
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 153 **Hearing Date:** June 6, 2017
Author: Chávez
Version: January 11, 2017
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Military Fraud*

HISTORY

Source: American G.I. Forum of California
AMVETS- Department of California

Prior Legislation: AB 1706 (Chavez) 2015-2016 Legislative Session, held in Senate Appropriations
AB 167 (Cook) Ch. 69, Stats. of 2011
AB 1829 (Cook), Ch. 366, Stats. of 2010
AB 265 (Cook) Ch. 93, Stats. of 2009
SB 1482 (Correa) Ch. 118, Stats. of 2008
AB 282 (Cook) Ch. 360, Stats. of 2007
AB 787 (DeVore) Ch. 457, Stats. of 2005

Support: American Legion, Department of California; California Association of County Veterans Service Officers; California State Commanders Veterans Council; Military Officers Association of America, California Council of Chapters; San Diego Military Advisory Council; Vietnam Veterans of America, California State Council

Opposition: None known

Assembly Floor Vote: 74 - 0

PURPOSE

The purpose of this bill is to modify the language of the California Stolen Valor Act to conform to the federal Stolen Valor Act of 2013.

Existing federal law provides that “whoever, with intent to obtain money, property, or other tangible benefit, fraudulently holds oneself out to be a recipient of a decoration or medal shall be fined under this title, imprisoned not more than one year, or both.” (18 U.S.C. § 704 subd. (b).)

Existing law provides that an elected officer of the state or a city, county, city and county, or district in this state forfeits his or her office upon the conviction of a crime pursuant to the federal Stolen Valor Act of 2005 or the California Stolen Valor Act, as specified. (Gov. Code § 3003.)

Existing law provides that it is a misdemeanor for any person to:

- a) Falsely represent himself or herself as a veteran or ex-serviceman of any war in which the United States was engaged, in connection with the soliciting of aid or the sale or attempted sale of any property. (Pen. Code § 532b subd. (a).)
- b) Falsely claim, or present himself or herself, to be a veteran or member of the Armed Forces of the United States, with the intent to defraud. (Pen. Code § 532b subd. (b).)
- c) Orally, in writing, or by wearing any military decoration, falsely represents himself or herself to have been awarded any military decoration, with the intent to defraud. If the person is a veteran of the Armed Forces of the U.S., he or she is guilty of either an infraction or a misdemeanor. (Pen. Code § 532b subd. (c)(1) & (2).)

Existing law defines military decoration as “any decoration or medal from the Armed Forces of the United States, the California National Guard, the State Military Reserve, or the Naval Militia, or any service medals or badges awarded to the members of those forces, or the ribbon, button, or rosette of that badge, decoration, or medal, or any colorable imitation of that item.” (Pen. Code § 532b subd. (c)(3).)

Existing law provides that this section does not apply to face-to-face solicitations involving less than ten dollars. (Pen. Code, § 532b subd. (d).)

This bill requires an officer to forfeit his or her office upon a conviction for a crime pursuant to the federal Stolen Valor Act of 2013 or California Stolen Valor Act that involves a fraudulent claim, made with the intent to obtain money, property, or other tangible benefit, that the person is a veteran or a member of the Armed Force of the United States.

This bill defines district as “any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.”

This bill defines tangible benefit as “financial remuneration, an effect on the outcome of a criminal or civil court proceeding, or any benefit relating to service in the military that is provided by a federal, state, or local governmental entity.”

This bill amends Penal Code section 532(b) to include the California National Guard, the State Military Reserve, the Naval Militia, the national guard of any other state, and any other reserve component of the Armed Forces of the United States in the list of service branches covered by the California Stolen Valor Act.

This bill creates the following misdemeanors for any person who:

- a) Forges documentation reflecting the awarding of a military decoration that he or she has not received for the purposes of obtaining money, property, or receiving a tangible benefit;
- b) Knowingly, with the intent to impersonate and to deceive, for the purposes of obtaining money, property, or receiving a tangible benefit, misrepresents himself or herself as a member or veteran of the Armed Forces of the United States, the California National Guard, the State Military Reserve, or the Naval Militia by wearing the uniform or

military decoration authorized for use by the members or veterans of those forces;

- c) Knowingly utilizes falsified military identification for the purposes of obtaining money, property, or receiving a tangible benefit;
- d) Knowingly, with the intent to impersonate, for the purposes of promoting a business, charity, or endeavor, misrepresents himself or herself as a member as a member or veteran of the Armed Forces of the United States, the California National Guard, the State Military Reserve, or the Naval Militia by wearing the uniform or military decoration authorized for use by the members or veterans of those forces; and
- e) Knowingly, with the intent to gain an advantage for employment purposes, misrepresents himself or herself as a member or veteran of the Armed Forces of the United States, the California National Guard, the State Military Reserve, or the Naval Militia by wearing the uniform or military decoration authorized for use by the members or veterans of those forces.

This bill makes other conforming changes.

COMMENTS

1. Need for This Bill

According to the author:

AB 167 (2011) was based on the Federal Stolen Valor Act of 2005 and created the requirement to vacate an elected office when convicted of stolen valor crimes, which was later found to be unconstitutional and was replaced with the Federal Stolen Valor Act of 2013. There is now a need to conform state law to the updated federal law.

2. Background

California currently requires that an elected officer forfeit his or her office upon conviction of a crime pursuant to either the federal Stolen Valor Act of 2005 or the California Stolen Valor Act. The federal Stolen Valor Act was updated in 2013 in response to the U.S. Supreme Court's ruling that the 2005 act was unconstitutional. (See *United States v. Alvarez* (2012) 132 S.Ct. 2537, 2556 [183 L.Ed.2d 547].)

This bill updates the California Stolen Valor Act by requiring a conviction pursuant to the federal Stolen Valor Act of 2013 rather than the previous federal Stolen Valor Act of 2005. In addition, this bill creates new misdemeanors related to the California Stolen Valor Act and changes the intent requirement to mirror federal law.

3. First Amendment

The First Amendment of the U.S. Constitution prohibits Congress from passing laws prohibiting free speech. (U.S. Const., 1st Amend.) State action restricting free speech is likewise prohibited by the Due Process Clause of the Fourteenth Amendment. (*First Nat. Bank of Boston v. Bellotti* (1978) 435 U.S. 765, 779.) Not all speech is protected, but categories of unprotected speech are

strictly limited. For example, obscenity, defamation, fraud, incitement, and speech integral to criminal conduct are unprotected categories of speech. (*U.S. v. Stevens* (2010) 559 U.S. 460, 468-469.) If speech does not fall into one of these well-defined categories, then that speech enjoys at least some level of First Amendment protection.

The threshold question in determining what level of protection to give speech is whether the regulation is content-based or content-neutral. (*Madsen v. Women's Health Center, Inc.*, (1994) 512 U.S. 763, 763-764.) Content-based restrictions on speech receive the strictest level of scrutiny. Therefore, a content-based restriction will only survive if the government has a compelling interest in regulating the speech and the restriction is the least restrictive means of regulating such speech. (*McIntyre v. Elections Comm'n* (1995) 514 U.S. 334, 346-47.) On the other hand, content-neutral speech is subject to the less restrictive intermediate scrutiny test, which only requires that the government have a legitimate interest and the means of regulating speech is narrowly tailored to achieve the government's ends. In contrast to strict scrutiny, the means chosen need not be the least restrictive means. (*Ward v. Rock Against Racism* (1989) 491 U.S. 781, 798-800.)

The U.S. Supreme Court ruled on the speech implicated in this bill when it examined the federal Stolen Valor Act of 2005 in *United States v. Alvarez, supra*, 132 S.Ct. 2537. The relevant language of the Act reads:

“Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both.”

A plurality of the Court held that this provision was a restriction on content-based speech, and therefore subject to strict scrutiny. (*Alvarez, supra*, 132 S.Ct. at 2543.) Critical to the Court's holding is that the statute prohibited false claims without any requirement of cognizable harm as a result of the false claims. The Court found that although the government's interest is compelling, other means exist to achieve its ends without restricting protected speech. In particular, the Court held the combination of a database for medal recipients coupled with public condemnation would serve just as well to deter false claims regarding military service. (*Alvarez, supra*, at pp. 132 S.Ct. at pp. 2550-2551.) Because alternative means exist to address the government's goal, the Court held the statutory provision unconstitutional. (*Ibid.*)

Two Justices concurred, but applied intermediate scrutiny because they found the false speech to be of limited value. (*Alvarez, supra*, 132 S.Ct. at p. 2552.) The false claims at issue here were easily verifiable, and therefore unlikely to aid in the debate of public issues which is the heart of the First Amendment's speech protections. However, the Court still held the statutory provision unconstitutional because of its potential to chill protected speech. Critical to the concurring Justices was the lack of intent to cause some legally cognizable harm, such as obtaining unearned benefits from the VA or unearned employment preferences. (*Id.* at pp. 2555-2556.)

The language of the federal Stolen Valor Act has since been amended to reflect the Court's holding in *Alvarez*. For example, the intent to cause some legally cognizable harm has been added. Notably, the Court specifically addressed the receipt of unearned benefits in *Alvarez* and stated that such restrictions are likely constitutional. This bill largely mirrors the language of the federal Act.

4. Argument in Support

The San Diego Military Advisory Council supports this bill stating:

...[T]he United States Supreme Court struck down the Federal Stolen Valor Act of 2005 stating that the action of claiming military service is protected under free speech. Therefore, the Federal Stolen Valor act of 2005 was found to be unconstitutional. Congress then passed the Federal Stolen Valor Act of 2013 with a focus on intent to make profit, obtain money, property, or obtaining something with/of tangible benefit or value.

SDMAC sends this letter to you to indicate its strong support and endorsement for Assembly Bill 153 which would conform California law to Federal law when stolen valor is used to gain “tangible benefit.”

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