Date of Hearing: March 15, 2022

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 1730 (Davies) – As Introduced January 31, 2022

PROPOSED CONSENT

SUBJECT: PENAL DAMAGES: VETERANS

KEY ISSUE: SHOULD VETERANS WHO PROVE THAT THEY ARE TARGETS OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES BE ELIGIBLE FOR TREBLE DAMAGES, JUST AS SENIOR CITIZENS AND DISABLED PERSONS CURRENTLY ARE?

SYNOPSIS

Veterans are, regrettably, frequent targets of frauds and scams. Individuals pretending to work for the United States Department of Defense or the Department of Veterans Affairs seek to persuade veterans to sign over their military pensions or other benefits. Fake charities skim donations intended to aid veterans who are disabled or indigent. Affinity scams exploit loyalty and trust in fellow service members to sign veterans up for worthless products and services.

This bill offers one approach to punishing and deterring such fraud. Existing California law has, for decades, permitted senior citizens and people with disabilities—two other groups regularly victimized by fraudsters—to obtain treble damages if they prove they were the victims of unfair and deceptive acts and practices. The function of trebling damages is two-fold: it punishes those who victimize a vulnerable group that deserves society’s support, and it deters future such frauds.

This bill is co-sponsored by the Children’s Advocacy Institute, Consumer Protection Policy Center, and Veterans Legal Clinic, all at the University of San Diego School of Law. It is supported by two nonprofit legal aid organizations (Housing and Economic Rights Advocates and Public Counsel), two veterans groups (Swords 2 Ploughshares and Iraq and Afghanistan Veterans of America), Consumer Attorneys of California, and Consumer Federation of California. There is no opposition on file to this measure.

SUMMARY: Adds veterans to the categories of persons who are eligible for treble damages in successful cases to redress unfair or deceptive acts or practices, or unfair methods of competition. Specifically, this bill:

1) Defines “veteran” as having the same meaning that the term has under the State Civil Service Act: a person who has served full time in the armed forces in time of national emergency or state military emergency or during any expedition of the armed forces, and who has not been dishonorably discharged or released from that service.

2) Provides that the trier of fact may treble certain remedies in an action brought by, on behalf of, or for the benefit of veterans in order to redress unfair or deceptive acts or practices or unfair methods of competition.
EXISTING LAW:

1) Defines the following terms:
   a) “Senior citizen” means a person who is 65 years of age or older. (Civil Code Sections 1761 (f), 3345 (a).)
   b) “Disabled person” means a person who has a physical or mental impairment that substantially limits one or more major life activities. (Civil Code Sections 1761 (g), 3345 (a).)

2) Requires—in an action to redress unfair or deceptive acts or practices, or unfair methods of competition—that the trier of fact consider the following factors, in addition to other appropriate factors, in deciding the amount of the fine, civil penalty, other penalty, or other remedy:
   a) That the defendant knew, or should have known, that the defendant’s conduct was directed to one or more senior citizens or disabled persons.
   b) That the defendant’s conduct caused one or more senior citizens or disabled persons to suffer any of the following:
      i) Loss or encumbrance of a primary residence, principal employment, or source of income.
      ii) Substantial loss of property set aside for retirement, or for personal or family care and maintenance.
      iii) Substantial loss of payments received under a pension or retirement plan or a government benefits program, or of assets essential to the health or welfare of the senior citizen or disabled person.
   c) That one or more senior citizens or disabled persons were substantially more vulnerable than other members of the public to the defendant’s conduct because of age, poor health, impaired understanding, restricted mobility, or disability, and actually suffered substantial physical, emotional, or economic damage resulting from the defendant’s conduct. (Civil Code Section 3345 (b).)

3) Provides that if the trier of fact makes an affirmative finding as to one of the factors set forth in 2) a), b), or c), that the trier may increase remedies up to three times their statutory maximum, or if no maximum is specified, up to three times the amount the trier would have imposed absent that finding. (Ibid.)

4) Specifies that any remedy to be so increased must have the purpose or effect to punish or deter. (Civil Code Section 3345 (b).)

5) Clarifies that restitution is not a remedy eligible for potential trebling under 4). (Clark v. Superior Court (2010) 50 Cal. 4th 605, 614.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.
COMMENTS: This bill would increase the potential damages that could be assessed in cases where veterans are proven to have been defrauded. According to the author:

The bravest and most courageous members of our community are the women and men of the Armed Forces who dedicate their lives to protecting our country. Unfortunately, there are entities and organizations who take advantage of these patriots. Veterans and their families are prime targets for scams and cons by unscrupulous businesses who prey on these individuals for their rightly-earned benefits. It’s time California cracked down on these entities and ensured we have the strongest protections and regulations available to protect against fraud and deceit.

*There is significant evidence that veterans are targeted for fraud.* The defrauding of veterans is a significant problem, both nationally and in California. According to an American Association of Retired Persons (AARP) study provided by the bill’s sponsors, “veterans, military, and their families continue to be significantly targeted more by con-artists and are losing money more than [civilians] when approached by similar scams or schemes.” Among the more alarming findings in the AARP study are the following responses from survey participants:

- 78% of military/veterans had been targeted by scams related to their military service or benefits.
- 1 in 3 military/veterans had lost money to service-related scams.
- Nearly half of military/veterans had erroneously signed over pension or disability benefits to third parties.


California’s Attorneys General have recognized the targeting of veterans by fraudsters. In 2012, then-Attorney General, now Vice-President Kamala Harris sued the officers and directors of Help Hospitalized Veterans, a California charity, for improperly diverting millions of dollars in donations that were meant to support injured veterans. A press release announcing the lawsuit, which ultimately resulted in a $2.5 million settlement, noted:

More than 2 million of the nation’s 22 million veterans live in California, the highest number for any state. Protecting these veterans, and active-duty military, from financial scams has been a priority for Attorney General Harris. This focus resulted from a survey of veterans who work in the [California] Department of Justice that was undertaken to inform Department efforts on the matter. (Cal. Dep’t of Justice, *Attorney General Kamala D. Harris Files Lawsuit Seeking Removal of Directors and Recovery of Funds for Veterans Charity* (Aug. 9, 2012), available at https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-files-lawsuit-seeking-removal-directors-and.)

Both former Attorney General Xavier Becerra and current Attorney General Rob Bonta have issued detailed consumer alerts warning of scams targeting veterans, service members, and their families. The types of scams identified in these alerts include:

- Identity theft, often perpetrated by individuals pretending to be from the U.S. Department of Defense or Department of Veterans Affairs.
• Home loan scams, in which individuals falsely claiming to be affiliated with the government or the Department of Veterans Affairs seek to persuade veterans with mortgages to obtain loan modifications or mortgage refinancings.

• Benefits fraud, including wrongfully inducing veterans to transfer their assets to a third party, sometimes by pretending to assist veterans in securing benefits.

• Debt collection efforts by collectors who falsely and illegally threaten that failure to pay a debt could result in demotion, revocation of security clearances, and even court-martial.

• Affinity fraud, through employing salespeople with military backgrounds, the misuse of service organization’s seals, and other means of taking advantage of veterans’ trust in the military.

• For-profit colleges that make false promises in order to secure G.I. Bill money.

• Fake charities that pretend to support veterans and servicemembers, but use few of their donations for charitable purposes.


This bill’s rationale: punishment and deterrence. The theory underlying this bill is two-fold: first, veterans are a group that is disproportionately targeted by and vulnerable to consumer fraud, just as seniors and people with disabilities are; and second, providing for treble damages will ensure justice for a population deserving of protection and also deter future fraud.

As the bill’s co-sponsors write, “Given the evidence of veterans being targets of scams and their sacrifice, unethical businesses should be as discouraged to target veterans as seniors and the disabled, and suffer the same consequences if they are not discouraged.”

The types of cases that would be eligible for treble damages under this bill. Damages could be increased under this bill in a case that meets all of the following criteria:

1. Any plaintiff eligible for increased damages would have to be a veteran, as defined under the State Civil Service Act. (Government Code Section 18500 et seq.) Class actions brought by veterans would also be eligible for increased damages under the bill.

2. Plaintiffs would have to prove that they have been the victims of unfair or deceptive acts or practices, or unfair methods of competition. Such cases are typically brought under, but are by no means limited to, statutes such the Consumers Legal Remedies Act (Civil Code Section 1750 et seq.); the Elder Abuse and Dependent Adult Civil Protection Act (Welfare and Institutions Code Section 15600 et seq.); and those provisions of the Unfair Competition Law (Business and Professions Code Section 17200 et seq.) that give rise to an award of damages.
3. The applicable statutory remedies would have to provide for a fine, civil penalty, punitive damages, or other form of monetary remedy intended to punish or deter misconduct. Accordingly, restitution would be ineligible for trebling under this bill. (See Clark, supra, 50 Cal. 4th at 614.) The Ninth Circuit Court of Appeal has similarly held that contract damages are ineligible for trebling, though there appears to have been no binding statement on this point of law by a California state appellate court. (See Sanchez v. Monumental Life Ins. Co. (9th Cir. 1996) 102 F.3d 398, 405 [“[The] argument that [Civil Code Section 3345] would allow [the plaintiff] to treble the otherwise available contract damages is erroneous.”].)

4. The trier of fact—whether a jury, a judge (in a bench trial), or an arbitrator—would have to make an affirmative finding as to one of the following: that (1) the defendant knew or should have known that its conduct was directed at one or more veterans; (2) the defendant’s conduct caused one or more veterans to lose something of value, such as their primary residence, employment, source of income, or retirement assets; or (3) one or more veterans was substantially more vulnerable to the defendant’s conduct than other members of the public due to age, poor health, or disability, and they actually suffered damage from the defendant’s conduct. Note that, depending on the facts of the particular case, all of the scams identified by Attorneys General Becerra and Bonta above could meet these criteria.

Existing Civil Code Section 3345, which applies these standards to allow for increased damages in cases involving seniors and/or people with disabilities, has been in effect since 1988. Research indicates that the statute has been well-tailored: it has been applied in cases in which these vulnerable populations have been taken advantage of, and not extended to cases where their vulnerabilities were not at issue. Accordingly, it is reasonable to expect that this bill would prove similarly well-tailored to ensure that heightened damages are available specifically in cases where veterans have been targeted for fraud.

ARGUMENTS IN SUPPORT: Consumer Federation of California emphasizes that veterans, given the many other burdens they must bear, should not also have to fear consumer fraud:

Veterans have long been the targets of scam artists, whether working with companies, charities or individually. In 2020 alone, veterans reported over $66 million in losses to the Federal Trade Commission, and this number significantly undercounts the losses, as it does not include fraud unreported due to fear, shame or bureaucratic structures. These scams often come in the form of fake military charities or schemes aimed at getting veterans to sign over their VA pensions. Millions of veterans rely on their military pensions to survive and are extremely vulnerable to the loss of that income stream. Many veterans already deal with the struggles of returning to civilian life, mourning fallen soldiers, post-traumatic stress and many other challenges, which is why veterans are specifically targeted in the first place. Adding to all of that, dealing with the stress of losing their savings to a scam, and not being properly compensated after, should not be an additional burden and should be strongly discouraged by law, as is the case in AB 1730.

REGISTERED SUPPORT / OPPOSITION:

Support
Children’s Advocacy Institute, University of San Diego School of Law (co-sponsor)
Consumer Protection Policy Center, University of San Diego School of Law (co-sponsor)
Veterans Legal Clinic, University of San Diego School of Law (co-sponsor)
Consumer Attorneys of California
Consumer Federation of California
Housing and Economic Rights Advocates
Iraq and Afghanistan Veterans of America
Public Counsel
Swords 2 Ploughshares

Opposition

None on file

Analysis Prepared by: Jith Meganathan / JUD. / (916) 319-2334