the employability of the party, the  
 8 court shall order support and maintenance for a period  
 9 sufficient to allow completion of the training, education,  
 10 skills, or other activity, and shall allow, in addition,  
 11 sufficient time for the party to secure appropriate employment."

12 SECTION 5. This Act does not affect rights and duties that  
 13 matured, penalties that were incurred, and proceedings that were  
 14 begun before its effective date.

15 SECTION 6. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 7. This Act shall take effect on July 1, 2017.

18

INTRODUCED BY: *Linda Chizame*  
 BY REQUEST

JAN 20 2017



# H.B. NO. 418

**Report Title:**

Divorce; Division of Property; Military Disability Benefits

**Description:**

Prohibits courts from indemnifying or awarding any other income or property of a veteran to the veteran's spouse or former spouse for any prejudgment or postjudgment waiver or reduction in military retirement or retainer pay related to receipt of disability benefits awarded to the veteran.

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