

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON MILITARY AND VETERANS AFFAIRS

James Ramos, Chair

SB 1311 (Eggman) – As Amended June 16, 2022

SENATE VOTE: 38-0

SUBJECT: Veterans: protections

SUMMARY: Strengthens existing consumer protection laws for military servicemembers. Specifically, **this bill:**

- 1) Allows that, for a small claims action, a plaintiff who is a servicemember is not required to personally appear if the servicemember is assigned to a location more than 100 miles from the court where the action is proceeding, or is otherwise unable to personally appear due to the performance of military duty.
- 2) Authorizes the servicemember to appear via video appearance for a small claims action.
- 3) Clarifies that the representative appearing on the servicemember's behalf for a small claims action is serving without compensation other than compensation from the United States or the State of California, and except as to representatives who are employed by the United States or the State of California, the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year.
- 4) Prohibits a person, in connection with any transaction or any sale of goods or services, from electronically accessing a Common Access Cards (CAC) issued to a servicemember, place or require the placement of such a CAC in a smart card reader, request or require entry of the personal identification number (PIN) associated with such a CAC, or require a servicemember to log in to any Department of Defense or, in the case of a member of the Coast Guard, Department of Homeland Security computer system. Voids a transaction or sale entered into in violation of these provisions.
- 5) Prohibits a person from conditioning the receipt of a military or veteran discount, in any form, on the waiver by a recipient of the discount of any right the person has under state or federal law. Any such waiver, and any other waiver of a right provided to servicemembers, former servicemembers, or their dependents by this code, is void.
- 6) Makes a security interest in personal property other than a motor vehicle, off-way vehicle, trailer, vessel, or aircraft void, and unable to be perfected, if it would cause a loan procured by a covered member in the course of purchasing the personal property to be exempt from the requirements of the federal Military Lending Act.
- 7) Makes a security interest in a motor vehicle void, and unable to be perfected, if it would cause a loan procured by a covered member in the course of purchasing the motor vehicle to be exempt from Section 987 of Title 10 of the United States Code, and the loan also funds the purchase of a credit insurance product or credit-related ancillary product.

- 8) Specifies that a lessee can terminate the lease of a motor vehicle if while in a period of military service, the lessee executes the lease and then receives military orders for a change of permanent station location that is more than 100 miles from the prior duty station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.
- 9) Specifies that any mortgage payments deferred are due and payable upon the sale of the property or other event specified in the documents creating the obligation permitting the lender to accelerate the loan, other than a deferral of payments as authorized.
- 10) Deletes provisions of law related to when mortgage payments delayed are due and payable and instead provides that in the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the obligation becomes due upon either of the following:
 - a) The sale of the property or other event specified in the documents creating the obligation permitting the lender to accelerate the loan, other than a deferment of payments authorized under the Act; or
 - b) Further encumbrance of the property other than for preservation or protection of the property that would cause the obligation to become due and payable under the terms of the contract or other instrument evidencing the obligation.
- 11) Prohibits a foreclosure or repossession of property from taking place during the deferment period unless ordered by a court or agreed to by the parties to the obligation.
- 12) Makes a person who violates a statutory cause of action for unfair competition if the violation is perpetrated against one or more servicemembers or veterans, liable for an additional civil penalty not to exceed \$2,500 for each violation, as provided.

EXISTING LAW:

- 1) Provides, pursuant to the federal Servicemembers Civil Relief Act (SCRA), for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service in order to enable servicemembers to devote their entire energy to the defense needs of the Nation. (United States Code, Title 50 Section 3902.)
- 2) Provides that the SCRA protections are extended to members of the National Guard and Reserve, from receipt of orders to report for duty to the date that they report, and include a servicemember's family members (such as a spouse or a child). In addition, if a servicemember has provided over half of a person's support for the 180 days immediately preceding an application for relief under the SCRA, that person is considered a dependent also. (United States Code, Title 50 Section 3917.)
- 3) Prohibits, under the Military Lending Act, a creditor from imposing an annual percentage rate of interest greater than 36 percent with respect to a consumer credit card extended to specified servicemembers or their dependents, and prohibits creditors from extending

consumer credit to specified servicemembers or their dependents with specified terms. (United States Code, Title 50 Section 987.)

- 4) Provides that in a small claims action a plaintiff is not required to personally appear, and may submit declarations to serve as evidence in their claim or allow another individual to appear and participate on their behalf, if:
 - a) The plaintiff is serving on active duty in the United States Armed Forces outside this state;
 - b) The plaintiff was assigned to their duty station after their claim arose;
 - c) The assignment is for more than six months;
 - d) The representative is serving without compensation, and
 - e) The representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. (Code of Civil Procedure Section 116.540 (a).)
- 5) Prohibits a person, in connection with the collection of any obligation from a member of the active militia or a member of the active or reserve components of the Armed Forces, from contacting the member's military unit or chain of command without the written consent of the member given after the obligation becomes due and payable. (Military and Veterans Code Section 401 (b).)
- 6) Authorizes a lessee on a lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation to terminate the lease at any time after the lessee enters into military service or the lessee meets any of the following:
 - a) During the term of the lease, enters a period of military service under a call or order specifying a period of not less than 180 days;
 - b) During the term of the lease, enters a period of military service under a call or order specifying a period of less than 180 days, and then receives orders extending the period of military service to a period of not less than 180 days; and
 - c) While in a period of military service, executes the lease and then receives military orders for a change of permanent station from a location in the continental United States to a location outside the continental United States, or from a location in a state outside the continental United States to any location outside that state, or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days. (Military and Veterans Code Section 409 (a)(2).)
- 7) Provides a number of benefits and protections to servicemembers and their families pursuant to the California Military Families Financial Relief Act (Act) including the following:
 - a) The deferral of payments due on installment contracts, such as credit cards, retail credit accounts, mortgages, property taxes, up to two vehicle loans, payment of property tax or

- special assessment, as specified, obligations to a utility company, and a student loan. If a lender defers payments on a closed end credit obligation or an open-end credit obligation with a maturity date the lender is required to extend the term of the obligation by the amount of months the obligation was deferred. (Military and Veterans Code Section 800 (a) & (e).)
- b) Provides that any mortgage payments delayed are due and payable upon the earlier of: (1) the sale of the property or other event specified in the document creating the obligation permitting the lender to accelerate the loan, other than a deferment of payments authorized under the Act; (2) further encumbrance of the property; or (3) the maturity of the obligation as defined under the terms of the document creating the obligation or, if applicable, extended as specified. (Military and Veterans Code Section 802 (f).)
- c) Allows the reservist to defer the payment of principal and interest on the specified obligations and prohibits foreclosure or repossession of the property on which payment had been deferred during the specified time period. (Military and Veterans Code Section 804.)
- 8) Provides a statutory cause of action for unfair competition, including any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, and makes a person who engages or proposes to engage in unfair competition liable for a civil penalty of not more than \$2,500, per violation. A person who engages or proposes to engage in unfair competition against one or more senior citizens or disabled persons may be liable for an additional penalty of \$2,500, as specified. (Business and Professions Code Sections 17206 – 17206.1.)

FISCAL EFFECT: According to analysis by the Senate Committee on Appropriations:

The Department of Justice (DOJ) reports costs in the hundreds of thousands for increased staff resources (Special Fund – Unfair Competition Law Fund) and costs in the thousands for overtime for existing staff to order and process additional fingerprints (General Fund).

Unknown, potentially-significant cost pressures on the courts for workload to adjudicate charges brought under the expanded provisions proposed by this bill (General Fund).

COMMENTS: According to the author:

“Senate Bill 1311 would extend additional legal and financial protections for active duty and reserve component service members and their families. SB 1311 stems from discussions between the Attorney General and military personnel, JAG legal assistance attorneys, command financial counselors, and other members of the military and veterans community, including a July 2021 roundtable event at Naval Base San Diego, and from the California Department of Justice’s enforcement experience.

Existing law, including the federal Servicemembers Civil Relief Act (SCRA) and California’s counterpart provisions in the California Military and Veterans Code (CMVC), provide military service members and their dependents a wide range of legal protections that are intended to address the unique circumstances of military service, and

allow service members to focus on performing their missions, on protecting their fellow servicemembers, and on coming home safely to their families.

These statutes are “read with an eye friendly to those who dropped their affairs to answer their country’s call.” *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948) (citing *Boone v. Lightner*, 319 U.S. 561, 575 (1943)). And they are equally critical to ensuring that servicemembers, including members of our own California National Guard, are able to respond effectively to fires, earthquakes, pandemics, and other state emergencies here in California.

SB 1311 draws from the Department of Justice’s experience protecting and working with military families in California and seeks to strengthen California’s existing military consumer protection laws where the need exists. California service members and their families deserve our unwavering support, and this measure recognizes the demands that military life and deployment places on them and ensures that their rights are fully protected under the law.”

Consumer protections and active duty military service.

Military servicemembers and their dependents enjoy significant consumer protections through a variety of existing laws, including the Federal Military Lending Act, the servicemembers Civil Relief Act, and provisions of the California Military Veterans Code. Active duty servicemembers are provided with these protections because military service imposes unique conditions upon servicemembers and their families that can make it difficult to impossible to service debt, or fulfill long-term contracts. Military service is unpredictable and intense, requires a high degree of mobility and often involves servicemembers being deployed to places where they may not be able to receive mail or access the internet for long periods of time.

The Department of Defense and the various branches of the armed forces regard these civil protections as important to maintaining force readiness, and violations of these protections as, therefore, a threat to readiness and the well-being of servicemembers and military families. According to the Federal Deposit Insurance Corporation, “The Military Lending Act, enacted in 2006 and implemented by the Department of Defense (DoD), protects active duty members of the military, their spouses, and their dependents from certain lending practices. These practices could pose risks for servicemembers and their families, and could pose a threat to military readiness and affect servicemember retention.”

Despite efforts on both the state and federal level to provide these protections to members of the U.S. armed forces, many still suffer significant abuse and exploitation. For instance, businesses will often condition their offers of military discounts with numerous pages of terms and conditions, including waivers of rights under state and federal law.

In one instance, a U.S. Navy senior noncommissioned officer who had stored valuable car parts and materials with a storage company, returned after deployment to find the company had

auctioned off his property.¹ The sale had apparently occurred as a result of the company requiring the sailor, a Master Chief Petty Officer with 30 years of service, to waive significant protections, including a protection preventing companies from selling the contents of a storage lot without a court order, prior to renting the unit. The bill would end this practice in California by, among other provisions, expressly prohibiting businesses from conditioning military discounts on the servicemember or veteran waiving their rights under state or federal law.

The financial exploitation of junior enlisted servicemembers, in particular, is widely regarded as a long-standing problem within the armed forces. A newly-minted soldier, sailor, airman or marine fresh from basic training, with no need to pay for housing or food, and with little understanding yet of the domestic burdens of military service, can quickly find themselves in financial peril.

GAP Waivers and this bill.

Guaranteed asset protection waivers (GAP waivers) are purported to protect car owners whose vehicles are declared a total loss after an accident, or are stolen and unrecovered, while the owner still owes money on the loan used to purchase the car. Low-income owners might be unable to afford comprehensive auto insurance that includes GAP coverage, and instead purchase the minimum liability policy required under law. In this situation, the owner may be doubly harmed in the event of a wreck or theft. They will no longer have a vehicle to drive, and because they are still repaying the loan, they cannot obtain financing to buy a replacement vehicle.

To address this risk, car buyers, particularly low-income car buyers, often purchase GAP waivers: add-on products to auto loan contracts under which the lender agrees to waive some or all of the remaining balance on the car loan if the car is subject to a total loss or is stolen and never recovered. The full cost of the GAP waiver is included as an upfront add-on charge for the vehicle, and the buyer makes interest payments on the cost of the waiver over the life of the loan. GAP waivers are generally sold in the indirect-lending context, in which dealers originate auto loans at the time of sale, and then sell the conditional sales contract governing the purchase and financing of the car, to a third-party lender.

Even though they resemble insurance products, GAP waivers sold by dealers are carved out from regulation under the Insurance Code. (Insurance Code Section 1758.992 (h)(2).) But there is no corresponding statute setting forth the specific responsibilities of sellers and lenders and the rights of buyers of GAP waivers. Consequently, purchasers of GAP waivers are often subject to significant consumer abuses. One such abuse is the practice by various institutions of bundling GAP waivers with purchase loans for servicemembers, and in the process of doing so, stripping the servicemember of existing consumer protections under the Federal Military Lending Act.

The opposition contends that this bill would “[prevent] military personnel or veterans to avail themselves of mainstream consumer products – voluntary protection products (“VPPs”) – just

¹ Department of Justice Files Suit Against Storage Company for Unlawfully Selling Servicemembers’ Belongings, Department of Justice: Office of Public Affairs (March 16, 2015) at <https://www.justice.gov/opa/pr/departments-justice-files-suit-against-storage-company-unlawfully-selling-service-members>.

because they serve our country.” However, no portion of the bill appears to prevent the sale of such products unless the purchase of the product would cause the loan to be exempt from the Military Lending Act. Prior to 2017, federal regulations promulgated pursuant to the MLA prevented servicemembers from losing protections under the MLA due to bundling products such as GAP waivers with purchase loans.²

However, the Trump administration rolled back this regulation, creating an opening for sellers to engage in exactly this practice.³ The language included in Section 5 of this bill appears to simply revert to the status quo prior to 2017. Servicemembers and veterans would still be able to purchase GAP waivers so long as the purchase does not effectively remove protections allotted them under the MLA. A servicemember may, for example, complete a second transaction at the dealership, or purchase a GAP waiver through an external source, such as their insurance provider.

It is worth noting that, while the coalition of lenders and auto dealers that have opposed this bill argue that it will have the unintended consequence of hoisting a new financial burden on servicemembers, it appears that purchasing GAP waivers at the dealership is often astronomically more expensive than acquiring it through an insurer. A 2017 study conducted by the National Consumer Law Center detailed that the average markup for GAP sold at a dealership was approximately 151%, an average of \$378 more than the dealer’s cost of \$251. (Van Alst, Carter, Levy, and Shavit, *Auto Add-Ons Add UP: How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing*, National Consumer Law Center (October 2017) p. 17 at https://www.nclc.org/images/pdf/car_sales/report-auto-add-on.pdf.) In contrast, insurance agents that sell GAP receive set commissions on each sale equaling the equivalent of an 11 – 18% markup. (Ibid.). Put briefly, GAP waivers appear to be significantly more affordable from secondary sources, such as an individual’s car insurance provider, than bundled with their car loan at the dealership.

As the opponents contend, GAP waivers are often valuable resources for all consumers purchasing new cars that can help cover significant amounts of debt from unfortunate accidents. The language in this bill does not appear to prevent the sale of GAP waivers to servicemembers or veterans, except in situations where such a purchase would cause the covered member to lose protections under the Federal Military Lending Act. In the event a servicemember wishes to purchase GAP, they may still access the product either through a secondary seller, such as their auto insurance provider, or even through the dealership at the point of sale in a separate transaction. The argument that by preventing the sale of GAP waivers bundled with the original purchase loans that would result in the loss of protections under the MLA this bill would undeniably result in the loss of access for all military servicemembers to these protections simply does not bear out.

² Military Lending Act Limitations on Terms of Consumer Credit Extended to servicemembers and Dependents, Defense Department (December 14, 2017) at <https://www.federalregister.gov/documents/2017/12/14/2017-26974/military-lending-act-limitations-on-terms-of-consumer-credit-extended-to-service-members-and>.

³ Arnold, *White House Takes Aim At Financial Protections for Military*, NPR (August 13, 2018) at <https://www.npr.org/2018/08/13/637992389/white-house-takes-aim-at-financial-protections-for-military>.

The Department of Defense.

The DoD is concerned specifically about what the DoD has called “hybrid loans.” In an amicus brief filed in January in the 4th Circuit Court of Appeals in *Davidson v. United Auto Credit Corporation*, the Department of Defense, joined by the Consumer Financial Protection Bureau, wrote:

“The MLA’s car-loan exception is not satisfied, however, by a hybrid loan—that is, a loan that finances a product bundle including both an exempt product (such as a car) and a distinct non-exempt product (such as optional GAP coverage). Such hybrid loans that bundle together standalone financial products like GAP coverage remain consumer credit subject to the statute’s protections for servicemembers.”

[...]

“Just as a lender could not bypass the MLA’s servicemember protections by bundling a standalone financial product such as a cash advance with a car loan, the same goes for GAP coverage. GAP coverage is a financial product, not a car product. It might help the owner pay off the loan when the car is totaled, but it does not help protect the car and does not further the purchase or use of the car. GAP coverage is thus distinct from and not appreciably related to the car being bought. And when a lender chooses to include financing for GAP coverage, that loan falls outside the statutory exception. This does not mean that lenders cannot offer hybrid loans, or a specific loan that finances GAP coverage; it just means that lenders must follow the statute’s protections in doing so.”

Arguments in support

This bill is sponsored by Attorney General Rob Bonta. It is supported by the California District Attorneys Association, the Consumer Federation of California, Nextgen California, and the San Diego Military Advisory Council. The Consumer Federation of California writes:

Unfortunately over the past few years, California has seen several instances of nefarious businesses unfairly targeting servicemembers and their families. The demands of military life, including lengthy deployments, can put a strain on families and make them more vulnerable to exploitation. Military and veteran benefits like the GI bill also attract unscrupulous businesses looking to drain these individuals’ bank accounts. For-profit colleges are an egregious example of this, claiming to offer servicemembers a valuable education but far more often delivering a lackluster or downright fraudulent experience.

SB 1311 helps put a stop to this unfair targeting of servicemembers strengthening consumer protections for these individuals. The California Attorney General, who is sponsoring SB 1311, has investigated and prosecuted several of these businesses, and crafted this bill based on the needs of servicemembers in these situations. Among the provisions, this bill imposes enhanced penalties for violations of the unfair competition law against servicemembers and veterans. The bill also enhances the ability of servicemembers to cancel auto leases when they are reassigned or deployed, which in and of itself is a very important reform.

California veterans have made a significant sacrifice for their country and they should feel confident that they are protected from businesses seeking to exploit them.

Arguments in opposition

Various credit union and financial services advocates oppose the bill unless amended, including the American Financial Services Association, the American Property Casualty Insurance Association, the California Credit Union League, the Consumer Credit Industry association, the Defense Credit Union Council, the Guaranteed Asset Protection Alliance, the Independent Auto Dealers Association of California, and the National Independent Auto Dealers Association. Stating concerns with the bill, the above organizations write jointly:

“The bill as written prevents military personnel or veterans to avail themselves of a mainstream consumer product – voluntary protection products (“VPPs”) -- just because they serve our country. Congress saw fit to pass the Military Lending Act to exempt securitized loans for personal property, such as water sport vehicle and trailers, and motor vehicles, enabling servicemembers to purchase and finance VPPs. This bill should not override their intent.

When consumers take on debt, they take on more financial risk. During the loan process, consumers may purchase VPPs like credit insurance, debt protection and Guaranteed Asset Protection (GAP) as a financial safety net. For example, GAP products are designed to protect consumers from what can be a large financial loss when their vehicle is, due to damage or theft, considered a total loss and the consumer owes a lender more than the value of the vehicle. When this occurs, the physical damage protection provided by an auto insurance policy will pay the depreciated value of the vehicle. That amount may not be adequate to pay-off the loan.

Given the high cost of motor vehicles, the difference (or “gap”) between these two amounts can be substantial, and this unique product provides a consumer with the security and protection needed to avoid having to continue to pay for a vehicle that they no longer own.

Consider the following should 408.1.(c) go into effect, a scenario occurring often with a young servicemember lacking funds for a down payment taking out the maximum loan amount to purchase the vehicle they desire, the most common car loan now reaching 72 months, with rapid vehicle depreciation considering the current inflated purchase prices for vehicles:

- servicemember borrows \$30,000 to purchase a vehicle
- servicemember still owes \$22,000 at the time their vehicle is destroyed
- the insurer values the vehicle at \$17,000 at the time of the claim
- servicemember now owes \$5,000 for a vehicle they can no longer use

- GAP coverage would waive the \$5,000 balance and allow the servicemember to replace the vehicle
- 408.1.(c) would leave the servicemember owing \$5,000 because they had no access to GAP coverage

Approximately 28 million U.S. households hold some form of VPP and received \$1.2 billion in benefits in 2020. It's no surprise then that academic research fielded by the highly regarded University of Michigan Survey Research Center shows that:

- 85% of installment loan borrowers indicated credit insurance and debt protection products are a good idea -- *a consistently high rating over a 40-year span of similar surveys.*
- About 90% of GAP purchasers would purchase it again and recommend it to others

With almost 40% of American households saying an unforeseen \$400 expense would be challenging to handle (pay off in the same month), coupled with inflationary trends and an expected downward correction in used car values, borrowers need access to affordable financial protection products now more than ever.”

REGISTERED SUPPORT / OPPOSITION:

Support

American Legion, Department of California
 Amvets, Department of California
 California Association of County Veterans Service Officers
 California Department of Justice
 California District Attorneys Association
 California Low-income Consumer Coalition
 California State Commanders Veterans Council
 Consumer Attorneys of California
 Consumer Federation of California
 Military Officers Association of America, California Council of Chapters
 National Consumer Law Center, INC.
 Navy Region Southwest
 Nextgen California
 San Diego Military Advisory Council (SDMAC)
 Swords to Plowshares - Vets Helping Vets
 Vietnam Veterans of America, California State Council

Opposition

American Financial Services Association

Oppose Unless Amended

Guaranteed Asset Protection Alliance

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