

AMENDED IN SENATE APRIL 13, 2005

SENATE BILL

No. 1082

Introduced by Senators ~~Ducheny and Morrow~~ *Morrow and Ducheny*

(Principal coauthor: Senator Ashburn)

(Coauthors: Senators Cox, Dunn, Dutton, Machado, Soto, and Speier)

(Coauthors: Assembly Members *Cogdill, DeVore, Haynes, Houston, Huff, La Malfa, La Suer, Leslie, Maze, Mountjoy, Niello, Oropeza, Parra, Plescia, Sharon Runner, Ruskin, Umberg, and Wyland*)

February 22, 2005

An act to amend Sections 3651, 3653, and 17560 of, and to add ~~Section 17440 to~~ *Sections 3047 and 17440 to*, the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 1082, as amended, ~~Ducheny~~ *Morrow*. Child support: military reservists.

(1) Existing law sets forth provisions by which a support order may be revised by the court and specifies that a support order may not be modified or terminated as to an amount that accrued before filing of a motion or an order to show cause to modify, except as specified.

This bill would create an additional exception to this rule to permit service members, activated to United States military duty or National Guard service *and deployed out-of-state*, to request modification of a support order, as specified. The bill would require the service member to indicate the date of deployment and would require the court, if possible, to schedule a hearing on the matter prior to that date, or grant a stay of ~~proceedings~~ *the motion or order to show cause for modification* consistent with certain federal time lines for stays. *This*

bill would impose additional requirements on a court that fails to grant a discretionary stay and would provide that a service member, who does not file a notice of activation of military service and request to modify a support order prior to deployment out-of-state, is not subject to penalties on the amount of child support that would not have accrued if the order had been modified, as specified. The bill would also require the Judicial Council to develop any forms and procedures necessary to implement those provisions.

The bill would also provide that a party's absence, relocation, or failure to comply with custody and visitation orders is not, by itself, sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure is the party's activation to military service and deployment out-of-state.

(2) Existing law permits an order modifying or terminating a support order to be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate or to any subsequent date, except as specified.

This bill would provide that if an order modifying or terminating a support order is entered due to a change in income resulting from the activation to military service or National Guard duty and deployment overseas for either the support obligor or support obligee, the order shall be made retroactive in accordance with specified requirements.

The bill would also require the Department of Child Support Services to work with the military and National Guard to ensure that information regarding the ability of service members to have support orders modified based on a change of income is made readily available to those service members. The bill would additionally require that department to develop a form for completion by the service member to allow the local child support agency to proceed with a motion for modification of a support order without the service member being required to appear. By placing new duties on local child support agencies, the bill would impose a state-mandated local program.

(3) Existing law establishes an arrears collection enhancement process pursuant to which the Department of Child Support Services may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to the California Work Opportunity and Responsibility to Kids Act (CalWORKs program).

This bill would provide that the acceptance of an offer in compromise shall be deemed to be in the state’s best interest with regard to arrears that accrued as a result of a decrease in income when an obligor was a reservist or member of the National Guard, was activated to military service, and failed to modify the support order to reflect the reduction in income. *The bill would also specify that those changes apply to all service members deployed out-of-state, regardless of whether those members were deployed before or after the effective date of the bill.* The bill would also require the director of that department to establish specified rules in accordance with this provision.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3047 is added to the Family Code, to
2 read:

3 3047. A party’s absence, relocation, or failure to comply with
4 custody and visitation orders shall not, by itself, be sufficient to
5 justify a modification of a custody or visitation order if the
6 reason for the absence, relocation, or failure to comply is the
7 party’s activation to military service and deployment
8 out-of-state.

9 SECTION 1.

10 SEC. 2. Section 3651 of the Family Code is amended to read:

11 3651. (a) Except as provided in subdivisions (c) and (d) and
12 subject to Article 3 (commencing with Section 3680) and
13 Sections 3552, 3587, and 4004, a support order may be modified
14 or terminated at any time as the court determines to be necessary.

15 (b) Upon the filing of a supplemental complaint pursuant to
16 Section 2330.1, a child support order in the original proceeding

1 may be modified in conformity with the statewide uniform
2 guideline for child support to provide for the support of all of the
3 children of the same parents who were named in the initial and
4 supplemental pleadings, to consolidate arrearages and wage
5 assignments for children of the parties, and to consolidate orders
6 for support.

7 (c) (1) Except as provided in paragraph (2) and subdivision
8 (b), a support order may not be modified or terminated as to an
9 amount that accrued before the date of the filing of the notice of
10 motion or order to show cause to modify or terminate.

11 (2) If a party to a support order is activated to United States
12 military duty or National Guard service *and deployed*
13 *out-of-state*, the service member may file a notice of activation of
14 military service and request to modify a support order by
15 informing the court and the other party of the request to modify
16 the support order based on the change in circumstance. The
17 service member shall indicate the date of deployment, and if
18 possible, the court shall schedule the hearing prior to that date. If
19 the court cannot hear the matter prior to the date of deployment
20 *out-of-state*, the court shall grant a stay of ~~proceedings~~ *the motion*
21 *or order to show cause for modification* consistent with the time
22 lines for stays *pursuant to the federal Servicemembers Civil*
23 *Relief Act*, set forth in Section 522 of the Appendix of Title 50 of
24 the United States Code. *If, after granting the mandatory stay*
25 *required by Section 522 of the Appendix of Title 50 of the United*
26 *States Code, the court fails to grant the discretionary stay*
27 *described under the law, it shall comply with the federal mandate*
28 *to appoint counsel to represent the interests of the deployed*
29 *service member. The court may not proceed with the motion or*
30 *order to show cause if it does not appoint counsel, unless the*
31 *service member is represented by other counsel.*

32 (3) *A service member who does not file a notice of activation*
33 *of military service and request to modify a support order prior to*
34 *deployment out-of-state nonetheless shall not be subject to*
35 *penalties on the amount of child support that would not have*
36 *accrued if the order had been modified pursuant to paragraph*
37 *(2).*

38 (4) *Notwithstanding any other provision of law, no interest*
39 *shall accrue on that amount of a child support obligation that*
40 *would not have become due and owing if the activated service*

1 *member modified his or her support order upon activation to*
2 *reflect the change in income due to the activation.*

3 (d) An order for spousal support may not be modified or
4 terminated to the extent that a written agreement, or, if there is no
5 written agreement, an oral agreement entered into in open court
6 between the parties, specifically provides that the spousal support
7 is not subject to modification or termination.

8 (e) This section applies whether or not the support order is
9 based upon an agreement between the parties.

10 (f) This section is effective only with respect to a property
11 settlement agreement entered into on or after January 1, 1970,
12 and does not affect an agreement entered into before January 1,
13 1970, as to which Chapter 1308 of the Statutes of 1967 shall
14 apply.

15 (g) The Judicial Council, *no later than 90 days after the*
16 *effective date of the act adding this section*, shall develop any
17 forms and procedures necessary to implement paragraph (2) of
18 subdivision (c). *The Judicial Council shall ensure that all forms*
19 *adopted pursuant to this section are in plain language.*

20 ~~SEC. 2.~~

21 *SEC. 3.* Section 3653 of the Family Code is amended to read:

22 3653. (a) An order modifying or terminating a support order
23 may be made retroactive to the date of the filing of the notice of
24 motion or order to show cause to modify or terminate, or to any
25 subsequent date, except as provided in subdivision (b) or by
26 federal law (42 U.S.C. Sec. 666(a)(9)).

27 (b) If an order modifying or terminating a support order is
28 entered due to the unemployment of either the support obligor or
29 the support obligee, the order shall be made retroactive to the
30 later of the date of the service on the opposing party of the notice
31 of motion or order to show cause to modify or terminate or the
32 date of unemployment, subject to the notice requirements of
33 federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds
34 good cause not to make the order retroactive and states its
35 reasons on the record.

36 (c) If an order modifying or terminating a support order is
37 entered due to a change in income resulting from the activation to
38 United States military service or National Guard duty and
39 deployment ~~overseas~~ *out-of-state* for either the support obligor or
40 the support obligee, the order shall be made retroactive to the

1 later of the date of the service on the opposing party of the notice
2 of activation, notice of motion, order to show cause to modify or
3 terminate, or the date of activation, subject to the notice
4 requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless
5 the court finds good cause not to make the order retroactive and
6 states its reasons on the record.

7 (d) If an order decreasing or terminating a support order is
8 entered retroactively pursuant to this section, the support obligor
9 may be entitled to, and the support obligee may be ordered to
10 repay, according to the terms specified in the order, any amounts
11 previously paid by the support obligor pursuant to the prior order
12 that are in excess of the amounts due pursuant to the retroactive
13 order. The court may order that the repayment by the support
14 obligee shall be made over any period of time and in any manner,
15 including, but not limited to, by an offset against future support
16 payments or wage assignment, as the court deems just and
17 reasonable. In determining whether to order a repayment, and in
18 establishing the terms of repayment, the court shall consider all
19 of the following factors:

20 (1) The amount to be repaid.

21 (2) The duration of the support order prior to modification or
22 termination.

23 (3) The financial impact on the support obligee of any
24 particular method of repayment such as an offset against future
25 support payments or wage assignment.

26 (4) Any other facts or circumstances that the court deems
27 relevant.

28 ~~SEC. 3.~~

29 *SEC. 4.* Section 17440 is added to the Family Code, to read:

30 17440. (a) The Department of Child Support Services shall
31 work with all branches of the United States military and the
32 National Guard to ensure that information is made available
33 regarding the rights and abilities of activated service members to
34 have their support orders modified based on a change in income
35 resulting from their activation, or other change of circumstance
36 affecting the child support calculation, *or to have a portion of*
37 *their child support arrearages compromised pursuant to Section*
38 *17560.*

39 (b) ~~The~~ *No later than 90 days after the effective date of this*
40 *section, the department shall develop a form for completion by*

1 the service member that will allow the local child support agency
2 to proceed with a motion for modification without the service
3 member being required to appear. The form shall contain only
4 the information necessary for the local child support agency to
5 proceed with the motion.

6 (c) Within five business days of receipt of a properly
7 completed form, the local child support agency shall bring a
8 motion to modify the support order. The local child support
9 agency shall bring the motion if the change in circumstances
10 ~~results~~ *would result* in any change in the dollar amount of the
11 support order.

12 (d) The department shall work with the United States military
13 to have this form and the form developed pursuant to Section
14 3651 distributed at all mobilization stations or other appropriate
15 locations to ensure timely notification to all activated personnel
16 of their rights and responsibilities.

17 ~~SEC. 4.~~

18 *SEC. 5.* Section 17560 of the Family Code is amended to
19 read:

20 17560. (a) The department shall create a program
21 establishing an arrears collection enhancement process pursuant
22 to which the department may accept offers in compromise of
23 child support arrears and interest accrued thereon owed to the
24 state for reimbursement of aid paid pursuant to Chapter 2
25 (commencing with Section 11200) of Part 3 of Division 9 of the
26 Welfare and Institutions Code. The program shall operate
27 uniformly across California and shall take into consideration the
28 needs of the children subject to the child support order and the
29 obligor's ability to pay.

30 (b) If the obligor owes current child support, the offer in
31 compromise shall require the obligor to be in compliance with
32 the current support order for a set period of time before any
33 arrears and interest accrued thereon may be compromised.

34 (c) Absent a finding of good cause, any offer in compromise
35 entered into pursuant to this section shall be rescinded, all
36 compromised liabilities shall be reestablished notwithstanding
37 any statute of limitations that otherwise may be applicable, and
38 no portion of the amount offered in compromise may be
39 refunded, if either of the following occurs:

1 (1) The department or local child support agency determines
2 that the obligor did any of the following acts regarding the offer
3 in compromise:

4 (A) Concealed from the department or local child support
5 agency any income, assets, or other property belonging to the
6 obligor or any reasonably anticipated receipt of income, assets, or
7 other property.

8 (B) Intentionally received, withheld, destroyed, mutilated, or
9 falsified any information, document, or record, or intentionally
10 made any false statement, relating to the financial conditions of
11 the obligor.

12 (2) The obligor fails to comply with any of the terms and
13 conditions of the offer in compromise.

14 (d) Pursuant to subdivision (k) of Section 17406, in no event
15 may the administrator, director, or director's designee within the
16 department, accept an offer in compromise of any child support
17 arrears owed directly to the custodial party unless that party
18 consents to the offer in compromise in writing and participates in
19 the agreement. Prior to giving consent, the custodial party shall
20 be provided with a clear written explanation of the rights with
21 respect to child support arrears owed to the custodial party and
22 the compromise thereof.

23 (e) Subject to the requirements of this section, the director
24 may delegate to the administrator of a local child support agency
25 the authority to compromise an amount of child support arrears
26 that does not exceed five thousand dollars (\$5,000). Only the
27 director or his or her designee may compromise child support
28 arrears in excess of five thousand dollars (\$5,000).

29 (f) For an amount to be compromised under this section, the
30 following conditions shall exist:

31 (1) (A) The administrator, director or director's designee
32 within the department determines that acceptance of an offer in
33 compromise is in the best interest of the state and that the
34 compromise amount equals or exceeds what the state can expect
35 to collect for reimbursement of aid paid pursuant to Chapter 2
36 (commencing with Section 11200) of Part 3 of Division 9 of the
37 Welfare and Institutions Code in the absence of the compromise,
38 based on the obligor's ability to pay.

39 (B) Acceptance of an offer in compromise shall be deemed to
40 be in the best interest of the state with regard to arrears that

1 accrued as a result of a decrease in income when an obligor was
2 a reservist or member of the National Guard, was activated to
3 United States military service, and failed to modify the support
4 order to reflect the reduction in income. The director, *no later*
5 *than 90 days after the effective date of the act adding this*
6 *subparagraph*, shall establish rules that compromise, at a
7 minimum, the amount of support that would not have accrued
8 had the order been modified to reflect the reduced income earned
9 during the period of active military service.

10 (2) Any other terms and conditions that the director establishes
11 that may include, but may not be limited to, paying current
12 support in a timely manner, making lump sum payments, and
13 paying arrears in exchange for compromise of interest owed.

14 (3) The obligor shall provide evidence of income and assets,
15 including, but not limited to, wage stubs, tax returns, and bank
16 statements and establish all of the following:

17 (A) That the amount set forth in the offer in compromise of
18 arrears owed is the most that can be expected to be paid or
19 collected from the obligor's present assets or income.

20 (B) That the obligor does not have reasonable prospects of
21 acquiring increased income or assets that would enable the
22 obligor to satisfy a greater amount of the child support arrears
23 than the amount offered, within a reasonable period of time.

24 (C) That the obligor has not withheld payment of child support
25 in anticipation of the offers in compromise program.

26 (g) A determination by the administrator, director or the
27 director's designee within the department that it would not be in
28 the best interest of the state to accept an offer in compromise in
29 satisfaction of child support arrears shall be final and not subject
30 to the provisions of Chapter 5 (commencing with Section 17800)
31 of Division 17, or subject to judicial review.

32 (h) Any offer in compromise entered into pursuant to this
33 section shall be filed with the appropriate court. The local child
34 support agency shall notify the court if the compromise is
35 rescinded pursuant to subdivision (c).

36 (⊕)

37 (i) Any compromise of child support arrears pursuant to this
38 section shall maximize to the greatest extent possible the state's
39 share of the federal performance incentives paid pursuant to the

1 Child Support Performance and Incentive Act of 1998 and shall
2 comply with federal law.

3 (j) The department shall ensure uniform application of this
4 section across the state.

5 (k) The department shall consult with the Franchise Tax Board
6 in the development of the program established pursuant to this
7 section.

8 (l) The department shall report to the Legislature on the results
9 of the program established pursuant to this section no later than
10 June 30, 2006.

11 (m) This section shall remain in effect only until January 1,
12 2007, and as of that date is repealed unless a later enacted statute,
13 that is enacted before January 1, 2007, deletes or extends that
14 date.

15 *SEC. 6. The amendments to Section 17560 of the Family*
16 *Code made by this act shall apply to all service members*
17 *deployed out-of-state, regardless of whether that deployment*
18 *occurred before or after the effective date of this act.*

19 ~~SEC. 5.~~

20 *SEC. 7.* If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.