

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2365

Introduced by Assembly Member ~~Hayashi~~ Lieu

February 19, 2010

An act to amend ~~Section 78.5 of~~ Sections 401, 402, 404, 405, 406, 407, 408, 409.1, 409.3, and 409.4 of, and to add Sections 409.14, 812, and 829 to, the Military and Veterans Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

AB 2365, as amended, ~~Hayashi~~ Lieu. Veterans affairs: administration.

Existing law provides legal rights, as specified, for service members in regards to credit agreements, court proceedings, interest liabilities, eviction proceedings, contracts, mortgages and trusts, leases, life insurance policies, taxes and assessments, and health insurance policies.

This bill would hold a person who violates any of the specified rights of service members liable for actual damages, reasonable attorney's fees, and costs incurred by an injured party. This bill would also waive the filing fee and court costs for a party seeking to enforce the rights.

Existing law authorizes a service member to apply to the court for relief of an obligation, liability, tax, or assessment, as specified. Existing law requires a party to provide notice before the court grants relief. Existing law requires the court to provide a hearing before granting or denying relief.

This bill would require the court to set a hearing date within 25 days after a petition is filed, unless good cause is shown to delay the date of the hearing. This bill would prohibit the court from charging a filing fee or court costs for filing a petition for relief.

Existing law, the California Military Families Financial Relief Act and the California Military Families Financial Relief Act of 2005, provides financial relief, as specified, for a service member who is called to active duty.

This bill would hold a person who violates these specified rights of service members liable for actual damages, reasonable attorney’s fees, and costs incurred by a person seeking to enforce the rights. This bill would also waive the filing fee and court costs for a person seeking to enforce the specified rights.

~~Existing law requires the Secretary of Veterans Affairs to conduct audits, as specified by statute, on internal controls, and to provide those audits to the inspector general.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

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

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

1 SECTION 1. Section 401 of the Military and Veterans Code is
2 amended to read:

3 401. (a) Application by a service member for, or receipt by a
4 service member of, a stay, postponement, or suspension pursuant
5 to this chapter in the payment of any tax, fine, penalty, insurance
6 premium, or other civil obligation or liability of that person shall
7 not itself, without regard to other considerations, provide the basis
8 for any of the following:

9 (1) A determination by any lender or other person that the
10 service member is unable to pay any civil obligation or liability
11 in accordance with its terms.

12 (2) With respect to a credit transaction between a creditor and
13 the service member, any of the following:

14 (A) A denial or revocation of credit by the creditor.

15 (B) A change by the creditor in the terms of an existing credit
16 arrangement.

17 (C) A refusal by the creditor to grant credit to the service
18 member in substantially the amount or on substantially the terms
19 requested.

1 (3) An adverse report relating to the creditworthiness of the
2 service member by or to any person or entity engaged in the
3 practice of assembling or evaluating consumer credit information.

4 (4) A refusal by an insurer to insure the service member.

5 (b) Any person violating any provision of this section is liable
6 for actual damages, ~~and~~ reasonable attorney's fees, *and costs*
7 incurred by the injured party.

8 (c) Any person violating any provision of this section is guilty
9 of a misdemeanor, and shall be punishable by imprisonment not
10 to exceed one year or by a fine not to exceed one thousand dollars
11 (\$1,000), or both.

12 *SEC. 2. Section 402 of the Military and Veterans Code is*
13 *amended to read:*

14 402. (a) In any action or proceeding commenced in any court,
15 if there shall be a default of any appearance by the defendant, the
16 plaintiff, before entering judgment shall file in the court a
17 declaration under penalty of perjury setting forth facts showing
18 that the defendant is not in the military service. If unable to file
19 that declaration, the plaintiff shall, in lieu thereof, file a declaration
20 setting forth either that the defendant is in the service or that the
21 plaintiff is not able to determine whether or not the defendant is
22 in the service. If a declaration is not filed showing that the
23 defendant is not in the military service, no judgment shall be
24 entered without first securing an order of court directing that entry,
25 and no order shall be made if the defendant is in the military service
26 until after the court appoints an attorney to represent the defendant
27 and protect his or her interest, and the court shall, on application,
28 make that appointment. Unless it appears that the defendant is not
29 in the military service the court may require, as a condition before
30 judgment is entered, that the plaintiff file a bond approved by the
31 court conditioned to indemnify the defendant, if in the military
32 service, against any loss or damage that he or she may suffer by
33 reason of any judgment should the judgment be thereafter set aside
34 in whole or in part. The court may make such other and further
35 order or enter that judgment as in its opinion may be necessary to
36 protect the rights of the defendant under this section.

37 (b) *Any person violating this section shall be liable for actual*
38 *damages, reasonable attorney's fees, and costs incurred by the*
39 *injured party.*

40 (b)

1 (c) Any person who shall, for purposes of this section, make or
 2 use a declaration declared to be true under penalty of perjury,
 3 knowing it to be false, is guilty of a misdemeanor and shall be
 4 punishable by imprisonment not to exceed one year or by a fine
 5 not to exceed one thousand dollars (\$1,000), or both.

6 ~~(e)~~

7 (d) In any action or proceeding in which a service member is a
 8 party, if the service member does not personally appear therein or
 9 is not represented by an authorized attorney, the court may appoint
 10 an attorney to represent him or her. In that case a bond may be
 11 required and an order made to protect the rights of the service
 12 member. However, no attorney appointed under this chapter to
 13 protect a service member shall have the power to waive any right
 14 of the person for whom he or she is appointed or bind him or her
 15 by his or her acts.

16 ~~(e)~~

17 (e) If any judgment shall be rendered in any action or proceeding
 18 governed by this chapter against any service member during the
 19 period of that service or within 30 days thereafter, and it appears
 20 that the service member was prejudiced by reason of his or her
 21 military service in making his or her defense thereto, the judgment
 22 may, upon application made by the service member or his or her
 23 legal representative not later than 90 days after the termination of
 24 the service, be opened by the court rendering the same and the
 25 defendant or his or her legal representative let in to defend;
 26 provided the application states a meritorious or legal defense to
 27 the action or some part thereof. Vacating, setting aside, or reversing
 28 any judgment by reason of this chapter shall not impair any right
 29 or title acquired by any bona fide purchaser for value under that
 30 judgment.

31 *SEC. 3. Section 404 of the Military and Veterans Code is*
 32 *amended to read:*

33 404. (a) The period of military service shall not be included
 34 in computing any period now or hereafter to be limited by any
 35 law, regulation, or order for the bringing of any action or
 36 proceeding in any court, board, bureau, commission, department,
 37 or other agency of government by or against any service member
 38 or by or against his or her heirs, executors, administrators, or
 39 assigns, whether the cause of action or the right or privilege to
 40 institute the action or proceeding accrued prior to or during the

1 period of service, nor shall any part of the period be included in
2 computing any period now or hereafter provided by any law for
3 the redemption of real property sold or forfeited to enforce any
4 obligation, tax, or assessment.

5 (b) This section shall not apply with respect to any period of
6 limitation prescribed by or under the federal Internal Revenue
7 Code.

8 (c) *Any person violating this section shall be liable for actual*
9 *damages, reasonable attorney's fees, and costs incurred by the*
10 *injured party.*

11 (e)

12 (d) Any person violating any provision of this section is guilty
13 of a misdemeanor, and shall be punishable by imprisonment not
14 to exceed one year or by a fine not to exceed one thousand dollars
15 (\$1,000), or both.

16 *SEC. 4. Section 405 of the Military and Veterans Code is*
17 *amended to read:*

18 405. (a) No obligation or liability bearing interest at a rate in
19 excess of 6 percent per year incurred by a service member before
20 that person's entry into service shall, during any part of the period
21 of military service, bear interest at a rate in excess of 6 percent per
22 year unless, in the opinion of the court, upon application thereto
23 by the obligee, the ability of the service member to pay interest
24 upon that obligation or liability at a rate in excess of 6 percent per
25 year is not materially affected by reason of that service, in which
26 case the court may make that order as in its opinion may be just.
27 As used in this section, "interest" includes service charges, renewal
28 charges, fees, or any other charges, except bona fide insurance, in
29 respect of any obligation or liability.

30 (b) *Any person violating this section shall be liable for actual*
31 *damages, reasonable attorney's fees, and costs incurred by the*
32 *injured party.*

33 *SEC. 5. Section 406 of the Military and Veterans Code is*
34 *amended to read:*

35 406. (a) No eviction or distress shall be made during the period
36 of military service specified in Section 400, during which a service
37 member is called to active state service pursuant to Section 143
38 or 146 or active federal service pursuant to Title 10 or 32 of the
39 United States Code or active duty, until 30 days after the service
40 member is released from active service or duty if the premises are

1 occupied primarily for dwelling purposes by the spouse, children,
2 or other dependents of a service member, except upon leave of
3 court granted upon application therefor or granted in an action or
4 proceeding affecting the right of possession.

5 (b) On any application or in any action under this section, the
6 court may on its own motion, and shall, on application, stay the
7 proceedings for the period specified in subdivision (a) or rather
8 than granting a complete stay, the court may require the tenant to
9 make regular partial payments during the service member's period
10 of military service, or the court may make any other order that it
11 finds to be just, unless the court finds that the ability of the tenant
12 to pay the agreed rent is not materially affected by that military
13 service. Where that stay is made by the court, the owner of the
14 premises shall be entitled, upon application therefor, to relief in
15 respect of those premises similar to that granted persons in military
16 service in Sections 407, 408, and 409.1 to that extent and for that
17 period as may appear to the court to be just.

18 (c) *Any person violating this section shall be liable for actual*
19 *damages, reasonable attorney's fees, and costs incurred by the*
20 *injured party.*

21 (e)

22 (d) Any person who knowingly takes part in any eviction or
23 distress as provided in this section or who attempts to do so, is
24 guilty of a misdemeanor, and shall be punishable by imprisonment
25 not to exceed one year or by a fine not to exceed one thousand
26 dollars (\$1,000), or both.

27 *SEC. 6. Section 407 of the Military and Veterans Code is*
28 *amended to read:*

29 407. (a) No person who has received, or whose assignor has
30 received, under a contract for the purchase of real or personal
31 property, a deposit or installment of the purchase price, or a deposit
32 or installment under the contract, from a person or from the
33 assignor of a person who, after the date of payment of the deposit
34 or installment, has entered military service, shall exercise any right
35 or option under that contract to rescind or terminate the contract
36 or resume possession of the property for nonpayment of any
37 installment due or for any other breach of its terms occurring prior
38 to or during the period of that military service, except by action
39 in a court of competent jurisdiction.

1 (b) Upon the hearing of that action as provided in subdivision
2 (a), the court may order the repayment of prior installments or
3 deposits or any part, as a condition of terminating the contract and
4 resuming possession of the property, or may, in its discretion, on
5 its own motion, and shall, on application to it by the service
6 member or some person on the service member's behalf, order a
7 stay of proceedings as the court deems just, unless in the opinion
8 of the court, the ability of the defendant to comply with the terms
9 of the contract is not materially affected by reason of the service;
10 or it may make any other disposition of the case as may be
11 equitable to conserve the interests of all parties.

12 (c) *Any person violating this section shall be liable for actual*
13 *damages, reasonable attorney's fees, and costs incurred by the*
14 *injured party.*

15 (e)

16 (d) Any person who shall knowingly resume possession of
17 property that is the subject of this section in a manner other than
18 as provided in subdivision (a), or attempts to do so, is guilty of a
19 misdemeanor, and shall be punishable by imprisonment not to
20 exceed one year or by a fine not to exceed one thousand dollars
21 (\$1,000), or both.

22 *SEC. 7. Section 408 of the Military and Veterans Code is*
23 *amended to read:*

24 408. (a) This section shall apply only to obligations secured
25 by mortgage, trust deed, or other security in the nature of a
26 mortgage upon real or personal property owned by a service
27 member at the commencement of the period of the military service
28 and still so owned by the service member whose obligations
29 originated prior to the person's period of military service.

30 (b) In any proceeding commenced in any court during the period
31 of military service to enforce that obligation as provided in
32 subdivision (a) arising out of nonpayment of any sum due or out
33 of any other breach of the terms of the mortgage, trust deed, or
34 other security occurring prior to or during the period of the service
35 the court may, after hearing and in its discretion on its own motion,
36 and shall, on application to it by the service member or some
37 person on the defendant's behalf, unless in the opinion of the court
38 the ability of the defendant to comply with the terms of the
39 obligation is not materially affected by reason of the defendant's
40 military service, do either of the following:

1 (1) Stay the proceedings for any period as the court deems just.

2 (2) Make any other disposition of the case as may be equitable
3 to conserve the interests of all parties.

4 (c) No sale, foreclosure, or seizure of property for nonpayment
5 of any sum due under any obligation as provided in subdivision
6 (a), or for any other breach of the terms thereof, whether under a
7 power of sale, under a judgment entered upon warrant of attorney
8 to confess judgment contained therein, or otherwise, shall be valid
9 if made during the period of military service or within three months
10 thereafter, except pursuant to an agreement between the parties,
11 unless upon an order previously granted by the court and a return
12 thereto made and approved by the court.

13 (d) *Any person violating this section shall be liable for actual*
14 *damages, reasonable attorney’s fees, and costs incurred by the*
15 *injured party.*

16 ~~(d)~~

17 (e) Any person who shall knowingly make or cause to be made
18 any sale, foreclosure, or seizure of property, defined as invalid by
19 subdivision (c), or attempts to do so, is guilty of a misdemeanor,
20 and shall be punishable by imprisonment not to exceed one year
21 or by a fine not to exceed one thousand dollars (\$1,000), or both.

22 *SEC. 8. Section 409.1 of the Military and Veterans Code is*
23 *amended to read:*

24 409.1. (a) Where any life insurance policy on the life of a
25 service member in military service has been assigned prior to that
26 person’s period of military service to secure the payment of any
27 obligation of the person, no assignee of the policy, except the
28 insurer in connection with a policy loan, shall, during the period
29 of military service of the insured or within one year thereafter,
30 except upon the consent in writing of the insured made during that
31 period or when the premiums thereon are due and unpaid or upon
32 the death of the insured, exercise any right or option by virtue of
33 that assignment unless upon leave of court granted upon an
34 application made therefor by the assignee. The court may thereupon
35 refuse to grant that leave unless in the opinion of the court the
36 ability of the obligor to comply with the terms of the obligation is
37 not materially affected by reason of his or her military service.

38 (b) No person shall exercise any right to foreclose or enforce
39 any lien for storage of household goods, furniture, or personal
40 effects of a service member during that person’s period of military

1 service and for three months thereafter, except upon an order
 2 previously granted by a court upon application therefor and a return
 3 thereto made and approved by the court. In that proceeding the
 4 court may, after hearing, in its discretion on its own motion, and
 5 shall, on ~~application~~ *petition* to it by a service member or some
 6 person on his or her behalf, unless in the opinion of the court the
 7 ability of the defendant to pay the storage charges due is not
 8 materially affected by reason of his or her military service, do
 9 either of the following:

- 10 (1) Stay the proceedings as provided in this chapter.
- 11 (2) Make that other disposition of the case as may be equitable
 12 to conserve the interest of all parties. This section shall not be
 13 construed in any way as affecting or as limiting the scope of
 14 Section 408.

15 *(c) Any person violating this section shall be liable for actual*
 16 *damages, reasonable attorney's fees, and costs incurred by the*
 17 *injured party.*

18 ~~(e)~~
 19 *(d) A person violating any provision of this section is guilty of*
 20 *a misdemeanor, and shall be punishable by imprisonment not to*
 21 *exceed one year or by a fine not to exceed one thousand dollars*
 22 *(\$1,000), or both.*

23 *SEC. 9. Section 409.3 of the Military and Veterans Code is*
 24 *amended to read:*

25 409.3. (a) A service member may, at any time during his or
 26 her period of military service or within six months thereafter, ~~apply~~
 27 ~~to~~ *petition* a court for relief in respect of any obligation or liability
 28 incurred by the service member prior to his or her period of military
 29 service or in respect of any tax or assessment whether falling due
 30 prior to or during his or her period of military service. ~~The court,~~
 31 ~~after appropriate notice and hearing, unless in its opinion the ability~~
 32 ~~of the applicant to comply with the terms of the obligation or~~
 33 ~~liability or to pay the tax or assessment has not been materially~~
 34 ~~affected by reason of his or her military service, may grant the~~
 35 ~~following relief:~~

- 36 ~~(1) In the case of an obligation payable under its terms in~~
 37 ~~installments under a contract for the purchase of real estate, or~~
 38 ~~secured by a mortgage or other instrument in the nature of a~~
 39 ~~mortgage upon real estate, a stay of the enforcement of the~~
 40 ~~obligation during the applicant's period of military service and,~~

1 from the date of termination of the period of military service or
2 from the date of application if made after the service, for a period
3 equal to the period of the remaining life of the installment contract
4 or other instrument plus a period of time equal to the period of
5 military service of the applicant or any part of the combined period,
6 subject to payment of the balance of principal and accumulated
7 interest due and unpaid at the date of termination of the period of
8 military service or from the date of application, as the case may
9 be, in equal installments during the combined period at the rate of
10 interest on the unpaid balance as is prescribed in the contract, or
11 other instrument evidencing the obligation, for installments paid
12 when due, and subject to any other terms as may be just.

13 (2) In the case of any other obligation, liability, tax, or
14 assessment, a stay of the enforcement thereof during the applicant's
15 period of military service and, from the date of termination of the
16 period of military service or from the date of application if made
17 after the service, for a period of time equal to the period of military
18 service of the applicant or any part of that period, subject to
19 payment of the balance of principal and accumulated interest due
20 and unpaid at the date of termination of the period of military
21 service or the date of application, as the case may be, in equal
22 periodic installments during the extended period at the rate of
23 interest as may be prescribed for the obligation, liability, tax, or
24 assessment, if paid when due, and subject to any other terms as
25 may be just.

26 (b) *The court shall set a hearing on the petition within 25 days*
27 *from the date the petition is filed, unless the court shows good*
28 *cause for extending the date of the hearing. The petition shall be*
29 *served at least 10 days before the hearing. The respondent shall*
30 *file and serve a response to the petition at least five days before*
31 *the hearing.*

32 (c) *The court shall not charge a filing fee or court costs for a*
33 *petition filed pursuant to this section.*

34 (d) *The court, after notice and hearing, unless in its opinion the*
35 *ability of the petitioner to comply with the terms of the obligation*
36 *or liability or to pay the tax or assessment has not been materially*
37 *affected by reason of his or her military service, may grant the*
38 *following relief:*

39 (1) *In the case of an obligation payable under its terms in*
40 *installments under a contract for the purchase of real estate, or*

1 *secured by a mortgage or other instrument in the nature of a*
2 *mortgage upon real estate, a stay of the enforcement of the*
3 *obligation during the applicant's period of military service and,*
4 *from the date of termination of the period of military service or*
5 *from the date of application if made after the service, for a period*
6 *equal to the period of the remaining life of the installment contract*
7 *or other instrument plus a period of time equal to the period of*
8 *military service of the applicant or any part of the combined period,*
9 *subject to payment of the balance of principal and accumulated*
10 *interest due and unpaid at the date of termination of the period of*
11 *military service or from the date of application, as the case may*
12 *be, in equal installments during the combined period at the rate*
13 *of interest on the unpaid balance as is prescribed in the contract,*
14 *or other instrument evidencing the obligation, for installments*
15 *paid when due, and subject to any other terms as may be just.*

16 *(2) In the case of any other obligation, liability, tax, or*
17 *assessment, a stay of the enforcement thereof during the applicant's*
18 *period of military service and, from the date of termination of the*
19 *period of military service or from the date of application if made*
20 *after the service, for a period of time equal to the period of military*
21 *service of the applicant or any part of that period, subject to*
22 *payment of the balance of principal and accumulated interest due*
23 *and unpaid at the date of termination of the period of military*
24 *service or the date of application, as the case may be, in equal*
25 *periodic installments during the extended period at the rate of*
26 *interest as may be prescribed for the obligation, liability, tax, or*
27 *assessment, if paid when due, and subject to any other terms as*
28 *may be just.*

29 ~~(b)~~

30 *(e) When any court has granted a stay as provided in this section,*
31 *no fine or penalty shall accrue during the period the terms and*
32 *conditions of the stay are complied with by reason of failure to*
33 *comply with the terms or conditions of the obligation, liability,*
34 *tax, or assessment in respect of which the stay was granted.*

35 ~~(e)~~

36 *(f) Nothing in this section shall permit a service member ordered*
37 *to military service to obtain a delay, deferment, or stay on an*
38 *obligation to pay child support. Nothing in this section shall*
39 *preclude a service member ordered to military service from seeking*
40 *a modification of an order to pay child support due to a reduction*

1 in income resulting from the order to service, or from seeking the
 2 imposition of the maximum interest rate provided by this chapter
 3 on arrearages in child support payments existing prior to the order
 4 to service.

5 *(g) Any person violating this section shall be liable for actual*
 6 *damages, reasonable attorney’s fees, and costs incurred by the*
 7 *injured party.*

8 *SEC. 10. Section 409.4 of the Military and Veterans Code is*
 9 *amended to read:*

10 409.4. (a) A person who by reason of military service is
 11 entitled to the rights and benefits of this chapter shall also be
 12 entitled upon release from that military service to reinstatement
 13 of any health insurance that was in effect on the day before the
 14 service commenced, and was terminated effective on a date during
 15 the period of the service.

16 (b) An exclusion or a waiting period may not be imposed in
 17 connection with reinstatement of health insurance coverage of a
 18 health or physical condition of a person under subdivision (a), or
 19 a health or physical condition of any other person who is covered
 20 by the insurance by reason of the coverage of that person, if any
 21 of the following apply:

22 (1) The condition arose before or during that person’s period
 23 of service.

24 (2) An exclusion or waiting period would not have been imposed
 25 for the condition during a period of coverage resulting from
 26 participation by that person in the insurance.

27 (3) The condition of the person has not been determined by the
 28 Secretary of Veterans Affairs to be a disability incurred or
 29 aggravated in the line of duty within the meaning of Section 105
 30 of Title 38 of the United States Code.

31 *(c) Any person violating this section shall be liable for actual*
 32 *damages, reasonable attorney’s fees, and costs incurred by the*
 33 *service member or other person entitled to the benefits and*
 34 *protections of this chapter.*

35 *SEC. 11. Section 409.14 is added to the Military and Veterans*
 36 *Code, to read:*

37 409.14. A service member or other person seeking to enforce
 38 rights pursuant to this chapter shall not be required to pay a filing
 39 fee or court costs.

1 SEC. 12. Section 812 is added to the Military and Veterans
2 Code, to read:

3 812. (a) A person violating any provision of this chapter shall
4 be liable for actual damages, reasonable attorney's fees, and costs
5 incurred by the service member or other person entitled to the
6 benefits and protections of this chapter.

7 (b) A service member or other person seeking to enforce rights
8 pursuant to this chapter shall not be required to pay a filing fee
9 or court costs.

10 SEC. 13. Section 829 is added to the Military and Veterans
11 Code, to read:

12 829. (a) A person violating any provision of this chapter shall
13 be liable for actual damages, reasonable attorney's fees, and costs
14 incurred by the service member or other person entitled to the
15 benefits and protections of this chapter.

16 (b) A service member or other person seeking to enforce rights
17 pursuant to this chapter shall not be required to pay a filing fee
18 or court costs.

19 ~~SECTION 1. Section 78.5 of the Military and Veterans Code~~
20 ~~is amended to read:~~

21 ~~78.5. The secretary shall conduct audits, as required by Section~~
22 ~~13402 of the Government Code, on internal controls of the~~
23 ~~department and shall provide those audits to the inspector general.~~