

Date of Hearing: July 10, 2017

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

SB 266 (Dodd) – As Amended July 5, 2017

SENATE VOTE: 40-0

SUBJECT: Armed service members: consumer loans

SUMMARY: Updates provisions of the Banking Law, Credit Union Law, California Finance Lenders Law, and Deferred Deposit Transaction Law to reflect new federal lending rules applicable to members of the military and their dependents. Specifically, **this bill:**

- 1) Updates the Banking Law (Financial Code Section 1498), Credit Union Law (Financial Code Sections 14960), California Finance Lenders Law (CFLL; Financial Code Section 22345), California Deferred Deposit Transaction Law (CDDTL; Financial Code Section 23038), and Military and Veterans Code (Section 394) to reflect changes to the Military Lending Act (MLA) and the federal regulations implementing that Act.
- 2) Requires prior references to Section 670 of Public Law 109-364 are replaced with references to Section 987 of Title 10 of the United States Code, as amended by Public Law 112-239.
- 3) Requires prior references to Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, are replaced with references to Part 232 of Title 32 of the Code of Federal Regulations, as published on July 22, 2015.

EXISTING STATE LAW:

- 1) Provides that any state-chartered bank or any state-chartered credit union, which makes a refund anticipation loan to a covered borrower, as defined, must comply with specified federal law and its implementing regulations (Section 670 of Public Law 109-364 and Section 232 of Title 32 of the Code of Federal Regulations, as published August 31, 2007; Financial Code Sections 1498 and 14960).
- 2) Provides that any person subject to the CFLL, who violates any provision of specified federal law or its implementing regulations, violates the CFLL (Section 670 of Public Law 109-364 or Section 232 of Title 32 of the Code of Federal Regulations, as published August 31, 2007; Financial Code Section 22345).
- 3) Provides that any person subject to the CDDTL, who violates any provision of specified federal law or its implementing regulations, violates the CDDTL (Section 670 of Public Law 109-364 or Section 232 of Title 32 of the Code of Federal Regulations, as published August 31, 2007; Financial Code Section 23038).
- 4) Provides that any state-chartered bank or state-chartered credit union, which does not market or extend refund anticipation loans to covered borrowers, and any person subject to the CFLL or CDDTL that does not market or extend loans subject to Section 670 of Public Law 109-364 or Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, to

borrowers covered by those provisions, is not in violation of Section 394 of the Military and Veterans Code (Financial Code Sections 1498, 14960, 22345, and 23038).

- 5) Prohibits a person who provides lending or financing from discriminating against any person with respect to the terms of a loan or financing, based on that person's membership in the military or naval forces of California or the United States. Provides, however, that this prohibition does not apply to persons who do not market or extend loans to borrowers covered by Section 670 of Public Law 109-364 and Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007 (Military and Veterans Code Section 394).

EXISTING FEDERAL LAW:

- 1) Updates to the MLA, and the rules and regulations that implement that act, require specified lenders that provide lending services to military members and their dependents to follow updated rules. These rules prohibit the specified creditors from:
 - a) Charging a "covered borrower" a Military Annual Percentage Rate, as defined, of greater than 36%.
 - b) Requiring these borrowers to submit to arbitration if disputes arise involving their loans.
 - c) Charging these borrowers prepayment penalties.

Creditors subject to the new rules are also required to provide specified, enhanced disclosures to covered borrowers regarding the borrowers' payment obligations.

- 2) Defines a covered borrower as an active duty member of the armed forces or armed forces reserves or a full-time member of the National Guard. Military dependents covered under the rules include spouses, children under the age of 21 (or under the age of 23 if enrolled in school full-time), parents and parents-in-law, and unmarried dependents who do not fit into any of the aforementioned categories.
- 3) Requires creditors, as specified, to check the military status of a prospective borrower before extending credit to that borrower. Creditors must either check the MLA database administered by the Department of Defense or use a credit report obtained from a nationwide consumer reporting agency or a reseller of such a report.
- 4) Provides, with two exceptions, that the new rules cover those who offer or extend credit to a borrower, primarily for personal, family, or household purposes, when that credit is subject to a finance charge or is payable in no more than four installments. The two exceptions include residential mortgage debt and automobile-secured purchase money loans.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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.

Discussion: Federal law continues to evolve in order to protect members of the military and their families from predatory lending. In California, the Department of Business Oversight (DBO) provides regulatory oversight for all licensed lenders in the state. Conforming state and federal law allows DBO to use its regulatory authority to enforce these laws with licensed lenders. This bill accomplishes that task. According to the author's office:

In 2015, the federal government strengthened several of the protections originally authorized in 2007 (Federal Register Volume 80, Number 140, July 22, 2015, pp 43560-43612; regulations effective October 1, 2015; compliance required by October 3, 2016). The more recent federal regulations modify the definitions of covered borrower to more closely match definitions contained in the MLA, cover more transactions than were covered under the 2007 regulations, add to the disclosures that creditors must provide to covered borrowers, and require creditors to use a more reliable method than the borrower self-certification that was previously required when determining whether an applicant for consumer credit is a covered borrower.

A coalition of veterans organizations note, "California is the home to the largest number of active military and veterans of all the 50 states. Currently, California law does not reflect the recent changes to federal lending regulations. We support your legislation to make conforming changes to California law to allow California's lending regulator to enforce the new federal protections for military borrowers and their families."

There is no opposition on file.

REGISTERED SUPPORT / OPPOSITION:

Support

American G.I. Forum of California
American Legion, Department of California
AMVETS, Department of California
California Association of County Veterans Service Officers
California State Commanders Veterans Council
Military Officers Association of America, California Council of Chapters
Public Counsel
Vietnam Veterans of America, California State Council

Opposition

None on file

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