

AMENDED IN ASSEMBLY APRIL 7, 2016

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2879

Introduced by Assembly Member Mark Stone
(~~Coauthors: Assembly Members Chiu and Maienschein~~)
(*Coauthors: Assembly Members Chiu and Ting*)

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, Mark Stone. ~~Service members.~~ *Member Employment Protection Act.*

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. *A violation of these provisions would not constitute a crime.* 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-no~~. State-mandated local program: ~~yes-no~~.

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

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *Existing federal law and state law recognizes the need to*
- 4 *protect military service members from discrimination in*
- 5 *employment. Under the federal Uniformed Services Employment*
- 6 *and Reemployment Rights Act (USERRA), an employer may not*
- 7 *deny initial employment, reemployment, retention in employment,*
- 8 *promotion, or any employment benefits based on an employee's*
- 9 *military service.*
- 10 (b) *In California, key protections in the Military and Veterans*
- 11 *Code and the Fair Employment and Housing Act strictly prohibit*
- 12 *discrimination on the basis of military and veteran status, and*
- 13 *further prohibit any non-job-related inquiry of an employee or*
- 14 *applicant's military and veteran status except that employers may*
- 15 *identify members of the military or veterans for the purpose of*
- 16 *awarding a veteran's preference as permitted by law.*
- 17 (c) *Because of the importance of these employment protections*
- 18 *for the well-being of service members, it is the policy of the State*
- 19 *of California to ensure that all service members have the full*
- 20 *benefit of the rights, penalties, remedies, forums, and procedures*
- 21 *established to protect service members from discrimination in*
- 22 *employment and that service members not be deprived of those*

1 *rights, penalties, remedies, forums, or procedures through the use*
2 *of involuntary or coerced waivers.*

3 *(d) Therefore, it is the purpose of this act to ensure that a*
4 *contract to waive any of the rights, penalties, remedies, forums,*
5 *or procedures under Section 394 of the Military and Veterans*
6 *Code, including any provision that has the effect of limiting the*
7 *full application or enforcement of any right, penalty, remedy,*
8 *forum, or procedure available under this section, is a matter of*
9 *voluntary consent, not coercion.*

10 *(e) This act shall be known, and may be cited, as the Service*
11 *Member Employment Protection Act.*

12 **SECTION 1.**

13 **SEC. 2.** Section 394 of the Military and Veterans Code is
14 amended to read:

15 394. (a) No person shall discriminate against any officer,
16 warrant officer, or enlisted member of the military or naval forces
17 of the state or of the United States because of that membership.
18 No member of the military forces shall be prejudiced or injured
19 by any person, employer, or officer or agent of any corporation,
20 company, or firm with respect to that member's employment,
21 position, or status or be denied or disqualified for employment by
22 virtue of membership or service in the military forces of this state
23 or of the United States.

24 (b) No officer or employee of the state, or of any county, city
25 and county, municipal corporation, or district shall discriminate
26 against any officer, warrant officer, or enlisted member of the
27 military or naval forces of the state or of the United States because
28 of that membership. No member of the military forces shall be
29 prejudiced or injured by any officer or employee of the state, or
30 of any county, city and county, municipal corporation, or district
31 with respect to that member's employment, appointment, position,
32 or status or be denied or disqualified for or discharged from that
33 employment or position by virtue of membership or service in the
34 military forces of this state or of the United States.

35 (c) No person shall prohibit or refuse entrance to any officer or
36 enlisted member of the Army or Navy of the United States or of
37 the military or naval forces of this state into any public
38 entertainment or place of amusement or into any of the places
39 described in Sections 51 and 52 of the Civil Code because that

1 member wears the uniform of the organization to which he or she
2 belongs.

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

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

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

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

1 as provided for in Section 232 of Title 32 of the Code of Federal
2 Regulations, as published on August 31, 2007, in Volume 72 of
3 the Federal Register.

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

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

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

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

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

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

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

3 (h) Any person violating *subdivision (a), (b), (c), (d), (e), or (f)*
4 *of this section is guilty of a misdemeanor. In addition to injunctive*
5 *relief and any other available remedies, any person violating any*
6 *of the provisions of this section shall be liable for actual damages*
7 *and reasonable attorney’s fees incurred by the injured party.*

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

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

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