

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 73 (Seyarto)  
Version: March 22, 2023  
Hearing Date: April 11, 2023  
Fiscal: Yes  
Urgency: No  
ME

**SUBJECT**

Employment policy: voluntary veterans' preference

**DIGEST**

This bill enacts the Voluntary Veterans' Preference Employment Policy Act and authorizes a private employer to establish a veterans' preference employment policy.

**EXECUTIVE SUMMARY**

Various statutes, such as the Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act, prohibit discrimination in employment, housing, public accommodation and services provided by business establishments on the basis of specified personal characteristics such as sex, race, color, national origin, religion, and disability. Over time, these statutes have been amended to include other characteristics such as medical conditions, marital status, and sexual orientation. Also over time, other statutes were amended to reflect the state's public policy against discrimination in all forms.

The Federal Uniformed Services Employment and Reemployment Rights Act (USERRA) provides employment discrimination protection for a person who is in active military duty or a veteran and has an obligation to perform service in a uniformed service (United States Armed Forces, United States Armed Forces Reserve, the United States National Guard). (38 U.S.C. § 4311.) The California Military and Veterans Code incorporates this discrimination protection, and further extends it to members or veterans of the California National Guard. (Mil. & Vet. Code § 394.) AB 556 (Salas, Ch. 691, Stats. 2013) incorporated protection from discrimination and retaliation for military employees and veterans into FEHA.

This bill seeks to establish the Voluntary Veterans' Preference Employment Policy Act to allow private employers to give veterans preference in employment decisions. If this

bill passes this Committee, it will then be heard by the Senate Military and Veterans Affairs Committee.

### PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) USERRA prohibits discrimination and retaliation against active duty military and veterans on the basis of the person's military membership, application for membership, performance of service, application for service, or obligation. (38 U.S.C. § 4311.)
- 2) Prohibits an employer's use of the employee's military membership, performance of service, application for service, or obligation as a motivating factor as cause for an adverse employment decision against the employee. (38 U.S.C. § 4311.)
- 3) USERRA provides that any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to specified reemployment rights and benefits and other employment benefits of this chapter. (38 U.S.C. § 4312.)

Existing state law:

- 1) Prohibits discrimination by a person, public entity, or official against any officer, warrant officer, or enlisted member of the military or naval forces of the state or of the United States because of that membership, and prohibits prejudice or injury by any person, employer, or officer or agent of any corporation, company, or firm with respect to that member's employment, position or status, or be denied or disqualified for employment by virtue of the membership. (Mil. & Vet. Code § 394(a) & (b).)
- 2) Prohibits an employer or officer or agent of any corporation, company, or firm, or other person, from: (1) discharging any person from employment because of the performance of any ordered military duty or training or by reason of being an officer, warrant officer, or enlisted member of the military or naval forces of this state or of the federal reserve components of the Armed Forces of the United States; (2) hindering or preventing that person from performing any military service or from attending any military encampment or place of drill or instruction they may be called upon to perform or attend by proper authority; (3) using prejudice or harm against an employee in any manner in their terms, conditions, or privileges of employment, position, or status by reason of the employee's performance of military service or duty or attendance at military encampments or places of drill or instruction; or (4) dissuading, preventing, or

stopping any person from enlistment or accepting a warrant or commission in the California National Guard, State Guard, or Naval Militia of the federal reserve components of the Armed Forces of the United States by threat or injury to the employee in respect to their terms, conditions, or privileges of employment, position, status, trade, or business because of enlistment or acceptance of a warrant or commission. (Mil. & Vet. Code § 394(d).)

- 3) Prohibits a private employer or officer or agent of any corporation, company, or firm, or other person, from restricting or terminating any collateral benefit for employees by reason of an employee's temporary incapacitation (any period of incapacitation of 52 weeks or less) incident to duty in the National Guard, State Guard, or Naval Militia or the federal reserve components of the Armed Forces of the United States. (Mil. & Vet. Code § 394(e).)
- 4) Provides that a violation of the above state employment protections is a misdemeanor, and that any person violating any of these provisions is liable for actual damages and reasonable attorney's fees incurred by the injured party. (Mil. & Vet. Code § 394(g).)
- 5) Provides that a covered employee has an absolute right to be restored to the former office or position and status formerly had by them in the same locality and in the same office, board, commission, agency, or institution of the public agency upon the termination of temporary military duty. If the office or position has been eliminated during the employee's absence, the employee must be reinstated to a position of like seniority, status, and pay if a position exists, or if no position exists, the employee will have the same rights and privileges that they would have had if they had occupied the position when it ceased to exist and had not taken temporary military leave of absence. (Mil. & Vet. Code § 395(c).)
- 6) The Fair Employment and Housing Act (FEHA), prohibits discrimination in housing and employment on the basis of various characteristics, including military and veteran status, as defined. (Gov. Code § 12920 et seq.)
- 7) Allows the Legislature to provide civil service hiring preferences for veterans and their surviving spouses. (Cal. Const., art. VII, § 6(a).)
- 8) Provides that gender discrimination protection under FEHA does not affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans. (Gov. Code § 12940(a)(4).)

This bill:

- 1) Establishes the Voluntary Veterans' Preference Employment Policy Act ("Act").

- 2) Provides that notwithstanding any other law, a private employer may establish and maintain a written veterans' preference employment policy, which shall be applied uniformly to hiring decisions.
- 3) Requires employers who adopt voluntary veterans' preference employment policies to report specified information to the Civil Rights Department.
- 4) Provides that the failure to submit the specified information shall render any preference granted by the employer ineligible for the protections of the Act.
- 5) Specifies that the granting of a veterans' preference, in and of itself, shall be deemed not to violate any local or state equal employment opportunity law or regulation, including, but not limited to, FEHA.
- 6) Requires the Department of Veterans Affairs to assist any private employer in determining if an applicant is a veteran, to the extent permitted by law.
- 7) Provides that nothing in the Voluntary Veteran's Preference Employment Policy Act shall be construed to authorize the establishment or use of a veterans' preference employment policy for the purpose or with the effect of unlawfully discriminating against an employment applicant on the basis of any protected classification under FEHA.
- 8) Specifies that it is the intent of the Act that the preference will benefit veterans of all protected classes, including women and LGBTQIA persons and that an employer's adoption of a voluntary veterans' preference employment policy is not intended to have the effect of discriminating against any veteran who is a member of any other protected classification in FEHA.
- 9) Provides the following definitions:
  - "DD Form 214, Member-4" means United States Department of Defense Form 214 or a similarly effective form issued by that department relating to separation from military service.
  - "Private employer" means a business entity in the private sector of this state with one or more employees.
  - "Veteran" means a person who has served full time in the Armed Forces in time of national emergency or state military emergency or during any expedition of the Armed Forces and who has been discharged or released under conditions other than dishonorable. For the purposes of this section, the term "conditions other than dishonorable" includes a discharge or release due to a violation of subdivision (b) of former Section 645 of Title 10 of the United States Code, repealed as of December 22, 2010, or policies or regulations adopted to implement that section.

- “Veterans’ preference employment policy” means a private employer’s voluntary preference for hiring a veteran over another qualified applicant.
- 10) Requires an employer with a veterans’ preference employment policy to accept any of the following as proof of an individual’s status as a veteran:
- a DD Form 214, Member-4;
  - a current and valid driver’s license with the word “VETERAN” printed on its face pursuant to Section 12811 of the Vehicle Code; and
  - a current and valid identification card with the word “VETERAN” printed on its face pursuant to Section 12811 of the Vehicle Code.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

While both the Federal and State Governments have recognized the value and sacrifice of our Nation’s Heroes and even provided incentives for businesses to hire Veterans, California has not explicitly made it clear that a business is allowed to develop policies that give Veterans preference for hiring. While only 7% of the population can claim veteran status, 13% of the homeless adult population are Veterans, nearly double the rate of their peers.

The U.S. Equal Employment Opportunity Commission has provided the clarification under Title VII that policies providing Veterans preference are lawful as long as permitted by state or local law. This has led to more than half of the states adopting policies to permit private sector Veterans preference, leaving California behind the curve in supporting its Veteran population.

#### 2. Veterans’ preference in California

Existing law provides that sex discrimination protections provided under the FEHA do not affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans. (Gov. Code § 12940(a)(4).) The FEHA provisions allowing special consideration for Vietnam-era veterans were established in 1981 and the statute has not been updated since then. Additionally, the California Constitution allows the Legislature to provide civil service hiring preferences for veterans and their surviving spouses (Cal. Const., art. VII, § 6(a).) There is also veterans’ preference for some state jobs.<sup>1</sup>

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<sup>1</sup> See <https://www.calvet.ca.gov/VetServices/Pages/State-Employment.aspx> (as of March 29, 2023).

This bill allows a private employer to establish a veterans' preference employment policy. This private employer, who opts to provide veteran preference in hiring decisions, must establish and maintain a written veterans' preference employment policy. In this way, other applicants or employees would be made aware of the employer's hiring policy. In the absence of such written policy, the employer may be liable for discrimination against another employee or applicant. Moreover, seeking to address concern that a veteran's preference policy created under this bill could be used by an employer in order to discriminate against the other protected classes under FEHA, the bill contains provisions that establish that:

- nothing in the bill shall be construed to authorize the establishment or use of a veterans' preference employment policy for the purpose or with the effect of unlawfully discriminating against an employment applicant on the basis of any protected classification; and
- the veteran's preference program shall be applied uniformly to hiring decisions.

The Chair of this Committee has noted that veterans benefits honor and recognize the sacrifice of veterans. They incentivize individuals to join the military and recognize that the transition from service to civilian life is often difficult. As an example, the suicide rate for Veterans was 57.3 percent greater than for non-Veteran U.S. adults in 2020.<sup>2</sup>

### SUPPORT

Housing Contractors of California

### OPPOSITION

None known

### RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 665 (Umberg, 2022) was substantially similar to this bill. However, the bill would have required DFEH to report specified information to legislative policy committees and the program would have sunset on January 1, 2028. The bill was vetoed by the Governor because he was "concerned that the veterans' preference policies that would be permitted by this legislation could negatively impact employment opportunities for

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<sup>2</sup> See National Veteran Suicide Prevention Annual Report by the Office of Mental Health and Suicide Prevention September 2022, US Department of Veterans Affairs, available at [2022 National Veteran Suicide Prevention Annual Report, VA Suicide Prevention, Office of Mental Health and Suicide Prevention, September 2022](#) [as of 3/29/23]

women and other protected groups underrepresented among veterans, such as people with disabilities.” The Governor noted, however, that “there are ways to make the preference workable[.]”

AB 160 (Voepel, 2019) would have enacted the Voluntary Veterans’ Preference Employment Policy Act and authorized a private employer to establish a veterans’ preference employment policy. The bill failed passage in the Senate Judiciary Committee.

AB 353 (Voepel, 2017) would have enacted the Voluntary Veterans’ Preference Employment Policy Act and authorized a private employer to establish a veterans’ preference employment policy. The bill failed passage in the Senate Judiciary Committee.

AB 1383 (Jones, 2016) would have enacted the Voluntary Veterans’ Preference Employment Policy Act and authorized a private employer to establish a veterans’ preference employment policy. The bill failed passage in the Senate Judiciary Committee.

AB 556 (Salas, Ch. 691, Stats. 2013) *See* Executive Summary.

SB 36 (Baca, Ch. 201, Stats. 1999) requires any city, county, or city and county, general law or chartered, when it has established a civil service system, to implement a veterans’ preference system, or adopt a resolution identifying reasons that the local agency does not do so.

SB 1150 (Fletcher and Burns, Ch. 123, Stats. 1945) requires military veterans’ preference on civil service employment lists.

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