

Assembly Bill No. 713

Passed the Assembly May 16, 2011

Chief Clerk of the Assembly

Passed the Senate July 1, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 409.3 and 409.5 of the Military and Veterans Code, relating to military service.

LEGISLATIVE COUNSEL'S DIGEST

AB 713, Block. Military service: legal benefits.

Existing law provides legal benefits, 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. Existing law provides that dependents of a service member are entitled to some of the benefits accorded to service members, as specified.

This bill would provide that a dependent of a service member is entitled to the benefit that no obligation or liability bearing interest at a rate in excess of 6% per year incurred by the dependent before that service member's entry into service, during any part of the period of military service, bear interest at a rate in excess of 6% per year, unless as provided.

Existing law authorizes a service member to apply to the court for relief of an obligation or liability incurred by the service member prior to his or her period of military service or for relief of any tax or assessment whether falling due prior to or during his or her period of military service. Existing law authorizes 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, to grant specified relief.

This bill would clarify that a service member may apply to a court for relief in respect of any obligation or liability incurred by the service member prior to the effective date of the orders for his or her most current period of military service. This bill would also clarify that the court may grant specified relief, 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 most current period of military service.

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

SECTION 1. 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 most current 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 the effective date of the orders for his or her most current period of military service or in respect of any tax or assessment whether falling due prior to or during his or her most current 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 most current period of 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. 2. Section 409.5 of the Military and Veterans Code is amended to read:

409.5. Dependents of a service member shall be entitled to the benefits accorded to service members under Sections 405 to 409.4, inclusive, upon application to a court therefor, unless in the opinion of the court the ability of the dependents to comply with the terms of the obligation, contract, lease, or bailment has not been

materially impaired by reason of the military service of the person upon whom the applicants are dependent.

Approved _____, 2011

Governor