

**ASSEMBLY BILL**

**No. 2879**

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**Introduced by Committee on Judiciary (Assembly Members Mark Stone (Chair), Alejo, Chau, Chiu, Cristina Garcia, and Holden)**

February 25, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2879, as introduced, Committee on Judiciary. Service members.

Existing law prohibits a person from discriminating against a member of the military forces because of his or her membership or service, as prescribed. Existing law makes a violation of those provisions a crime. Existing law also provides civil remedies for violations of those provisions.

This bill would prohibit a person from requiring a waiver of the protections afforded under those provisions as a condition of employment, including the right to file and pursue a civil action or complaint, as specified. The bill would prohibit a person from retaliating against a person who refuses to waive his or her rights under those provisions, as prescribed. The bill would require any waiver of the protections afforded under those provisions to be knowing and voluntary, in writing, and expressly not made as a condition of employment, as specified. The bill would require a person seeking to enforce such a waiver to have the burden of proving that the waiver was knowing and voluntary and not made as a condition of employment. The bill would apply its provisions to any agreement entered into on or after January

1, 2017, including an agreement that requires private arbitration. The bill would include a severability clause.

Because a violation of those provisions would constitute a crime, this bill would impose 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.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

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

3 394. (a) No person shall discriminate against any officer,  
4 warrant officer or enlisted member of the military or naval forces  
5 of the state or of the United States because of that membership.  
6 No member of the military forces shall be prejudiced or injured  
7 by any person, employer, or officer or agent of any corporation,  
8 company, or firm with respect to that member's employment,  
9 position or status or be denied or disqualified for employment by  
10 virtue of membership or service in the military forces of this state  
11 or of the United States.

12 (b) No officer or employee of the state, or of any county, city  
13 and county, municipal corporation, or district shall discriminate  
14 against any officer, warrant officer or enlisted member of the  
15 military or naval forces of the state or of the United States because  
16 of that membership. No member of the military forces shall be  
17 prejudiced or injured by any officer or employee of the state, or  
18 of any county, city and county, municipal corporation, or district  
19 with respect to that member's employment, appointment, position  
20 or status or be denied or disqualified for or discharged from that  
21 employment or position by virtue of membership or service in the  
22 military forces of this state or of the United States.

23 (c) No person shall prohibit or refuse entrance to any officer or  
24 enlisted member of the Army or Navy of the United States or of  
25 the military or naval forces of this state into any public  
26 entertainment or place of amusement or into any of the places

1 described in Sections 51 and 52 of the Civil Code because that  
2 member wears the uniform of the organization to which he or she  
3 belongs.

4 (d) No employer or officer or agent of any corporation,  
5 company, or firm, or other person, shall discharge any person from  
6 employment because of the performance of any ordered military  
7 duty or training or by reason of being an officer, warrant officer,  
8 or enlisted member of the military or naval forces of this state, or  
9 hinder or prevent that person from performing any military service  
10 or from attending any military encampment or place of drill or  
11 instruction he or she may be called upon to perform or attend by  
12 proper authority; prejudice or harm him or her in any manner in  
13 his or her employment, position, or status by reason of performance  
14 of military service or duty or attendance at military encampments  
15 or places of drill or instruction; or dissuade, prevent, or stop any  
16 person from enlistment or accepting a warrant or commission in  
17 the California National Guard or Naval Militia by threat or injury  
18 to him or her in respect to his or her employment, position, status,  
19 trade, or business because of enlistment or acceptance of a warrant  
20 or commission.

21 (e) (1) No private employer or officer or agent of any  
22 corporation, company, or firm, or other person, shall restrict or  
23 terminate any collateral benefit for employees by reason of an  
24 employee's temporary incapacitation incident to duty in the  
25 National Guard or Naval Militia. As used in this subdivision,  
26 "temporary incapacitation" means any period of incapacitation of  
27 52 weeks or less.

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

31 (f) No person who provides lending or financing shall  
32 discriminate against any person with respect to the terms of a loan  
33 or financing, including, but not limited to, the finance charge,  
34 based on that person's membership in the military or naval forces  
35 of this state or of the United States. With respect to any loan or  
36 credit transaction covered by Section 670 of Public Law 109-364  
37 and Section 232 of Title 32 of the Code of Federal Regulations,  
38 as published on August 31, 2007, in Volume 72 of the Federal  
39 Register, a person that does not market or extend those transactions  
40 to covered borrowers shall not be in violation of this section. For

1 purposes of this section, a covered borrower has the same meaning  
2 as provided for in Section 232 of Title 32 of the Code of Federal  
3 Regulations, as published on August 31, 2007, in Volume 72 of  
4 the Federal Register.

5 (g) (1) *A person shall not require another person to waive any*  
6 *legal right, penalty, remedy, forum, or procedure for a violation*  
7 *of this section, as a condition of employment, including the right*  
8 *to file and pursue a civil action or complaint with, or otherwise*  
9 *notify, the Labor Commissioner, state agency, other public*  
10 *prosecutor, law enforcement agency, or any court or other*  
11 *governmental entity.*

12 (2) *A person shall not threaten, retaliate, or discriminate against*  
13 *another person on the basis that the other person refuses to waive*  
14 *any legal right, penalty, remedy, forum, or procedure for a*  
15 *violation of this section, including the right to file and pursue a*  
16 *civil action or complaint with, or otherwise notify, the Labor*  
17 *Commissioner, state agency, other public prosecutor, law*  
18 *enforcement agency, or any court or other governmental entity.*

19 (3) *Except for any legal right, penalty, forum, or procedure that*  
20 *state or federal law prohibits from being waived, any waiver of*  
21 *any legal right, penalty, remedy, forum, or procedure for a*  
22 *violation of this section, including the right to file and pursue a*  
23 *civil action or complaint with, or otherwise notify, the Labor*  
24 *Commissioner, state agency, other public prosecutor, law*  
25 *enforcement agency, or any court or other governmental entity*  
26 *shall be knowing and voluntary, and in writing, and expressly not*  
27 *made as a condition of employment.*

28 (4) *Any waiver of any legal right, penalty, remedy, forum, or*  
29 *procedure for a violation of this section that is required as a*  
30 *condition of employment shall be deemed involuntary,*  
31 *unconscionable, against public policy, and unenforceable. Nothing*  
32 *in this subdivision shall affect the enforceability or validity of any*  
33 *other provision of the contract.*

34 (5) *Any person who seeks to enforce a waiver of any legal right,*  
35 *penalty, remedy, forum, or procedure for a violation of this section*  
36 *shall have the burden of proving that the waiver was knowing and*  
37 *voluntary and not made as a condition of employment.*

38 (6) *This section shall apply to any agreement to waive any legal*  
39 *right, penalty, remedy, forum, or procedure for a violation of this*  
40 *code, including an agreement to accept private arbitration, entered*

1 *into, altered, modified, renewed, or extended on or after January*  
2 *1, 2017.*

3 ~~(g)~~

4 *(h) Any person violating this section is guilty of a misdemeanor.*  
5 ~~In addition,~~ *addition to injunctive relief and any other remedies*  
6 *available, any person violating any of the provisions of this section*  
7 *shall be liable for actual damages and reasonable attorney's fees*  
8 *incurred by the injured party.*

9 ~~(h)~~

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

13 *(j) The provisions of this section are severable. If any provision*  
14 *of this section or its application is held invalid, that invalidity shall*  
15 *not affect other provisions or applications that can be given effect*  
16 *without the invalid provision or application.*

17 SEC. 2. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.