

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 583

Introduced by Assembly Member Chávez

February 24, 2015

An act to amend Section ~~800~~ 395.06 of the Military and Veterans Code, relating to military service.

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as amended, Chávez. Military service: ~~benefits~~; *employment protections*.

Existing law provides protections for members of the National Guard ordered into active state service by the Governor or active federal service by the President of the United States for emergency purposes, and for reservists called to active duty, as specified.

Existing law provides protections for these persons during their period of military service with respect to their private employment rights upon return from service, and requires the district attorney of the county in which an employer maintains a place of business to act as an attorney on behalf of a service member in any action, as specified, against an employer who fails or refuses to comply with those provisions, if the district attorney is reasonably satisfied that the person is entitled to these benefits.

This bill would extend these protections to members of the National Guard of other states who are called to military service by their respective Governors or by the President of the United States, and who have left a position in private employment in California. Because this bill would expand the duties of district attorneys, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law authorizes members of the United States Military Reserve or the National Guard who are called to active duty as a result of the Iraq and Afghanistan conflicts, as specified, to defer payments on certain obligations while serving on active duty.~~

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

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

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

1 SECTION 1. Section 395.06 of the Military and Veterans Code
2 is amended to read:
3 395.06. (a) (1) Every officer and enlisted member of the
4 California National Guard who, in order to undertake active
5 military duty in the service of the state when the Governor has
6 issued a proclamation of a state of insurrection pursuant to Section
7 143, or a proclamation of a state of extreme emergency or when
8 the California National Guard is on active duty pursuant to Section
9 146, or a service member called to active service or duty under
10 Chapter 7.5 (commencing with Section 400), has left a position,
11 other than a temporary position, in private employment, receives
12 a certificate of satisfactory service in the California National Guard
13 or an equivalent thereof, is still qualified to perform the duties of
14 that position, and makes application within 40 days after release
15 from service shall be considered as on leave of absence during that
16 period and shall be restored by the former employer to the former
17 position or to a position of similar seniority, status, and pay without
18 loss of retirement or other benefits, unless the employer's
19 circumstances have so changed as to make it impossible or
20 unreasonable to do so, and shall not be discharged from the position
21 without cause within one year after being restored to the position.

1 (2) *Every officer and enlisted member of the National Guard*
2 *of a state other than California who, in order to undertake active*
3 *military duty in the service of that state when the Governor of that*
4 *state has issued a proclamation of a state of insurrection, or a*
5 *proclamation of a state of extreme emergency or when the National*
6 *Guard of that state is on active duty, or a service member called*
7 *to active service or duty by the Governor of that state or into active*
8 *federal service by the President of the United States pursuant to*
9 *Title 10 or 32 of the United States Code, has left a position, other*
10 *than a temporary position, in private employment in California,*
11 *receives a certification of satisfactory service in the National*
12 *Guard of another state or an equivalent thereof, is still qualified*
13 *to perform the duties of that position, and makes application within*
14 *40 days after release from service shall be considered as on leave*
15 *of absence during that period and shall be restored by the former*
16 *employer to the former position or to a position of similar seniority,*
17 *status, and pay without loss of retirement or other benefits, unless*
18 *the employer's circumstances have so changed as to make it*
19 *impossible or unreasonable to do so, and shall not be discharged*
20 *from the position without cause within one year after being restored*
21 *to the position.*

22 (b) *Every officer and enlisted member of the California National*
23 *Guard, or the National Guard of a state other than California,*
24 *who has left a part-time position in private employment for*
25 *purposes of service pursuant to paragraph (1) or (2) of subdivision*
26 *(a), receives a certificate of satisfactory service in the California*
27 *National Guard, or the National Guard of another state or an*
28 *equivalent thereof, is still qualified to perform the duties of that*
29 *position, and makes application within five days after release from*
30 *service shall be considered as on leave of absence during that*
31 *period and shall be restored by the former employer to the former*
32 *position, or to a position of similar seniority, status, and pay, if*
33 *any exists, and shall not be discharged from the position without*
34 *cause within one year after being restored to the position.*

35 (c) *If any employer fails or refuses to comply with this section,*
36 *the superior court of the county in which the employer maintains*
37 *a place of business may, upon the filing of a motion, petition, or*
38 *other appropriate pleading by the person entitled to the benefits*
39 *of this section, specifically require the employer to comply with*
40 *this section and compensate the person for any loss of wages or*

1 benefits suffered by reason of the employer's unlawful action. The
2 court shall order a speedy hearing and shall advance it on the
3 calendar. Upon application to the district attorney of the county
4 in which the employer maintains a place of business by any person
5 claiming to be entitled to the benefits of this section, the district
6 attorney, if reasonably satisfied that the person is entitled to these
7 benefits, shall appear and act as attorney for the person in the
8 amicable adjustment of the claim or in the filing of any motion,
9 petition, or other appropriate pleading and the prosecution thereof
10 to specifically require the employer to comply with this section.
11 No fees or court costs are required to be paid by the person
12 applying for these benefits.

13 (d) Upon application to the city prosecutor of the city in which
14 the employer maintains a place of business by any person claiming
15 to be entitled to the benefits of this section, the city prosecutor, if
16 reasonably satisfied that the person is entitled to these benefits,
17 may appear and act as attorney for the person in the amicable
18 adjustment of the claim or in the filing of any motion, petition, or
19 other appropriate pleading and the prosecution thereof to
20 specifically require the employer to comply with this section. No
21 fees or court costs are required to be paid by the person applying
22 for these benefits.

23 *SEC. 2. If the Commission on State Mandates determines that*
24 *this act contains costs mandated by the state, reimbursement to*
25 *local agencies and school districts for those costs shall be made*
26 *pursuant to Part 7 (commencing with Section 17500) of Division*
27 *4 of Title 2 of the Government Code.*

28 ~~SECTION 1. Section 800 of the Military and Veterans Code~~
29 ~~is amended to read:~~

30 ~~800. (a) (1) Subject to subdivision (b), in addition to any other~~
31 ~~benefit provided by law and to the extent permitted by federal law,~~
32 ~~any member of the United States Military Reserve or the National~~
33 ~~Guard of this state who is called to active duty after the enactment~~
34 ~~of this chapter and before January 1, 2014, as a part of the Iraq~~
35 ~~and Afghanistan conflicts may defer payments on any of the~~
36 ~~following obligations while serving on active duty:~~

37 ~~(A) An obligation secured by a mortgage or deed of trust.~~
38 ~~(B) Credit card as defined in Section 1747.02 of the Civil Code.~~
39 ~~(C) Retail installment contract as defined in Section 1802.6 of~~
40 ~~the Civil Code.~~

- 1 ~~(D) Retail installment account, installment account, or revolving~~
2 ~~account as defined in Section 1802.7 of the Civil Code.~~
- 3 ~~(E) Up to two vehicle loans. For purposes of this chapter,~~
4 ~~“vehicle” means a vehicle as defined in Section 670 of the Vehicle~~
5 ~~Code.~~
- 6 ~~(F) Any payment of property tax or any special assessment of~~
7 ~~in-lieu property tax imposed on real property that is assessed on~~
8 ~~residential property owned by the reservist and used as that~~
9 ~~reservist’s primary place of residence on the date the reservist was~~
10 ~~ordered to active duty.~~
- 11 ~~(2) Subject to subdivision (b), in addition to any other benefits~~
12 ~~provided by law and to the extent permitted by federal law, any~~
13 ~~reservist who is called to active duty on and after January 1, 2014,~~
14 ~~may defer payments on any of the following obligations while~~
15 ~~serving on active duty:~~
 - 16 ~~(A) An obligation secured by a mortgage or deed of trust.~~
 - 17 ~~(B) Credit card as defined in Section 1747.02 of the Civil Code.~~
 - 18 ~~(C) Retail installment contract as defined in Section 1802.6 of~~
19 ~~the Civil Code.~~
 - 20 ~~(D) Retail installment account, installment account, or revolving~~
21 ~~account as defined in Section 1802.7 of the Civil Code.~~
 - 22 ~~(E) Up to two vehicle loans. For purposes of this chapter,~~
23 ~~“vehicle” means a vehicle as defined in Section 670 of the Vehicle~~
24 ~~Code.~~
 - 25 ~~(F) Any payment of property tax or any special assessment of~~
26 ~~in-lieu property tax imposed on real property that is assessed on~~
27 ~~residential property owned by the reservist and used as that~~
28 ~~reservist’s primary place of residence on the date the reservist was~~
29 ~~ordered to active duty.~~
 - 30 ~~(G) Any obligation owed to a utility company.~~
- 31 ~~(b) (1) In order for an obligation or liability of a reservist to be~~
32 ~~subject to the provisions of this chapter, the reservist or the~~
33 ~~reservist’s designee shall deliver to the obligor both of the~~
34 ~~following:~~
 - 35 ~~(A) A letter signed by the reservist, under penalty of perjury,~~
36 ~~requesting a deferment of financial obligations.~~
 - 37 ~~(B) A copy of the reservist’s activation or deployment order~~
38 ~~and any other information that substantiates the duration of the~~
39 ~~service member’s military service.~~

- 1 ~~(2) If required by a financial institution, proof that the reservist's~~
2 ~~employer does not provide continuing income to the reservist while~~
3 ~~the reservist is on active military duty, including the reservist's~~
4 ~~military pay, of more than 90 percent of the reservist's monthly~~
5 ~~salary and wage income earned before the call to active duty.~~
- 6 ~~(e) Upon request of the reservist or the reservist's dependent or~~
7 ~~designee and within five working days of that request, if applicable;~~
8 ~~the employer of a reservist shall furnish the letter or other~~
9 ~~comparable evidence showing that the employer's compensation~~
10 ~~policy does not provide continuing income to the reservist,~~
11 ~~including the reservist's military pay, of more than 90 percent of~~
12 ~~the reservist's monthly salary and wage income earned before the~~
13 ~~call to active duty.~~
- 14 ~~(d) The deferral period on financial obligations shall be the~~
15 ~~lesser of 180 days or the period of active duty plus 60 calendar~~
16 ~~days and shall apply only to those payments due subsequent to the~~
17 ~~notice provided to a lender as provided in subdivision (b). In~~
18 ~~addition, the total period of the deferment shall not exceed 180~~
19 ~~days within a 365-day period.~~
- 20 ~~(e) If a lender defers payments on a closed end credit obligation~~
21 ~~or an open-end credit obligation with a maturity date, pursuant to~~
22 ~~this chapter, the lender shall extend the term of the obligation by~~
23 ~~the amount of months the obligation was deferred.~~
- 24 ~~(f) If a lender defers payments on an open-end credit obligation~~
25 ~~pursuant to this chapter, the lender may restrict the availability of~~
26 ~~additional credit with respect to that obligation during the term of~~
27 ~~the deferral.~~