

Date of Hearing: April 5, 2011

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS
Paul J. Cook, Chair
AB 167 (Cook) – As Amended: March 25, 2011

SUBJECT: California Stolen Valor Act.

SUMMARY: Expands existing provisions related to forfeiture of elected office under the Federal Stolen Valor Act, to additionally require that an elected officer, as specified, forfeit office upon conviction of a crime involving a false claim, with intent to defraud, that he or she is a veteran or a member of the Armed Forces of the United States. In addition, characterizes these and related provisions, as specified, as the "California Stolen Valor Act."

EXISTING LAW

- 1) Mandates that an officer forfeit office upon conviction of designated crimes as specified in the Constitution and laws of the California. (Government Code Section 3000.)
- 2) Requires that an elected officer, as specified, forfeit his or her office upon conviction of a crime pursuant to the federal Stolen Valor Act of 2005, as specified, that involves a false claim of receipt of a military decoration or medal described in that act. (Government Code Section 3003.)
- 3) Provides that a person who falsely represents 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 sale or attempted sale of property, is guilty of a misdemeanor. [Penal Code Section 532b(a).]
- 4) States that a person who falsely claims, or presents himself or herself, to be a veteran or member of the Armed Forces of the United States, with the intent to defraud, is guilty of a misdemeanor. [Penal Code Section 532b(b).]
- 5) Mandates that a person who, orally, in writing, or by wearing a military decoration, falsely represents himself or herself to have been awarded a military decoration, with the intent to defraud, is guilty of a misdemeanor. If the person committing the offense is a veteran of the Armed Forces of the United States, this offense is an infraction or a misdemeanor. [Penal Code Section 532b(c).]
- 6) Deems a person who falsely represents himself or herself in a manner as specified to be guilty of a misdemeanor or infraction. [Military and Veterans Code Section 1821.]
- 7) Directs that the offenses, as specified, may be deemed infractions, as specified, and explains that a conviction for such an infraction is not grounds for suspension, revocation or denial of a license, or for revocation or probation or parole. (Penal Code Section 19.8.)
- 8) Mandates that a person who, without authority, wears the uniform or distinctive part thereof, or similar apparel, of the armed forces of the United States or the Public Health Service, shall be fined or imprisoned for up to six months. (Title 18 United States Code Section 702.)

- 9) Penalizes a person who, with intent to deceive, wears any military or official decoration of a nation with which the United States is at peace, with a fine or imprisonment for up to six months. (Title 18 United States Code Section 703.)
- 10) Demands that a person who knowingly wears, manufactures, or sells a decoration or medal authorized by Congress for the armed forces of the United States; a service medal or badge awarded to members of such forces; the ribbon, button, or rosette of any such badge, decoration or medal; or a colorable imitation thereof, except when authorized under regulations made pursuant to law, shall be fined under this title, imprisoned not more than six months, or both. If the decoration or medal is a Congressional Medal of Honor, the offender can be imprisoned not more than one year, fined, or both. [Title 18 United States Code Section 704(a) or 704(b)(1).]
- 11) Declares that a person who knowingly manufactures, reproduces, sells or purchases for resale, either separately or on or appended to, any article of merchandise manufactured or sold; any badge, medal, emblem; other insignia or any colorable imitation thereof of any veterans' organization incorporated by enactment of Congress or of any organization formally recognized by any such veterans' organization as an auxiliary of such veterans' organization; knowingly prints, lithographs, engraves or otherwise reproduces on any poster, circular, periodical, magazine, newspaper, or other publication; or circulates or distributes any such printed matter bearing a reproduction of such badge, medal, emblem, or other insignia or any colorable imitation thereof, except when authorized under rules and regulations prescribed by any such organization, shall be fined under this title, imprisoned not more than six months, or both. [Title 18 United States Code Section 705.]

FISCAL EFFECT: Unknown

COMMENTS:

Background

Currently, California law requires that an elected officer forfeit office upon conviction of a crime pursuant to the federal Stolen Valor Act. (Government Code Section 3003.) Additionally, under California law, it is already a misdemeanor for a person to falsely claim or present himself or herself as a veteran or member of the Armed Forces with intent to defraud. [Penal Code Section 532b(b).] This bill merely expands existing standards concerning forfeiture of elected office to add that forfeiture be required upon conviction of such a misdemeanor. This bill also characterizes these provisions, and certain related provisions, as specified, as the California Stolen Valor Act.

Constitutionality of Federal Stolen Valor Act

The federal Stolen Valor Act's constitutionality has been challenged. A law that imposes a content-based restriction on pure speech generally is subject to strict scrutiny and cannot stand unless it is narrowly tailored to serve a compelling government interest. [*Boos v. Barry* (1988) 485 U.S. 312, 321.] The United States has argued that the federal Stolen Valor Act's restrictions on speech should not be subjected to strict-scrutiny because, as false factual speech, it falls within those categories of speech that may be restricted without Constitutional issue. [*United States v. Alvarez*, (9th Cir. 2010) 617 F.3d 1198, 1202-1203.] However, the Ninth Circuit Court of

Appeals held that false factual speech is not in itself a category of unprotected speech, and that the speech restricted by Stolen Valor Act Sections 704(b) and (c) does not fall into any of the existing categories. [*United States v. Alvarez, supra*, 617 F.3d 1198, 1206.] The court went on to determine Sections 704(b) and (c) to be unconstitutional because they criminalize pure speech, without any other actions, and, as content-based speech restrictions, are not narrowly tailored to achieve a compelling governmental interest. [*United States v. Alvarez, supra*, 617 F.3d 1198, 1218.] A Colorado district court came to the same conclusion. [*United States v. Strandlof*, (D.Colo. July 16, 2010, Crim. Case No. 09-cr-00497-REB) 2010 U.S. Dist. LEXIS 82662, *22.] Although, a Virginia district court concluded that Section 704(b) of the federal Stolen Valor Act is constitutional [*United States v. Robbins*, (W.D.Va. Jan. 3, 2011, No. 2:10CR00006) 2011 U.S. Dist. LEXIS 190, *15], the Ninth Circuit Court's decision is binding in California.

These cases do not directly impact the constitutionality of this bill, but instead serve to illustrate the potential constitutional problems in the underlying law. Given the discrepancies in these opinions, it is likely that the issue of the federal Stolen Valor Act's constitutionality will be taken to the United States Supreme Court.

Unlike the federal Stolen Valor Act, the provisions of California law upon which the California Stolen Valor Act and the requirements for which office forfeiture are based additionally require that the actor make such false statements, or wear military decoration, *with the intent to defraud*. (Penal Code Section 532b.) Thus, these regulations do not punish the fabrication alone; to do so would create a presumably unconstitutional content-based regulation. This law's language correctly punishes the criminal *act* of intending to defraud by claiming false receipt of a military award or membership in the Armed Forces.

Previous Legislation

AB 1829 (Cook), Chapter 366, Statutes of 2010, increased the penalty from an infraction to a misdemeanor (or in the case where the person committing the offense is a veteran of the Armed Forces of the United States, an infraction or a misdemeanor, as specified) for a person who, orally or in writing, or by wearing a military decoration, falsely represents himself or herself to have been awarded a military decoration, with the intent to defraud. Defined "military decoration" to be a decoration or medal from the Armed Forces of the United States, California National Guard, State Military Reserve, or Naval Militia, or a service medal or badge awarded to the members of those forces, or the ribbon, button, or rosette of that badge, decoration, or medal, or a colorable imitation of that item.

SB 1482 (Correa), Chapter 118, Statutes of 2008, mandated that an elected officer of a city, county, city and county, or district in California, forfeit his or her office upon conviction of a crime pursuant to the federal Stolen Valor Act, which involves a false claim of receipt of a military decoration or medal described in that act.

AB 282 (Cook), Chapter 360, Statutes of 2007, created an infraction for a person to falsely represent himself or herself, verbally or in writing, to have been awarded a decoration or medal from the Armed Forces of the United States, the California National Guard, State Military Reserve, or Navel Militia; a service medal or badge awarded to the members of such forces; a ribbon, button, or rosette of such a badge, decoration or medal; or, a colorable imitation of such item, with the intent to defraud.

AB 787 (DeVore), Chapter 457, Statutes of 2006, provided that a person who falsely claims, represents or presents himself or herself to be a veteran or member of the Armed Forces of the United States, with the intent to defraud, is guilty of a misdemeanor. Face-to-face solicitations involving less than \$10 are exempt from prosecution.

Author's Statement

According to the author, this bill is intended "to give the state another tool beside the federal Stolen Valor Act by establishing the California Stolen Valor Act which would prosecute those using false claim of military service to get elected in office."

"Current Federal Law – Stolen Valor Act of 2005: President Bush signed S. 1998 (Conrad-ND) (PL 109-437) on December 20, 2006 to broaden the provisions of federal law that prohibited the unauthorized wearing, manufacturing or selling of Medal of Honor medals. Under the new law, these prohibitions also apply to false claims about receiving medals and expanding the scope beyond only the Medal of Honor."

REGISTERED SUPPORT / OPPOSITION:

Support

American Legion-Department of California , AMVETS-Department of California, California Association of County Veterans Service Officers, Military Officers Association of America-California Council of Chapters, Student Veterans of California, Vietnam Veterans of America, California State Council. Military Order of the Purple Heart- Department of California, California State Commanders Veterans Council

Opposition

None.

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