

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2879

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

February 25, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2879, as amended, ~~Committee on Judiciary~~ *Mark Stone*. 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~~ *officer*, or enlisted member of the military or naval
5 forces of the state or of the United States because of that
6 membership. No member of the military forces shall be prejudiced
7 or injured by any person, employer, or officer or agent of any
8 corporation, company, or firm with respect to that member's
9 employment, ~~position~~ *position*, or status or be denied or
10 disqualified for employment by virtue of membership or service
11 in the military forces of this state 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~~ *officer*, or enlisted member of
15 the military or naval forces of the state or of the United States
16 because of that membership. No member of the military forces
17 shall be prejudiced or injured by any officer or employee of the
18 state, or of any county, city and county, municipal corporation, or
19 district with respect to that member's employment, appointment,
20 ~~position~~ *position*, or status or be denied or disqualified for or
21 discharged from that employment or position by virtue of
22 membership or service in the military forces of this state or of the
23 United States.

1 (c) No person shall prohibit or refuse entrance to any officer or
2 enlisted member of the Army or Navy of the United States or of
3 the military or naval forces of this state into any public
4 entertainment or place of amusement or into any of the places
5 described in Sections 51 and 52 of the Civil Code because that
6 member wears the uniform of the organization to which he or she
7 belongs.

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

25 (e) (1) No private employer or officer or agent of any
26 corporation, company, or firm, or other person, shall restrict or
27 terminate any collateral benefit for employees by reason of an
28 employee's temporary incapacitation incident to duty in the
29 National Guard or Naval Militia. As used in this subdivision,
30 "temporary incapacitation" means any period of incapacitation of
31 52 weeks or less.

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

35 (f) No person who provides lending or financing shall
36 discriminate against any person with respect to the terms of a loan
37 or financing, including, but not limited to, the finance charge,
38 based on that person's membership in the military or naval forces
39 of this state or of the United States. With respect to any loan or
40 credit transaction covered by Section 670 of Public Law 109-364

1 and Section 232 of Title 32 of the Code of Federal Regulations,
2 as published on August 31, 2007, in Volume 72 of the Federal
3 Register, a person that does not market or extend those transactions
4 to covered borrowers shall not be in violation of this section. For
5 purposes of this section, a covered borrower has the same meaning
6 as provided for in Section 232 of Title 32 of the Code of Federal
7 Regulations, as published on August 31, 2007, in Volume 72 of
8 the Federal Register.

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

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

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

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

38 (5) Any person who seeks to enforce a waiver of any legal right,
39 penalty, remedy, forum, or procedure for a violation of this section

1 shall have the burden of proving that the waiver was knowing and
2 voluntary and not made as a condition of employment.

3 (6) This section shall apply to any agreement to waive any legal
4 right, penalty, remedy, forum, or procedure for a violation of this
5 code, including an agreement to accept private arbitration, entered
6 into, altered, modified, renewed, or extended on or after January
7 1, 2017.

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

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

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

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