

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2365

Introduced by Assembly Member Lieu

February 19, 2010

An act to amend 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, Lieu. Veterans affairs: administration.

Existing law provides legal rights, as specified, for service members ~~in regards~~ *regard* 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.

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
- 2 is 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.
- 20 (3) An adverse report relating to the creditworthiness of the
- 21 service member by or to any person or entity engaged in the
- 22 practice of assembling or evaluating consumer credit information.
- 23 (4) A refusal by an insurer to insure the service member.

1 (b) Any person violating any provision of this section is liable
2 for actual damages, reasonable attorney's fees, and costs incurred
3 by the injured party.

4 (c) Any person violating any provision of this section is guilty
5 of a misdemeanor, and shall be punishable by imprisonment not
6 to exceed one year or by a fine not to exceed one thousand dollars
7 (\$1,000), or both.

8 SEC. 2. Section 402 of the Military and Veterans Code is
9 amended to read:

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

33 ~~(b) Any person violating this section shall be liable for actual~~
34 ~~damages, reasonable attorney's fees, and costs incurred by the~~
35 ~~injured party.~~

36 ~~(e)~~

37 (b) Any person who shall, for purposes of this section, make or
38 use a declaration declared to be true under penalty of perjury,
39 knowing it to be false, is guilty of a misdemeanor and shall be
40 punishable by imprisonment not to exceed one year or by a fine

1 not to exceed one thousand dollars (\$1,000), or both. *That person*
2 *also is liable for actual damages, reasonable attorney’s fees, and*
3 *costs incurred by the injured party.*

4 ~~(d)~~

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

14 ~~(e)~~

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

29 SEC. 3. Section 404 of the Military and Veterans Code is
30 amended to read:

31 404. (a) The period of military service shall not be included
32 in computing any period now or hereafter to be limited by any
33 law, regulation, or order for the bringing of any action or
34 proceeding in any court, board, bureau, commission, department,
35 or other agency of government by or against any service member
36 or by or against his or her heirs, executors, administrators, or
37 assigns, whether the cause of action or the right or privilege to
38 institute the action or proceeding accrued prior to or during the
39 period of service, nor shall any part of the period be included in
40 computing any period now or hereafter provided by any law for

1 the redemption of real property sold or forfeited to enforce any
2 obligation, tax, or assessment.

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

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

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

13 SEC. 4. Section 405 of the Military and Veterans Code is
14 amended to read:

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

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

30 SEC. 5. Section 406 of the Military and Veterans Code is
31 amended to read:

32 406. (a) No eviction or distress shall be made during the period
33 of military service specified in Section 400, during which a service
34 member is called to active state service pursuant to Section 143
35 or 146 or active federal service pursuant to Title 10 or 32 of the
36 United States Code or active duty, until 30 days after the service
37 member is released from active service or duty if the premises are
38 occupied primarily for dwelling purposes by the spouse, children,
39 or other dependents of a service member, except upon leave of

1 court granted upon application therefor or granted in an action or
 2 proceeding affecting the right of possession.

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

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

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

24 SEC. 6. Section 407 of the Military and Veterans Code is
 25 amended to read:

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

37 (b) Upon the hearing of that action as provided in subdivision
 38 (a), the court may order the repayment of prior installments or
 39 deposits or any part, as a condition of terminating the contract and
 40 resuming possession of the property, or may, in its discretion, on

1 its own motion, and shall, on application to it by the service
2 member or some person on the service member's behalf, order a
3 stay of proceedings as the court deems just, unless in the opinion
4 of the court, the ability of the defendant to comply with the terms
5 of the contract is not materially affected by reason of the service;
6 or it may make any other disposition of the case as may be
7 equitable to conserve the interests of all parties.

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

17 SEC. 7. Section 408 of the Military and Veterans Code is
18 amended to read:

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

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

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

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

39 (c) No sale, foreclosure, or seizure of property for nonpayment
40 of any sum due under any obligation as provided in subdivision

1 (a), or for any other breach of the terms thereof, whether under a
2 power of sale, under a judgment entered upon warrant of attorney
3 to confess judgment contained therein, or otherwise, shall be valid
4 if made during the period of military service or within three months
5 thereafter, except pursuant to an agreement between the parties,
6 unless upon an order previously granted by the court and a return
7 thereto made and approved by the court.

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

16 SEC. 8. Section 409.1 of the Military and Veterans Code is
17 amended to read:

18 409.1. (a) Where any life insurance policy on the life of a
19 service member in military service has been assigned prior to that
20 person’s period of military service to secure the payment of any
21 obligation of the person, no assignee of the policy, except the
22 insurer in connection with a policy loan, shall, during the period
23 of military service of the insured or within one year thereafter,
24 except upon the consent in writing of the insured made during that
25 period or when the premiums thereon are due and unpaid or upon
26 the death of the insured, exercise any right or option by virtue of
27 that assignment unless upon leave of court granted upon an
28 application made therefor by the assignee. The court may thereupon
29 refuse to grant that leave unless in the opinion of the court the
30 ability of the obligor to comply with the terms of the obligation is
31 not materially affected by reason of his or her military service.

32 (b) No person shall exercise any right to foreclose or enforce
33 any lien for storage of household goods, furniture, or personal
34 effects of a service member during that person’s period of military
35 service and for three months thereafter, except upon an order
36 previously granted by a court upon application therefor and a return
37 thereto made and approved by the court. In that proceeding the
38 court may, after hearing, in its discretion on its own motion, and
39 shall, on petition to it by a service member or some person on his
40 or her behalf, unless in the opinion of the court the ability of the

1 defendant to pay the storage charges due is not materially affected
2 by reason of his or her military service, do either of the following:

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

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

15 SEC. 9. Section 409.3 of the Military and Veterans Code is
16 amended to read:

17 409.3. (a) A service member may, at any time during his or
18 her period of military service or within six months thereafter,
19 petition a court for relief in respect of any obligation or liability
20 incurred by the service member prior to his or her period of military
21 service or in respect of any tax or assessment whether falling due
22 prior to or during his or her period of military service.

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

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

31 (d) The court, after notice and hearing, unless in its opinion the
32 ability of the petitioner to comply with the terms of the obligation
33 or 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 (e)

27 (e) (1) When any court has granted a stay as provided in this
28 section, no fine or penalty shall accrue during the period the terms
29 and conditions of the stay are complied with by reason of failure
30 to comply with the terms or conditions of the obligation, liability,
31 tax, or assessment in respect of which the stay was granted.

32 (2) *If a person has charged or accrued a fine or penalty in*
33 *violation of paragraph (1), that person shall be liable for actual*
34 *damages, reasonable attorney's fees, and costs incurred by the*
35 *injured party as a result of the violation.*

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 or
9 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 or
18 court costs.