

AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 720

Introduced by Senator Correa

February 22, 2013

~~An act to amend Section 51 of the Military and Veterans Code, relating to the Military Department.~~ *An act to amend Section 409.3 of the Military and Veterans Code, relating to military service.*

LEGISLATIVE COUNSEL'S DIGEST

SB 720, as amended, Correa. ~~Military Department.~~ *Military service: benefits.*

Existing law authorizes a service member to apply to the court for relief of an obligation, liability, tax, or assessment, as specified. Existing law authorizes, 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, as specified, 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 the 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, as specified.

This bill would instead authorize, 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, a deferment of the payments on the obligation during the service member's period of military service, or should the service member request such relief after the start of his or her current period of military service, or within 6 months thereafter, a deferment of such payments for a period of time

equal to the period of military service starting from the date of application, as specified. The bill would prohibit penalties from being imposed on the nonpayment of principal or interest during this period and interest from being charged or accumulated on the principal or interest on which the payment was delayed. The bill would also prohibit foreclosure or repossession of property on which payment has been deferred, as specified. The bill would require mortgage payments deferred during this period to be due and payable upon the occurrence of specified conditions. The bill would provide that a service member with a mortgage subject to an impound account for the payment of property taxes, special assessments, and certain insurance shall not be relieved from making monthly payments, as specified, and that a service member shall not be precluded from making payments toward mortgage payments deferred, as specified.

~~Existing law establishes in state government the Military Department, which includes the office of the Adjutant General, the State Military Reserve, the California Cadet Corps, and the Naval Militia.~~

~~This bill would make nonsubstantive changes to this provision.~~

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

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

- 1 SECTION 1. Section 409.3 of the Military and Veterans Code
- 2 is amended to read:
- 3 409.3. (a) A service member may, at any time during his or
- 4 her most current period of military service or within six months
- 5 thereafter, petition a court for relief in respect of any obligation
- 6 or liability incurred by the service member ~~prior to~~ before the
- 7 effective date of the orders for his or her most current period of
- 8 military service or in respect of any tax or assessment whether
- 9 falling due ~~prior to~~ before or during his or her most current period
- 10 of military service.
- 11 (b) The court shall set a hearing on the petition within 25 days
- 12 from the date the petition is filed, unless the court shows good
- 13 cause for extending the date of the hearing. The petition shall be
- 14 served at least 10 days before the hearing. The respondent shall
- 15 file and serve a response to the petition at least five days before
- 16 the hearing.

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

3 (d) The court, after notice and hearing, ~~unless in its opinion the~~
4 ~~ability of the petitioner~~ *if the court finds the ability of the service*
5 *member to comply with the terms of the any such obligation or*
6 ~~liability liability~~, or to pay the tax or ~~assessment~~ *assessment*, has
7 ~~not~~ been materially affected by reason of ~~orders for~~ his or her most
8 current period of military service, may grant the following relief:

9 (1) In the case of an obligation payable under its terms in
10 installments under a contract for the purchase of real estate, or
11 secured by a mortgage or other instrument in the nature of a
12 mortgage upon real estate, ~~a stay deferment of the enforcement of~~
13 ~~payments on the obligation during the applicant's service member's~~
14 ~~period of military service and, from the date of termination of the~~
15 ~~period of military service or, or should the service member request~~
16 ~~such relief after the start of his or her current period of military~~
17 ~~service, or within six months thereafter, a deferment of such~~
18 ~~payments for a period of time equal to the period of military service~~
19 ~~starting from the date of application if made after the service, for~~
20 ~~a period equal to the period of the remaining life of the installment~~
21 ~~contract or other instrument plus a period of time equal to the~~
22 ~~period of military service of the applicant or any part of the~~
23 ~~combined period, subject to payment of the balance of principal~~
24 ~~and accumulated interest due and unpaid at the date of termination~~
25 ~~of the period of military service or from the date of application,~~
26 ~~as the case may be, even if such payments extend beyond the~~
27 ~~termination of the current period of military service. The obligation~~
28 ~~shall be extended for the period of time that payments were~~
29 ~~deferred, and the deferred principal shall be paid in equal~~
30 installments during the combined period at the rate of interest on
31 the unpaid balance as is prescribed in the contract, or other
32 instrument evidencing the obligation, for installments paid when
33 due, and subject to any other terms as may be just.

34 (2) In the case of any other obligation, liability, tax, or
35 assessment, ~~a stay of the enforcement thereof~~ *deferment of any*
36 ~~payments on the obligation during the applicant's service member's~~
37 ~~period of military service and, from the date of termination of the~~
38 ~~period of military service or from the date of application if made~~
39 ~~after the service, for a period of time equal to the period of military~~
40 ~~service of the applicant or any part of that period, subject to~~

1 payment of the balance of principal and accumulated interest due
2 and unpaid at the date of termination of the period of military
3 service or the date of application, as the case may be, in equal
4 periodic installments during the extended period at the rate of
5 interest as may be prescribed for the obligation, liability, tax, or
6 assessment, if paid when due, and subject to any other terms as
7 may be just.

8 (e) (1) When any court has granted a *stay deferment* as provided
9 in this section, no fine or penalty shall accrue during the period
10 the terms and conditions of the *stay deferment* are complied with
11 by reason of failure to comply with the terms or conditions of the
12 obligation, liability, tax, or assessment in respect of which the *stay*
13 *deferment* was granted, *including penalties on the nonpayment of*
14 *principal or interest during this period. Interest shall not be*
15 *charged or accumulated on the principal or interest on which the*
16 *payment was delayed. Foreclosure or repossession of property on*
17 *which payment has been deferred shall not take place during the*
18 *period specified in this section.*

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

23 (f) *Notwithstanding subdivision (d), any mortgage payments*
24 *deferred pursuant to this section are due and payable upon the*
25 *earlier of the following:*

26 (1) *The sale of the property or other event specified in the*
27 *documents creating the obligation permitting the lender to*
28 *accelerate the loan, other than a deferment of payments authorized*
29 *by this section.*

30 (2) *Further encumbrance of the property other than for*
31 *preservation or protection of the property.*

32 (3) *The maturity of the obligation, as defined under the terms*
33 *of the documents creating the obligation, or, if applicable, as*
34 *extended pursuant to subdivision (d).*

35 (g) *This section shall not relieve a service member with a*
36 *mortgage subject to an impound account for the payment of*
37 *property taxes, special assessments, mortgage insurance, and*
38 *hazard insurance from making monthly payments of an amount*
39 *that is at least sufficient to pay these amounts, unless the borrower*
40 *and lender agree to a lesser amount.*

1 (h) *This section shall not preclude a service member from*
2 *making payments toward the mortgage payments deferred before*
3 *the occurrence of any of the events in subdivision (d).*

4 (f)

5 (i) ~~Nothing in this~~ *This section shall not permit a service member*
6 *ordered to military service to obtain a delay, deferment, or stay on*
7 *an obligation to pay child support.* ~~Nothing in this~~ *This section*
8 *shall not preclude a service member ordered to military service*
9 *from seeking a modification of an order to pay child support due*
10 *to a reduction in income resulting from the order to service, or*
11 *from seeking the imposition of the maximum interest rate provided*
12 *by this chapter on arrearages in child support payments existing*
13 ~~prior to~~ *before the order to service.*

14 SECTION 1. ~~Section 51 of the Military and Veterans Code is~~
15 ~~amended to read:~~

16 ~~51. The Military Department includes all of the following:~~

17 ~~(a) The office of the Adjutant General.~~

18 ~~(b) The California National Guard.~~

19 ~~(c) The State Military Reserve.~~

20 ~~(d) The California Cadet Corps.~~

21 ~~(e) The Naval Militia.~~