

**SUBJECT:** Allowing firing for falsifying military records to get employment benefits

**COMMITTEE:** Defense and Veterans' Affairs — favorable, without amendment

**VOTE:** 7 ayes — S. King, Frank, Aycock, Blanco, Farias, Schaefer, Shaheen

0 nays

**SENATE VOTE:** On final passage, March 24 — 31-0

**WITNESSES:** For — (*Registered, but did not testify:* John McKinny, American Legion Department of Texas; Annie Spilman, National Federation of Independent Business-Texas; Jason Vaughn)

Against — None

**BACKGROUND:** Under Penal Code, sec. 32.54, it is a crime for a person to use or claim to hold a military record that the person knows is fraudulent, is fictitious, or has been revoked in the promotion of a business or with the intent to obtain certain benefits. An offense is punished as a class C misdemeanor (maximum fine of \$500).

**DIGEST:** SB 664 would allow an employer to discharge an employee if the employer determined, based on a reasonable factual basis, that the employee falsified or misrepresented the employee's military record in a way that constituted an offense under Penal Code, sec. 32.54 in obtaining employment or acquiring any benefit related to the employment.

It would not matter for the purpose of this bill whether the employee was employed under an employment contract. Any such contract would be void and unenforceable as against public policy if the employee were discharged for falsifying or misrepresenting a military record as described in the bill.

The bill would allow an employee who was employed under an employment contract on the date the employee was fired to bring suit

against the employer for appropriate relief in a district court in the county in which the firing occurred if the employee believed he or she had been wrongfully fired. Appropriate relief would include rehiring or reinstatement to the employee's previous job, payment of back wages, and reestablishment of employee benefits for which the employee otherwise would have been eligible had the employee not been fired.

The bill would take effect September 1, 2015, and would apply only to a termination that occurred on or after that date.

**SUPPORTERS  
SAY:**

SB 664 appropriately would authorize an employer to fire a person who committed a crime in falsifying a military record to obtain employment or associated benefits. Currently, even though a person may be found guilty of having used a falsified military record, the person may still keep the job or the benefits secured with those falsified records. This bill would provide employers with clear authority to fire such an employee, regardless of any employment contract into which the employee may have entered.

The bill would ensure that those who had served their country honorably and were actually entitled to veterans benefits and hiring preference received that preference over individuals who had fraudulently claimed military service. Employees who use fictitious records should be held accountable to protect the interests of veterans.

The bill would not grant employers too much discretion to determine what constituted a reasonable factual basis for firing because the bill would require that the falsification or misrepresentation be considered an offense under the Penal Code. The rules determining what constitutes a criminal offense for this type of falsification of military records would be the employer's guide for determining whether sufficient factual basis existed to fire the employee.

The Legislature made it a crime in 2011 to falsify military service for the purpose of advertising one's business or attempting to secure some employment benefit or preference that is available to veterans. Employers

should be able to terminate employment contracts that were secured by an employee who was committing a crime.

OPPONENTS  
SAY:

The bill would be unnecessary and could run contrary to current labor laws. If an employee is an at-will employee, the employee currently could be fired at any time for any reason without the new rules provided in the bill. If an employment contract were signed, the parties would include provisions on just cause for firing, which could include resume fraud or misrepresentation of records if the parties chose to include those reasons. Also, allowing an employer to fire an individual based on the employer's interpretation of a reasonable factual basis could give the employer too much discretion to fire employees based on less than credible evidence.