

Date of Hearing: July 2, 2013

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS
Al Muratsuchi, Chair
SB 720 (Correa) – As Amended: May 21, 2013

SENATE VOTE: 38-0

SUBJECT: Military service: benefits

FISCAL EFFECT: This measure is keyed fiscal.

SUMMARY: Seeks to ensure that military reservists and National Guard members ordered to active federal or state military service are able to defer financial obligations for all active duty assignments under terms currently reserved only for those recalled to active duty as part of the Iraq and Afghanistan conflicts. Specifically, this bill:

- 1) Authorizes, in the case of an installment contract for the purchase of real estate, or other instrument in the nature of a mortgage upon real estate, 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.
- 2) Authorizes, in the case of any other obligation, liability, tax, or assessment, a deferment of any payments on the obligation during an applicant's period of military service, or, 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.
- 3) Prohibits penalties from being imposed for the nonpayment of principal or interest during a period of deferment, and would prohibit 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.
- 4) Requires mortgage payments deferred during this period to be due and payable upon the occurrence of certain specified conditions, including the sale of the property, the maturity of the obligation, or the further encumbrance of the property other than for preservation or protection of the property.
- 5) Provides 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 a deferred mortgage.

EXISTING LAW:

- 1) Permits a federal military reservist or National Guardsman who is called to active duty as part of the Iraq and Afghanistan conflicts to defer payments on a financial obligation for a period of up to six months without accruing interest on the principal or interest of a deferred

payment. (Military and Veterans Code Section 800 *et seq.* All further references are to this code unless otherwise noted.)

- 2) Permits a federal military reservist or National Guardsman who is called to active duty to, at any time during his or her period of active duty service or within six months thereafter, apply to a court for relief from an obligation or liability incurred by the member prior to his or her period of military service, or from any tax or assessment falling due prior to or during the period of service. (Section 409.3(a).)
- 3) Authorizes, in the case of an installment contract for the purchase of real estate, 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, or, if application is made after the service, for a period of time up to the length of the period of military service. At the conclusion of the stay of enforcement, the principal and accumulated interest due and unpaid shall be repaid in equal installments during the remaining life of the installment contract or other instrument, extended by a period of time equal to the stay of enforcement, at the rate of interest on the unpaid balance as 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. (Section 409.3(d)(1).)
- 4) Authorizes, in the case of any other obligation, liability, tax, or assessment, a stay of the enforcement during an applicant's period of military service, or, if application is 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. At the conclusion of the stay of enforcement, 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, shall be repaid in equal periodic installments during a period of time equal to the stay of enforcement, 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. (Section 409.3(d)(2).)
- 5) Permits a court to grant this specified relief after appropriate notice and hearing, unless in its opinion the ability of the service member to comply with the obligation or pay the tax or assessment has not been materially affected by reason of the member's military service. (Section 409.3(d).)

COMMENTS: This bill would extend the enhanced protections currently offered only to service members ordered to active duty as part of the conflicts in Iraq and Afghanistan, including protection from having to pay interest on the accumulated principal or interest of a deferred financial obligation, to all federal military reservists and California National Guard service members ordered to active duty. It would also incorporate specific safeguards afforded to financial institutions under other deferment statutes to financial obligations deferred by service members under these enhanced protections.

As stated by the Assembly Committee on Judiciary:

Background: Existing law permits military reservists and National Guard members ordered to active federal or state military service to defer certain loans and financial obligations under two different provisions of the Military and Veterans Code. Military and Veterans Code Section 409.3 suspends enforcement of specified civil liabilities,

including financial obligations such as mortgages, automobile loans, and installment contracts, for service members during periods of active military service. The relief afforded under this section is available only upon application to a court, and at the conclusion of the period of suspension, the maturity date of the financial obligation is extended by the period of military service, and all unpaid principal and accumulated interest is added to the principal balance of the financial obligation. Consequently, a service member who defers an obligation under this provision incurs interest on any deferred interest, potentially increasing the amount due on an obligation after all deferred sums are rolled back into the obligation's principal at the conclusion of the deferment period.

Military and Veterans Code Section 800 *et seq.*, in contrast, permits service members called to active duty specifically as part of the Iraq or Afghanistan conflicts to defer payments on similar financial obligations for a period of up to six months. Rather than petitioning a court, a service member need only send a letter to their lender requesting deferment of a financial obligation in order to receive benefits under this provision. Additionally, Military and Veterans Code Section 804 provides that “[n]o interest shall be charged or accumulated on the principal or interest on which the payment was delayed.”

Elimination of interest accrual on deferred interest and enhanced protection for financial institutions: This bill makes two important changes regarding the financial protections afforded California's deployed military reservists and National Guardsman. First, it harmonizes certain protections currently available under Military and Veterans Code Section 800 *et seq.* with those available under Military and Veterans Code Section 409.3, by eliminating the accrual of interest on deferred interest payable under pre-existing financial obligations, such as mortgages and real estate purchase installment contracts, in the latter provision. Second, it incorporates certain protections afforded financial institutions under Section 800 *et seq.* into deferments authorized under Section 409.3.

The policy underlying the existing deferral protections is to recognize that in many cases the financial impact to a reserve or National Guard servicemember of a call to active duty is negative. Moreover, when such members are deployed overseas, we recognize that it may be difficult or impossible for them to manage financial obligations remotely and that, particularly in combat zones, they may be under extreme stress already without adding worry about finances back home. We recognize their sacrifice. We balance those considerations with the importance in our society of honoring contractual obligations made in the course of commerce. Our policy decision in California has been to allow servicemembers to defer certain financial obligations but to require that they still honor their commitments when they return from service.

This bill is in alignment with existing policy. Iraq and Afghanistan are the most recent conflict venues but, unfortunately, they are unlikely to be the last. Many of the stresses mentioned above occur as a result of a call to active service regardless of the location of the service. Therefore it makes sense to extend these protections to servicemembers without regard to the particular conflict or location in which they serve. Moreover, it is logical to harmonize the two sections of the Military and Veterans Code which offer financial protections, particularly with regard to whether or not interest is chargeable on deferred obligations.

Pending Related Legislation: AB 526 (Melendez) seeks to extend certain financial protections to a larger class of military reservists and National Guard members, their spouses and legal dependents, and would add utility bills to the current list of obligations subject to deferment, which include mortgages, credit card payments, installment accounts, vehicle loans, and property taxes.

Prior Related Legislation: AB 713 (Block, Chapter 105, Statutes of 2011) clarified that recall to active military service gives a service member the ability to apply to a court for relief from certain financial obligations. This bill also extended an existing provision of law that protects service members from the assessment of interest at a rate greater than six percent to the dependents of those service members.

AB 2455 (Nava, Chapter 124, Statutes of 2010) extended certain financial protections with respect to deferment of vehicle loans to spouses and dependents of service members.

AB 2365 (Lieu, Chapter 385, Statutes of 2010) enabled a service member to recover actual damages, reasonable attorney fees, and costs from any person who violates specified rights and protections of the Military and Veterans Code. Granted service members an expedited review of certain petitions for relief from financial obligations, and provided that a court shall not charge a filing fee or court costs for specified actions.

AB 306 (Baca, Chapter 291, Statutes of 2005) authorized service members who are called to active duty as a result of the Iraq or Afghanistan conflicts to defer payments on specified obligations for the period of active duty, plus 60 calendar days, or 180 days, whichever is less.

AB 1433 (Horton, Chapter 60, Statutes of 2002) enabled service members to petition a court for specified relief with respect to credit contract obligations, rental agreements, taxes (except income taxes), and health insurance, as well as eviction protection for the service members' families.

SB 1284 (Battin, 2002) would have extended certain financial protections to military reservists called to serve on active duty for national emergencies caused by the terrorist attacks on New York City and the Pentagon. This bill would have extended certain existing misdemeanor provisions relating to rent relief to a larger class of military reservists. This bill died in the Senate Committee on the Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

California Military Department
American Legion – Department of California
AMVETS – Department of California
California State Commanders Veterans Council
Vietnam Veterans of America – California State Council
National Guard Association of California

Opposition

None on file

Analysis Prepared by: John Spangler / V. A. / (916) 319-3550