

Assembly Bill No. 2365

Passed the Assembly August 12, 2010

Chief Clerk of the Assembly

Passed the Senate August 9, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, Lieu. Veterans affairs: administration.

Existing law provides legal rights, as specified, for service members in 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 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

402. (a) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court a declaration under penalty of perjury setting forth facts showing that the defendant is not in the military service. If unable to file that declaration, the plaintiff shall, in lieu thereof, file a declaration

setting forth either that the defendant is in the service or that the plaintiff is not able to determine whether or not the defendant is in the service. If a declaration is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing that entry, and no order shall be made if the defendant is in the military service until after the court appoints an attorney to represent the defendant and protect his or her interest, and the court shall, on application, make that appointment. Unless it appears that the defendant is not in the military service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in the military service, against any loss or damage that he or she may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. The court may make such other and further order or enter that judgment as in its opinion may be necessary to protect the rights of the defendant under this section.

(b) Any person who shall, for purposes of this section, make or use a declaration declared to be true under penalty of perjury, knowing it to be false, is guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by a fine not to exceed one thousand dollars (\$1,000), or both. That person also is liable for actual damages, reasonable attorney's fees, and costs incurred by the injured party.

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

(d) If any judgment shall be rendered in any action or proceeding governed by this chapter against any service member during the period of that service or within 30 days thereafter, and it appears that the service member was prejudiced by reason of his or her military service in making his or her defense thereto, the judgment may, upon application made by the service member or his or her legal representative not later than 90 days after the termination of

the service, be opened by the court rendering the same and the defendant or his or her legal representative let in to defend; provided the application states a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment by reason of this chapter shall not impair any right or title acquired by any bona fide purchaser for value under that judgment.

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

404. (a) The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any service member or by or against his or her heirs, executors, administrators, or assigns, whether the cause of action or the right or privilege to institute the action or proceeding accrued prior to or during the period of service, nor shall any part of the period be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

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

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

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

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

405. (a) No obligation or liability bearing interest at a rate in excess of 6 percent per year incurred by a service member before that person's entry into service shall, during any part of the period of military service, bear interest at a rate in excess of 6 percent per year unless, in the opinion of the court, upon application thereto by the obligee, the ability of the service member to pay interest upon that obligation or liability at a rate in excess of 6 percent per

year is not materially affected by reason of that service, in which case the court may make that order as in its opinion may be just. As used in this section, “interest” includes service charges, renewal charges, fees, or any other charges, except bona fide insurance, in respect of any obligation or liability.

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

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

406. (a) No eviction or distress shall be made during the period of military service specified in Section 400, during which a service member is called to active state service pursuant to Section 143 or 146 or active federal service pursuant to Title 10 or 32 of the United States Code or active duty, until 30 days after the service member is released from active service or duty if the premises are occupied primarily for dwelling purposes by the spouse, children, or other dependents of a service member, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

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

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

(d) Any person who knowingly takes part in any eviction or distress as provided in this section or who attempts to do so, is guilty of a misdemeanor, and shall be punishable by imprisonment

not to exceed one year or by a fine not to exceed one thousand dollars (\$1,000), or both.

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

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

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

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

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

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

408. (a) This section shall apply only to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a service

member at the commencement of the period of the military service and still so owned by the service member whose obligations originated prior to the person's period of military service.

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

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

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

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

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

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

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

409.1. (a) Where any life insurance policy on the life of a service member in military service has been assigned prior to that person's period of military service to secure the payment of any obligation of the person, no assignee of the policy, except the

insurer in connection with a policy loan, shall, during the period of military service of the insured or within one year thereafter, except upon the consent in writing of the insured made during that period or when the premiums thereon are due and unpaid or upon the death of the insured, exercise any right or option by virtue of that assignment unless upon leave of court granted upon an application made therefor by the assignee. The court may thereupon refuse to grant that leave unless in the opinion of the court the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his or her military service.

(b) No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a service member during that person's period of military service and for three months thereafter, except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. In that proceeding the court may, after hearing, in its discretion on its own motion, and shall, on petition to it by a service member or some person on his or her behalf, unless in the opinion of the court the ability of the defendant to pay the storage charges due is not materially affected by reason of his or her military service, do either of the following:

(1) Stay the proceedings as provided in this chapter.

(2) Make that other disposition of the case as may be equitable to conserve the interest of all parties. This section shall not be construed in any way as affecting or as limiting the scope of Section 408.

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

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

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

409.3. (a) A service member may, at any time during his or her period of military service or within six months thereafter, petition a court for relief in respect of any obligation or liability incurred by the service member prior to his or her period of military

service or in respect of any tax or assessment whether falling due prior to or during his or her period of military service.

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

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

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

(1) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after the service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant or any part of the combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during the combined period at the rate of interest on the unpaid balance as is prescribed in the contract, or other instrument evidencing the obligation, for installments paid when due, and subject to any other terms as may be just.

(2) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after the service, for a period of time equal to the period of military service of the applicant or any part of that period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military

service or the date of application, as the case may be, in equal periodic installments during the extended period at the rate of interest as may be prescribed for the obligation, liability, tax, or assessment, if paid when due, and subject to any other terms as may be just.

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

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

(f) Nothing in this section shall permit a service member ordered to military service to obtain a delay, deferment, or stay on an obligation to pay child support. Nothing in this section shall preclude a service member ordered to military service from seeking a modification of an order to pay child support due to a reduction in income resulting from the order to service, or from seeking the imposition of the maximum interest rate provided by this chapter on arrearages in child support payments existing prior to the order to service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved _____, 2010

Governor