

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1311 (Eggman)
Version: February 18, 2022
Hearing Date: April 19, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

Veterans: protections

DIGEST

This bill strengthens California's existing military consumer protection laws by enhancing existing legal and financial protections for service members and their families by, among other things, prohibiting a person from conditioning the receipt of a military discount on the waiver of any right of the recipient under state or federal law and voiding any such waiver.

EXECUTIVE SUMMARY

Existing law provides various consumer and financial protections for members of the military. For example, existing law authorizes a member of the United States Military Reserve or the National Guard who is called to active duty to defer payments on specified obligations, including mortgages and vehicle loans, while serving on active duty. Additionally, existing law authorizes a person to terminate a lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes in any case in which the lease was executed by or on the behalf of the person who, after the execution of that lease, entered military service.

This bill arises out of discussions between the Attorney General's office and the military and veterans community, including JAG legal assistance attorneys and command financial counselors, and the experience of the Attorney General's office over the past several years.

The bill is sponsored by Attorney General Rob Bonta. It is supported by a wide range of military and veterans groups, the California District Attorneys Association, and the Consumer Attorneys of California. The bill is opposed by the California New Car Dealers Association. If the bill passes out of this Committee, it will next be heard before the Senate Military and Veterans Affairs Committee.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Provides, pursuant to the federal Servicemembers Civil Relief Act (SCRA), for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of Service Members during their military service in order to enable service members to devote their entire energy to the defense needs of the Nation. (50 U.S.C. § 3902.)
- 2) Provides that the SCRA protections are extended to members of the National Guard and Reserve, from receipt of orders to report for duty to the date that they report, and include a service member's family members (such as a spouse or a child). In addition, if a service member has provided over half of a person's support for the 180 days immediately preceding an application for relief under the SCRA, that person is considered a dependent also. (50 U.S.C. § 3917.)
- 3) Prohibits, under the Military Lending Act, a creditor from imposing an annual percentage rate of interest greater than 36 percent with respect to a consumer credit card extended to specified service members or their dependents, and prohibits creditors from extending consumer credit to specified service members or their dependents with specified terms. (10 U.S.C. § 987.)

Existing state law:

- 1) Provides that in a small claims action a plaintiff is not required to personally appear, and may submit declarations to serve as evidence in their claim or allow another individual to appear and participate on their behalf, if:
 - a) the plaintiff is serving on active duty in the United States Armed Forces outside this state;
 - b) the plaintiff was assigned to their duty station after their claim arose;
 - c) the assignment is for more than six months;
 - d) the representative is serving without compensation, and
 - e) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. (Code Civ. Proc. § 116.540(a).)
- 2) Prohibits a person, in connection with the collection of any obligation from a member of the active militia or a member of the active or reserve components of the Armed Forces, from contacting the member's military unit or chain of command without the written consent of the member given after the obligation becomes due and payable. (Mil. & Vet. Code Sec. 401(b).)
- 3) Authorizes a lessee on a lease of a motor vehicle used, or intended to be used, by a service member or a service member's dependents for personal or business

transportation to terminate the lease at any time after the lessee enters into military service or the lessee meets any of the following:

- a) during the term of the lease, enters a period of military service under a call or order specifying a period of not less than 180 days;
 - b) during the term of the lease, enters a period of military service under a call or order specifying a period of less than 180 days, and then receives orders extending the period of military service to a period of not less than 180 days; and
 - c) while in a period of military service, executes the lease and then receives military orders for a change of permanent station from a location in the continental United States to a location outside the continental United States, or from a location in a state outside the continental United States to any location outside that state, or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days. (Mil. & Vet. Code Sec. 409(a)(2).)
- 4) Provides a number of benefits and protections to service members and their families pursuant to the California Military Families Financial Relief Act (Act)¹ including the following:
- a) the deferral of payments due on installment contracts, such as credit cards, retail credit accounts, mortgages, property taxes, up to two vehicle loans, payment of property tax or special assessment, as specified, obligations to a utility company, and a student loan. If a lender defers payments on a closed end credit obligation or an open-end credit obligation with a maturity date the lender is required to extend the term of the obligation by the amount of months the obligation was deferred. (Mil. & Vet. Code Sec. 800(a) & (e).)
 - b) Provides that any mortgage payments delayed are due and payable upon the earlier of: (1) the sale of the property or other event specified in the document creating the obligation permitting the lender to accelerate the loan, other than a deferment of payments authorized under the Act; (2) further encumbrance of the property; or (3) the maturity of the obligation as defined under the terms of the document creating the obligation or, if applicable, extended as specified. (Mil. & Vet. Code Sec. 802(f).)
 - c) Allows the reservist to defer the payment of principal and interest on the specified obligations and prohibits foreclosure or repossession of the property on which payment had been deferred during the specified time period. (Mil. & Vet. Code Sec. 804.)
- 5) Provides a statutory cause of action for unfair competition, including any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, and makes a person who engages or proposes to engage in

¹ Mil. & Vet. Code §§ 800-812.

unfair competition liable for a civil penalty of not more than \$2,500, per violation. A person who engages or proposes to engage in unfair competition against one or more senior citizens or disabled persons may be liable for an additional penalty of \$2,500, as specified.

This bill:

- 1) Provides, for a small claims action, that a plaintiff who is a service member is not required to personally appear if the service member is assigned to a location more than 100 miles from the court where the action is proceeding, or is otherwise unable to personally appear due to the performance of military duty.
 - a) Authorizes the service member to appear via video appearance.
 - b) Clarifies that the representative appearing on the service member's behalf is serving without compensation other than compensation from the United States or the State of California, and except as to representatives who are employed by the United States or the State of California, the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year.
- 2) Prohibits a person, in connection with any transaction or any sale of goods or services, from electronically accessing a CAC issued to a service member, place or require the placement of such a CAC in a smart card reader, request or require entry of the personal identification number (PIN) associated with such a CAC, or require a service member to log in to any Department of Defense or, in the case of a member of the Coast Guard, Department of Homeland Security computer system. Voids a transaction or sale entered into in violation of these provisions.
- 3) Prohibits a person from conditioning the receipt of a military or veteran discount, in any form, on the waiver by a recipient of the discount of any right the person has under state or federal law. Any such waiver, and any other waiver of a right provided to service members, former service members, or their dependents by this code, is void.
- 4) Authorizes a service member in the grade E-5 or below who purchases or leases a motor vehicle from a dealer to cancel the purchase or lease up to 30 days from the date on which the service member took possession of the vehicle, or the date on which the service member obtained title to the vehicle, whichever is later, as provided.
 - a) A service member who cancels a vehicle purchase or lease is entitled to a return of any trade-in and a full refund of all amounts paid within 24 hours of returning the vehicle.
 - b) A service member may cancel no more than one automobile purchase or lease under this section in any 12-month period.

- c) Any person violating this provision is liable for actual damages, reasonable attorney's fees, and costs incurred by the injured party.
- 5) Provides a security interest in personal property other than a motor vehicle is void, and cannot be perfected, if it would cause a loan procured by a covered member in the course of purchasing the personal property to be exempt from the requirements of the federal Military Lending Act.
 - a) A security interest in a motor vehicle is void, and cannot be perfected, if it would cause a loan procured by a covered member in the course of purchasing the motor vehicle to be exempt from Section 987 of Title 10 of the United States Code, and the loan also funds the purchase of a credit insurance product or credit-related ancillary product.
- 6) Instead specifies that the lessee can terminate the lease of a motor vehicle if while in a period of military service, the lessee executes the lease and then receives military orders for a change of permanent station location that is more than 100 miles from the prior duty station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.
- 7) Specifies that any mortgage payments deferred are due and payable upon the sale of the property or other event specified in the documents creating the obligation permitting the lender to accelerate the loan, other than a deferral of payments as authorized.
- 8) Deletes provisions of law related to when mortgage payments delayed are due and payable and instead provides that in the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the obligation becomes due upon either of the following:
 - a) the sale of the property or other event specified in the documents creating the obligation permitting the lender to accelerate the loan, other than a deferment of payments authorized under the Act; or
 - b) further encumbrance of the property other than for preservation or protection of the property that would cause the obligation to become due and payable under the terms of the contract or other instrument evidencing the obligation.
- 9) Provides that no foreclosure or repossession of property will take place during the deferment period unless ordered by a court or agreed to by the parties to the obligation.
- 10) Makes a person who violates a statutory cause of action for unfair competition if the violation is perpetrated against one or more service members or veterans, liable for an additional civil penalty not to exceed \$2,500 for each violation, as provided.

COMMENTS

1. Stated need for the bill

The Author writes:

SB 1311 is crafted with military families at its heart as we work to build in the flexibility our service members need to meet the unique burdens of military service with respect and protection they deserve. This bill goes a long way to alleviate the often unseen and unaddressed burdens that many military families deal with on a daily basis. SB 1311 reminds our service members that California remains committed to supporting them on and off the battlefield.

The Attorney General Rob Bonta, sponsor of the bill writes:

Attorney General Bonta is honored to sponsor your Senate Bill (SB) 1311 to extend additional legal and financial protections for active duty and reserve component service members and their families. SB 1311 stems from discussions between the Attorney General and military personnel, JAG legal assistance attorneys, command financial counselors, and other members of the military and veterans community, including a July 2021 roundtable event at Naval Base San Diego, and from the California Department of Justice's investigation and prosecution of businesses that have targeted service members and military families.

Existing law, including the federal Servicemembers Civil Relief Act (SCRA) and California's counterpart provisions in the California Military and Veterans Code (CMVC), provide military service members and their dependents a wide range of legal protections that are intended to address the unique circumstances of military service, and allow service members to focus on performing their missions, on protecting their fellow servicemembers, and on coming home safely to their families.

These statutes are "read with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948) (citing *Boone v. Lightner*, 319 U.S. 561, 575 (1943)). And they are equally critical to ensuring that servicemembers, including members of our own California National Guard, are able to respond effectively to fires, earthquakes, pandemics, and other state emergencies here in California.

The Legislature has a long history of bipartisan support for consumer protections intended to help service members and their families cope with the unique demands of military life and deployment. [...]

2. The bill provides enhanced consumer protections for California service members and their families

This bill is sponsored by the Attorney General of California. The Attorney General's office has a history of aiding consumers, including service members, in exercising their rights under the law and prosecuting those who seek to violate those rights. This bill was crafted by the Attorney General's office to address various issues by service members attempting to exercise their rights under the various consumer and financial protections they are afforded under the law. The bill's provisions stem from discussions the Attorney General had with the military and veterans community, including a roundtable event at Naval Base San Diego in July 2021, and the Attorney General's office's own experience prosecuting and enforcing existing consumer protections. For instance, businesses will often condition their offer of military discounts with numerous pages of terms and conditions, including additional terms or waivers of rights under state and federal law. The bill would end this practice by expressly prohibiting businesses from conditioning military discounts on the service member or veteran waiving their rights under state or federal law and additionally provides that the waiver of any right provided to service members, former service members, or their dependents by the Military and Veteran Code is void. The bill prohibits a person, in connection with an transaction or sale, from electronically accessing a CAC issued to a service member, placing or requiring the placement of a CAC in a smart card reader, requesting or requesting entry of a PIN associated with a CAC, or requiring a service member to log into a Department of Defense or Coast Guard Department of Homeland Security computer system.

The bill would provide a service member of E5-rank or below a 30-day cooling-off period to return a leased or purchased auto and provides that a service member who cancels a vehicle purchase pursuant to this provision is entitled to a return of any trade-in and entitled to receive a full refund on all amounts paid within 24 hours of returning the vehicle. According to the Attorney General's office, these service members are very often the target of predatory auto sales practices and this provision will help ensure they are not taken advantage of by unscrupulous actors. The bill also strengthens the ability of service members to terminate auto leases when they are reassigned or deployed by reducing the period of deployment to exercise this right under existing law from 180 days to 90 days and decreasing the distance a change in permanent station has to be from the prior duty station.

The bill will assist service members, who generally must move frequently and who can find it difficult to appear in court and defend their rights because of distance, deployments, and other military responsibilities by providing them the right to appear remotely, or through another military member, in small claims cases, such as when seeking the return of an improperly held security deposit. The bill eliminates a loophole in existing law by providing that a security interest in personal property other than a motor vehicle is void, and cannot be perfected, if it would cause a loan procured by a

covered member in the course of purchasing the personal property to be exempt from the requirements of the Military Lending Act. The bill also clarifies existing law under the Act that allows service members to defer payments on mortgages and other obligations during a deployment by making it clear that interest is not accrued on the deferred mortgage obligation during the period of deferment.

The bill is supported by numerous military and veterans organizations, the California District Attorneys Association, and the Consumer Attorneys of California. There is no known opposition.

3. Statements in support

The American Legion-Department of California, AMVETS-Department of California, California Association of County Veterans Service Officers, California State Commanders Veterans Council, Military Officers Association of America-California Council of Chapters, and the Vietnam Veterans of America-California State Council write in support:

The consumer protections related to military discounts, privacy protection, return of security deposits, fairness in auto sales contracts, borrower protections, and provisions for deferral of interest, are important financial issues that will positively impact the lives of the servicemembers in our state. This is especially true when the added stress of training and deployments are added to coping with everyday personal finances. [...]

The Consumer Attorneys of California write in support:

[...] Some businesses have offered military discounts for service members with the added cost of requiring these individuals to waive their legal rights in exchange for the discount. For example, one San Diego area storage company required service members to waive their rights under the SCRA in exchange for a discount, resulting in a Navy SEAL having his personal goods auctioned off during a deployment. SB 1311 seeks to end this practice by expressly prohibiting businesses from conditioning military discounts on the service member or veteran waiving their rights under state or federal law.

Predatory businesses have also targeted military personnel by seeking access to chip-based military ID cards. Once these cards are accessed businesses can log into the Department of Defense computer systems and make illicit changes to a service member's pay or benefits. SB 1311 makes it unlawful for a business to access these military ID cards or use these cards to access military pay and personnel websites.

Service members have experienced issues with landlords withholding their security deposits when they're deployed or must move out of state for their military service. SB 1311 establishes the right to appear remotely or through another service member in small claims cases involving the return of an improperly held security deposit.

Lastly, SB 1311 closes a loophole in the Military Lending Act by applying the Act both in incidents of consumer credit and also where the lender has a security interest in the item sold.

For these reasons CAOC supports SB 1311.

4. Opposition

The California New Car Dealers Association (CNCDA) is in opposition to the bill because of the provisions that allow a service member of E5-rank or below a 30-day cooling-off period to return a leased or purchased auto, and that a service member who cancels a vehicle purchase pursuant to this provision is entitled to a return of any trade-in and entitled to receive a full refund on all amounts paid within 24 hours of returning the vehicle. The CNCDA believes this part of the bill is completely unworkable for various reasons, including:

- It essentially mandates car dealers provide members in the grade of E-5 or below a brand new rental car for 30 or more days at the expense of the selling or leasing dealer.
- If a service member bought a brand-new car and then chose to return it to a dealer, the dealer would then have to sell the vehicle again as used, at a significant loss.
- Depending on longer DMV processing timelines or paperwork-related difficulties that sometimes arise when transferring a vehicle's title, the process to receive a vehicle's title can take months. A dealer would have to accept the return of a vehicle after this undefined number of months and would be required to have a service members' trade-in vehicle, if there was one, still available to return to them.
- Would require wholly different retail installment sales contracts to be presented to certain consumers.
- Imposes criminal penalties for a violation of its provisions, and liability for actual damages, reasonable attorney's fees and other costs.
- Consumer protections already exist for California consumers purchasing vehicles from dealers.
- The provision unfairly interferes with dealer business practices.

SUPPORT

Attorney General Rob Bonta (sponsor)
American Legion, Department of California
AMVETS-Department of California
California Association of County Veterans Service Officers
California District Attorneys Association
California Low-Income Consumer Coalition
California State Commanders Veterans Council
Consumer Attorneys of California
Consumer Federation of California
Military Officers Association of America-California Council of Chapters
National Consumer Law Center
NextGen California
Vietnam Veterans of America-California State Council

OPPOSITION

California New Car Dealers Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 3212 (Irwin, Ch. 555, Stats. 2018) this bill strengthened California's existing military consumer protection laws by enhancing existing protections for service members and their families by, among other things, including student loans under provisions that allow a member of the United States Military Reserve or the National Guard who is called to active duty, as specified, to defer payments on specified obligations.
