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SB-266 Armed service members: consumer loans. (2017-2018)

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Date Published: 10/05/2017 09:00 PM

Senate Bill No. 266

CHAPTER 514

An act to amend Sections 1498, 14960, 22345, and 23038 of the Financial Code, and to amend Section 394 of the Military and Veterans Code, relating to consumer loans.

[Approved by Governor October 05, 2017. Filed with Secretary of State October 05, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 266, Dodd. Armed service members: consumer loans.

(1) Existing federal law, the Military Lending Act, prohibits a creditor who extends consumer credit to a covered member of the Armed Forces or a dependent of such a member from requiring that member or dependent to pay interest with respect to the extension of such credit, unless an exception to that rule applies. The federal act also requires a creditor to satisfy other terms and conditions before extending consumer credit to a covered member, and to comply with mandatory disclosure requirements, as specified. Any person who violates the federal act is subject to both criminal and civil penalties.

Existing law, the Banking Law, prescribes the conditions pursuant to which a state-chartered bank may engage in the practice of banking. The California Credit Union Law provides for the regulation of credit unions within the state by the Commissioner of Business Oversight. Existing law imposes both criminal and civil penalties for violations of the Banking Law and the California Credit Union Law. Existing law requires a state-chartered bank or a credit union when making or extending a refund anticipation loan to comply with the provision of the John Warner National Defense Authorization Act for Fiscal Year 2007 that added the Military Lending Act.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Business Oversight. Existing law, the California Deferred Deposit Transaction Law, provides for the licensure and regulation by the commissioner of persons engaged in the business of making or arranging deferred deposit transactions. A willful violation of either the California Finance Lenders Law or the California Deferred Deposit Transaction Law is a crime. Existing law makes it unlawful under the California Finance Lenders Law and the California Deferred Deposit Transaction Law to violate the provision of the John Warner National Defense Authorization Act for Fiscal Year 2007 that added the Military Lending Act.

This bill would amend the laws described above to update the references to the Military Lending Act in order to incorporate amendments to that act, and its applicable regulations.

(2) Existing law provides that any person who violates specified provisions prohibiting discrimination against a member of the military or naval forces of this state or the United States, including discrimination with respect to the terms of a loan or financing based on that person's membership in the military or naval forces of this state or of the United States, is guilty of a misdemeanor. Existing law exempts from the discrimination provisions, with respect to loans and transactions covered by the section of the John Warner National Defense Authorization Act for Fiscal Year 2007 that added the Military Lending Act, any person who does not

market or extend consumer loans to specified covered borrowers, and any person who does not market deferred deposit transactions to, or enter into such transactions with, specified covered borrowers.

This bill would update the references to the Military Lending Act in order to incorporate amendments to that act, and its applicable regulations.

(3) This bill would incorporate additional changes to Section 394 of the Military and Veterans Code proposed by AB 1710 to be operative only if this bill and AB 1710 are enacted and this bill is enacted last.

(4) Because this bill amends state statutes, the violation of which is a misdemeanor, to include references to an updated federal statute, this bill would expand the scope of existing crimes, thereby imposing a state-mandated local program.

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 1498 of the Financial Code is amended to read:

1498. (a) Any state-chartered bank that extends consumer credit to a covered borrower, as those terms are defined 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 published on July 22, 2015, on page 43560 in Number 140 of Volume 80 of the Federal Register, shall comply with the applicable provisions of 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 on the date described above.

(b) A state-chartered bank that does not market or extend consumer credit to covered borrowers, as those terms are defined under 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 subdivision (a), shall not be in violation of Section 394 of the Military and Veterans Code.

SEC. 2. Section 14960 of the Financial Code is amended to read:

14960. (a) Any credit union that extends consumer credit to a covered borrower, as those terms are defined 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 published on July 22, 2015, on page 43560 in Number 140 of Volume 80 of the Federal Register, shall comply with the applicable provisions of 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 on the date described above.

(b) A credit union that does not market or extend consumer credit to covered borrowers, as those terms are defined under 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 subdivision (a), shall not be in violation of Section 394 of the Military and Veterans Code.

SEC. 3. Section 22345 of the Financial Code is amended to read:

22345. (a) Any person who violates any provision of Section 987 of Title 10 of the United States Code, as amended by 126 Stat. 1785 (Public Law 112-239), or any provision of 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 published on July 22, 2015, on page 43560 in Number 140 of Volume 80 of the Federal Register, violates this chapter.

(b) A person that does not market consumer loans to, or does not extend those loans to, covered borrowers, as that term is defined under 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 subdivision (a), shall not be in violation of Section 394 of the Military and Veterans Code.

SEC. 4. Section 23038 of the Financial Code is amended to read:

23038. (a) Any person who violates any provision of Section 987 of Title 10 of the United States Code, as amended by 126 Stat. 1785 (Public Law 112-239), or any provision of 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 published on July 22, 2015, on page 43560 in Number 140 of Volume 80 of the Federal Register, violates this division.

(b) A person that does not market deferred deposit transactions to, or does not enter into those transactions with, covered borrowers, as that term is defined under 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 subdivision (a), shall not be in violation of Section 394 of the Military and Veterans Code.

SEC. 5. Section 394 of the Military and Veterans Code is amended to read:

394. (a) A person shall not discriminate 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. 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 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 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 any 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 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 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 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) Any person violating this section is guilty of a misdemeanor. In addition, any 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. 5.5. Section 394 of the Military and Veterans Code is amended to read:

394. (a) A person shall not discriminate 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. 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 any 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 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 published on the date described in this subdivision.

(g) Any person violating this section is guilty of a misdemeanor. In addition, any 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. 6. Section 5.5 of this bill incorporates amendments to Section 394 of the Military and Veterans Code proposed by both this bill and Assembly Bill 1710. 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 Assembly Bill 1710, in which case Section 5 of this bill shall not become operative.

SEC. 7. 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.