

Date of Hearing: July 10, 2017

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AJR 5 (Medina) – As Introduced February 23, 2017

SUBJECT: Military Lending Act

SUMMARY: Urges the United States Congress to prevail upon the Department of Defense (DOD) to realign its criteria for the safe harbor provision in the Military Lending Act (MLA) in order to avoid the requirement of a social security number. Specifically, **this resolution** makes the following legislative findings:

- 1) On October 17, 2006, Congress passed the MLA to protect service members and their families from certain predatory lending practices.
- 2) A creditor violating the provisions of the MLA can be subject to administrative, civil, and criminal liability, unless the creditor shows that the violation was not intentional and resulted from a bona fide error.
- 3) The first regulations, adopted in 2007, provided a safe harbor process known as “self-certification,” that required a creditor to present to the applicant a clear and unambiguous “covered borrower identification statement,” wherein the applicant affirmed in writing whether the applicant was or was not a DOD published a revised set of regulations replacing the self-certification rules and instead require a lender to obtain the full name, date of birth, and social security number of the applicant to check with the Department of Defense MLA database.
- 4) There is a significant population in California without a social security number.
- 5) California’s Unruh Civil Rights Act (Unruh Act) guarantees access to business services offered to the public and a violation arises if a person is denied access to a business service based on his or her immigration status.
- 6) By requiring lenders to ask for a social security number in order to meet the safe harbor provisions of the MLA, the revised regulations expose businesses to liability under the Unruh Act and unnecessarily burden many segments of California’s immigrant communities.
- 7) The Legislature urges Congress to prevail upon the DOD to realign their criteria for the safe harbor provision in order to avoid the requirement of a social security number.

EXISTING LAW:

- 1) Pursuant to the Unruh Act, all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civil (Civ.) Code Section 51)

FISCAL EFFECT: Unknown. This resolution is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Background:** Congress passed the MLA on October 17, 2006, to protect active duty service members (including those on active Guard or active Reserve duty) and their covered dependents from excessive interest rates on most types of consumer loans and other significant rights. Initially, the MLA and its implementing regulation only applied to high-cost payday loans, vehicle title loans and refund anticipation loans involving covered borrowers. Claims that pawn shop loans could be abusive, especially since many pawnbrokers set up shop just outside of military bases, and a class-action lawsuit filed in 2011 accusing an auto-title pawn shop outside of Fort Benning in Georgia of making predatory loans, caused the DOD to revisit the MLA. The DOD finalized regulations to impose stricter requirements on all financial institutions, including pawnbrokers in 2015.

The new MLA regulations, applying to transactions that are established on or after October 3, 2016, changed the definition of consumer credit for covered service members and dependents. The changes essentially expanded the kinds of credit products that now must comply with a 36% cap. Previously, creditors would skirt that cap by offering military consumers products like rolling lines of credit that did not fall under the law, allowing them to charge excessive rates. Now, all such credit products are capped at 36%. The changes also aligned the definition of “consumer credit” with the federal Truth in Lending Act, maintained the 36% cap and prohibited creditors from requiring service members to submit to mandatory arbitration and onerous legal proceedings.

- 2) **Effect on Pawnbrokers in California:** Under the 2007 rules, pawn shops were granted safe harbor if they obtained a signed certification from a borrower that he or she is not covered by the MLA. The 2015 MLA rules require pawnbrokers to obtain social security numbers (SSN) from every customer applying for a loan and verify their military status online using the Defense Manpower Data Center (DMDC). The pawnbroker will then receive a “verified certificate” on the military status of each applicant from the DMDC. In order to collect and store such sensitive information, current data security measures must be enhanced to ensure customer safety. These regulatory changes will place a significant compliance burden on lenders who seek to offer certain consumer credit to service members and their families.

Under the Unruh Act, one who denies or discriminates against a consumer based on that consumer's immigration status may be subject to a fine of \$4,000 or more (Civ. Code Section 52(a)). The California Pawnbroker's Association (CAPA) argues that the Unruh Act will prevent California pawnbrokers from being able to utilize the 2015 rule's safe harbor provision without facing liability, because CAPA members cannot benefit from the safe harbor protections without violating the Unruh Act.

This resolution urges Congress to prevail upon the DOD to realign their criteria for the safe harbor provision in order to avoid the requirement of a social security number so that pawnbrokers in California will not violate the civil rights of our citizens.

REGISTERED SUPPORT / OPPOSITION:

Support

California Pawnbroker's Association
90 individuals

Opposition

None on file

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