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AB-1710 Prohibited discrimination against service members. (2017-2018)

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Assembly Bill No. 1710

CHAPTER 591

An act to amend Section 394 of the Military and Veterans Code, relating to service members.

[Approved by Governor October 08, 2017. Filed with Secretary of State October 08, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1710, Committee on Veterans Affairs. Prohibited discrimination against service members.

(1) Existing law prohibits various types of discrimination against an officer, warrant officer, or enlisted member of the military or naval forces of the state or of the United States because of his or her membership or service, including, among others, discrimination with respect to his or her employment. Existing law provides criminal penalties and civil remedies for violations of these prohibitions.

This bill would include, within these prohibitions, discrimination in terms, conditions, or privileges of employment, as specified. By expanding the scope of these prohibitions, this bill would expand the scope of a crime, and thus impose a state-mandated local program.

(2) This bill would incorporate additional changes to Section 394 of the Military and Veterans Code proposed by SB 266 to be operative only if this bill and SB 266 are enacted and this bill is enacted last.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 394 of the Military and Veterans Code is amended to read:

394. (a) A person shall not discriminate against an officer, warrant officer, or enlisted member of the military or naval forces of the state or of the United States because of that membership. A member of the military forces shall not be prejudiced or injured by a person, employer, or officer or agent of a corporation, company, or firm in terms, conditions, or privileges with respect to that member's employment, position or status or be denied or disqualified for employment by virtue of membership or service in the military forces of this state or of the United States.

(b) An officer or employee of the state, or of any county, city and county, municipal corporation, or district shall not discriminate against an officer, warrant officer, or enlisted member of the military or naval forces of the state or of the United States because of

that membership. A member of the military forces shall not be prejudiced or injured by an officer or employee of the state, or of any county, city and county, municipal corporation, or district in terms, conditions, or privileges with respect to that member's employment, appointment, position, or status or be denied or disqualified for or discharged from that employment or position by virtue of membership or service in the military forces of this state or of the United States.

(c) A person shall not prohibit or refuse entrance to an officer or enlisted member of the Army or Navy of the United States or of the military or naval forces of this state into any public entertainment or place of amusement or into any of the places described in Sections 51 and 52 of the Civil Code because that member wears the uniform of the organization to which he or she belongs.

(d) An employer or officer or agent of a corporation, company, or firm, or other person, shall not discharge a 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 hinder or prevent that person from performing any military service or from attending any military encampment or place of drill or instruction he or she may be called upon to perform or attend by proper authority; prejudice or harm him or her in any manner in his or her terms, conditions, or privileges of employment, position, or status by reason of performance of military service or duty or attendance at military encampments or places of drill or instruction; or dissuade, prevent, or stop any person from enlistment or accepting a warrant or commission in the California National Guard or Naval Militia by threat or injury to him or her in respect to his or her terms, conditions, or privileges of employment, position, status, trade, or business because of enlistment or acceptance of a warrant or commission.

(e) (1) A private employer or officer or agent of a corporation, company, or firm, or other person, shall not restrict or terminate any collateral benefit for employees by reason of an employee's temporary incapacitation incident to duty in the National Guard or Naval Militia. As used in this subdivision, "temporary incapacitation" means any period of incapacitation of 52 weeks or less.

(2) As used in this subdivision, "benefit" includes, but is not limited to, health care which may be continued at the employee's expense, life insurance, disability insurance, and seniority status.

(f) A person who provides lending or financing shall not discriminate against a person with respect to the terms of a loan or financing, including, but not limited to, the finance charge, based on that person's membership in the military or naval forces of this state or of the United States. With respect to a loan or credit transaction covered by Section 670 of Public Law 109-364 and Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register, a person that does not market or extend those transactions to covered borrowers shall not be in violation of this section. For purposes of this section, a covered borrower has the same meaning as provided for in Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register.

(g) A person violating this section is guilty of a misdemeanor. In addition, a person violating any of the provisions of this section shall be liable for actual damages and reasonable attorney's fees incurred by the injured party.

(h) The remedies provided for in this section are not intended to be exclusive but are in addition to the remedies provided for in other laws, including Sections 51 and 52 of the Civil Code.

SEC. 1.5. Section 394 of the Military and Veterans Code is amended to read:

394. (a) A person shall not discriminate against an officer, warrant officer, or enlisted member of the military or naval forces of the state or of the United States because of that membership. A member of the military forces shall not be prejudiced or injured by a person, employer, or officer or agent of a corporation, company, or firm in terms, conditions, or privileges with respect to that member's employment, position or status or be denied or disqualified for employment by virtue of membership or service in the military forces of this state or of the United States.

(b) An officer or employee of the state, or of any county, city and county, municipal corporation, or district shall not discriminate against an officer, warrant officer, or enlisted member of the military or naval forces of the state or of the United States because of that membership. A member of the military forces shall not be prejudiced or injured by an officer or employee of the state, or of any county, city and county, municipal corporation, or district in terms, conditions, or privileges with respect to that member's employment, appointment, position, or status or be denied or disqualified for or discharged from that employment or position by virtue of membership or service in the military forces of this state or of the United States.

(c) A person shall not prohibit or refuse entrance to an officer or enlisted member of the Army or Navy of the United States or of the military or naval forces of this state into any public entertainment or place of amusement or into any of the places described in Sections 51 and 52 of the Civil Code because that member wears the uniform of the organization to which he or she belongs.

(d) An employer or officer or agent of a corporation, company, or firm, or other person, shall not discharge a 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 hinder or prevent that person from performing any military service or from attending any military encampment or place of drill or instruction he or she may be called upon to perform or

attend by proper authority; prejudice or harm him or her in any manner in his or her terms, conditions, or privileges of employment, position, or status by reason of performance of military service or duty or attendance at military encampments or places of drill or instruction; or dissuade, prevent, or stop any person from enlistment or accepting a warrant or commission in the California National Guard or Naval Militia by threat or injury to him or her in respect to his or her terms, conditions, or privileges of employment, position, status, trade, or business because of enlistment or acceptance of a warrant or commission.

(e) (1) A private employer or officer or agent of a corporation, company, or firm, or other person, shall not restrict or terminate any collateral benefit for employees by reason of an employee's temporary incapacitation incident to duty in the National Guard or Naval Militia. As used in this subdivision, "temporary incapacitation" means any period of incapacitation of 52 weeks or less.

(2) As used in this subdivision, "benefit" includes, but is not limited to, health care which may be continued at the employee's expense, life insurance, disability insurance, and seniority status.

(f) A person who provides lending or financing shall not discriminate against a person with respect to the terms of a loan or financing, including, but not limited to, the finance charge, based on that person's membership in the military or naval forces of this state or of the United States. With respect to a loan or credit transaction covered by Section 987 of Title 10 of the United States Code, as amended by 126 Stat. 1785 (Public Law 112-239), and Part 232 (commencing with Section 232.1) of Subchapter M of Chapter I of Subtitle A of Title 32 of the Code of Federal Regulations, as amended as published on July 22, 2015, on Page 43560 in Number 140 of Volume 80 of the Federal Register, a person that does not market or extend those transactions to covered borrowers shall not be in violation of this section. For purposes of this section, a covered borrower has the same meaning as provided for in Part 232 (commencing with Section 232.1) of Subchapter M of Chapter I of Subtitle A of Title 32 of the Code of Federal Regulations, as amended on the date described in this subdivision.

(g) A person violating this section is guilty of a misdemeanor. In addition, a person violating any of the provisions of this section shall be liable for actual damages and reasonable attorney's fees incurred by the injured party.

(h) The remedies provided for in this section are not intended to be exclusive but are in addition to the remedies provided for in other laws, including Sections 51 and 52 of the Civil Code.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 394 of the Military and Veterans Code proposed by both this bill and Senate Bill 266. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 394 of the Military and Veterans Code, and (3) this bill is enacted after Senate Bill 266, in which case Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.