
THE CONSUMER FINANCE PODCAST – CALIFORNIA UPDATES PROTECTIONS FOR SERVICE MEMBERS AND VETERANS

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Chris Willis:

Welcome to the *Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper's Consumer Financial Services Regulatory practice, and I'm really glad you joined us for our episode today, which is about a new development under California law, relating to the protection of service members.

But before we jump into that new development, let me remind you to visit and subscribe to our blog, consumerfinancialserviceslawmonitor.com, where we have daily updates about everything that's going on in the consumer finance world. And while you're at it, check out our other podcasts. We have lots of them. We have [FCRA Focus](#), all about the Fair Credit Reporting Act. [The Crypto Exchange](#), which of course is about crypto matters. And our privacy and data security podcast called [Unauthorized Access](#). All of which are available on all popular podcast platforms.

And speaking of podcast platforms, if you like this podcast, let us know. Leave us a review on your podcast platform of choice and let us know how we're doing. Now, as I said, today we're going to be talking about a new California law, California Senate Bill 1311, which recently became enacted in California and expands certain protections for service members under California law.

And so of course, if we're going to talk about anything relating to the military, we have to have Tony Kaye on the podcast. Tony is one of our partners in the Consumer Financial Services Group, living in Salt Lake City, and Tony is our subject matter experts on all things military, Servicemember's Civil Relief Act, Military Lending Act, and now this new California law. Tony, welcome to the podcast.

Tony Kaye:

Thanks. Good morning. It is really nice to be here bright and early.

Chris Willis:

We're talking about California SB 1311, which as I said, was recently enacted. Give us a little bit about the background about the statute.

Tony Kaye:

So, this is a law that was drawn up at the instance of the California Attorney General's Office, some folks in the Consumer Protection Division there. They had met with veterans and service members in San Diego and came up with various ideas to fix problems with their current Military and Veterans Protection Code. And we have a new law that's not that aggressive in some areas, but really aggressive in others, when it comes to how it's treating existing protections under the Military Lending Act.

Chris Willis:

So, let's unpack that, Tony. Let's talk about the provisions that are aimed particularly at the Military Lending Act. What's going on there?

Tony Kaye:

There, as you know, Chris, there is a provision in the Military Lending Act that exempts from the coverage of the Military Lending Act, loans that are purchase money and secured by personal property, and those exemptions apply specifically to motor vehicles and really any form of personal property. This statute is trying to unwind those.

And I mean, you will recall with Auto Finance, that the CFPB went through a whole rigmarole with various guidance, where they were really trying to find a way to make gap insurance and other products like that eradicate the exemption for auto finance lenders. And by 2017, they withdrew their guidance and were back to business as usual when it comes to the ability to finance gap insurance.

This statute, as it's aimed in motor vehicles, would say that if you finance gap insurance or credit insurance, or other credit-related ancillary products along with the vehicle, that you effectively lose your security interest, because the statute is voiding any security interest that would cause a loan to be not covered by the Military Lending Act.

Chris Willis:

That sounds pretty draconian, Tony. And so, let me make sure I understand that. If you're an auto finance company or an auto dealer in the first instance, signing a retail installment contract with a customer to purchase a vehicle and there's a gap product included, that would under the terms of the Federal Military Lending Act, not be subject to the MLA, because there's a purchase money security interest in the automobile.

Tony Kaye:

Correct.

Chris Willis:

But under the California law, you wouldn't be able to take a security interest in the automobile if there's gap on the contract. Do I have that right?

Tony Kaye:

That's the intent of the statute. Yeah. I've read the legislative history on this, and the answer to it, according to the Attorney General is, look, you can't finance gap insurance with the financing of the car, but a service member could buy that financing separately, in a separate transaction with the dealer, which is a little strange if you think about it, or buy it from their own insurance carrier.

Now, the problem with the latter solution is that a lot of insurance carriers don't actually sell gap insurance, so it's not available. One thing that could be helpful in this, is that the statute's aimed at credit insurance and credit insurance is defined to include gap insurance, but it doesn't include something that in the industry is called a gap waiver, which is really just a term of the retail installment contract that says that the balance of the loan is waived if the car is totaled. That, we think will still fly in California, the way their insurance code is written. But if you're just

trying to sell ordinary gap insurance, it has to be in a separate transaction according to the Attorney General.

Chris Willis:

Got it. Okay. So, we talked for a second about the provisions of the statute on auto finance transactions. What about other personal property finance transactions? Like, let's say you're buying some home appliances or something. What does the statute say about that?

Tony Kaye:

Okay, well, this is really crazy. So, the statute here is basically saying that those are loans. There's a similar exemption for personal property. We went through that. If you're taking a security interest, it's going to be void, there's basically no way right now, at least on the face of the statute, to secure a loan to purchase personal property.

There are some exemptions to that. Obviously, there's the motor vehicle exception, they're treating that differently. So, that's only going to be voided or lost if you try to finance gap insurance or something like that. And then they've also exempted off highway vehicles, trailers, boats, things like that. So, you can still buy a boat and give the lender security interest. But if you want to buy a washer dryer, the lender getting a security interest is going to be a real challenge, which is probably going to drive up the credit for those things, assuming that the financiers in this arena just don't back away completely from financing loans to service numbers.

Chris Willis:

So, just to be clear, Tony, the voiding of security interests in non-vehicle personal property is independent of whether there's insurance or any other term of the contract. It's just, you cannot have a security interest in non-vehicle personal property under this new statute. Is that right?

Tony Kaye:

Correct. It's not conditioned on whether or not you are also financing a credit-related product or credit insurance.

Chris Willis:

And so as you mentioned, it sounds like that might have a negative impact on the availability of personal property point of sale financing for service members in California. Is there any possibility that these provisions, the ones you were talking about, both with respect to vehicles and non-vehicles, are preempted by any federal law?

Tony Kaye:

It doesn't appear that way. The Military Lending Act has its own preemption provisions, and they're mirrored in the Department of Defense Regulations implementing the Military Lending Act. And the idea there is that anything that would reduce the protections of the Military Lending Act would be preempted. But here, you're creating protections for service members, whether they make market sense or not, that are enhanced over and above what the Military Lending Act provides. So, we don't see a good [inaudible 00:07:20] argument.

Chris Willis:

So, Tony, besides the provisions relating to security interests in vehicle and non-vehicle purchase finance transactions, are there any other protections that were expanded by the statute, that our listeners need to be aware of?

Tony Kaye:

Yeah, there are several. The new statute prohibits lenders or other businesses, really, from using a service member's common access card or the PIN number associated with a common access card. It also prevents them from requiring a service member to log into any Department of Defense, or Department of Homeland Security computer systems. And that's for obvious reasons. There's security issues when that happens. And there's no reason for a service member to have to do any of those sorts of things in order to buy a product or obtain a loan.

The statute prohibits individuals and businesses from conditioning the receipt of a military or veteran discount on a service member's waiver of his or her rights under state or federal law. This was apparently one of the problems raised in San Diego, by members of the military and veterans. The statute will void the waiver of any right that a service member may have given in that context.

Now, the penalties have gone way up for violation of the Unfair Competition Code alone, and it's a \$2,500 per violation penalty. But if a business commits a violation of the Unfair Competition Code now, against a service member, there's an additional \$2,500 penalty. So, the penalty's been essentially increased to \$5,000 for service members.

And then, there are some other minor changes that I don't think are going to cause too much trouble in the industry. There's one aimed somewhat at the Servicemember's Civil Relief Act. So, as you may recall, leases for vehicles under the SCRA can be terminated if a service member's being moved from a station in the United States, abroad, or from a posting abroad back to the United States. Those are called permanent changes of station. Under the California law, if an individual's moved more than 100 miles away from their current station, they have the right to terminate the lease. That's going to impact a lot more leases than the SCRA did, because service members get moved 100 miles fairly frequently.

Chris Willis:

So, basically this is an expansion, Tony, of the trigger for the right to terminate a lease under the SCRA. It basically makes the availability of that lease termination option wider, more frequent for service members in California.

Tony Kaye:

Much wider. Yes, I mean, 100 miles, you could make four moves within the state of California to different bases, and still have traveled more than 100 miles. And then there is a provision that's an amendment to a prior provision of California law, dealing with deferments. Under California law, a service member who got activated could petition a court to have obligations deferred for as long as necessary based on the deferment. And if you were activated as a member of the guard, you could just write your lender and say, "Hey, I need to defer my obligations." You don't have to go to court.

Well, one of the things that was problematic under the prior law was that if an obligation was deferred under the older version of the statute, and if the contract had said that you had to pay if you reached the maturity date of the obligation, then you had to pay notwithstanding the deferral

of that obligation. Now, that loophole or basically, mistake in the statute, has been taken out. So, if you reach the maturity date of a particular obligation, your deferral will go beyond that and it'll be measured by the amount of time you're on active duty, for both service members and members of the guard who get called up.

Chris Willis:

One final question for you. Is there any indication that there might be other state military-related legislation in the works, that's similar to this? Have we picked up anything like that?

Tony Kaye:

Well, I mean, over the past couple of years, there have been amendments to state Servicemember's Civil Relief Act analogs, and that continues to happen. And now we're starting to see states look at enhancing Military Lending Act-like regulations. So, I would expect to see more of this. And we've even seen some states trying to apply the 36% rate cap in the Military Lending Act, more broadly to civilians. So, I think this is something that we need to be watching on a state-by-state basis. Our legislative research team is doing that, and we will report on any major changes.

But I would encourage our listeners, whenever they are dealing with an SCRA problem in particular, but even the MLA now, to not just look at their policies and procedures for complying with federal law, but also to take a look at state laws and see where they are currently. Of course, if there's any questions about that, we're happy to have people call us.

Chris Willis:

Yeah. That's great advice, Tony, because certainly in today's environment, it seems like it's really going to be necessary to take into account not just the federal military protection statutes, the SCRA, and Military Lending Act, but to take into account this increasing complexity and variety of state laws that protect service members.

Tony Kaye:

Yeah, exactly. I mean, and nobody should be surprised by this, right? Since 2001, the country has been involved in one war, military action, or another. And more recently, we've got a lot of folks activated because of the situation in Ukraine. Service members are considered to be protected. They're an important group of people for state legislatures and the Federal Government. So, I would expect to see considerably more legislation in this area over the next few years.

Chris Willis:

Well, what that means, Tony, is I think we're going to have a lot more opportunities to have you on as a guest on the podcast, to continue to update our audience on these important developments about protection of service members. So, thank you for being on today, and we'll look forward to the next time you pay us a visit.

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