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AB-3212 Service member protections. (2017-2018)

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Date Published: 09/19/2018 09:00 PM

Assembly Bill No. 3212

CHAPTER 555

An act to amend Sections 401, 402, 403, 404, 405, 406, 407, 408, 409.1, 409.2, 409.3, 409.4, 800, 803, 811, 821, 822, 823.5, 824, 826, and 827 of, to add Sections 409.15, 813, and 830 to, and to repeal and add Sections 400 and 409 of, the Military and Veterans Code, relating to service members.

[Approved by Governor September 19, 2018. Filed with Secretary of State September 19, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3212, Irwin. Service member protections.

(1) Existing law provides that the application by a service member for, or receipt by a service member of, a stay, postponement, or suspension in the payment of any tax, fine, penalty, insurance premium, or other civil obligation or liability of that person does not itself, without regard to other considerations, provide the basis for, among other things, a determination by any lender or other person that the service member is unable to pay any civil obligation or liability or the denial or revocation of credit by the creditor.

This bill would additionally provide that an application or receipt under these provisions does not provide a basis for an annotation in a service member's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information identifying the service member as a member of the active militia, or an active or reserve component of the Armed Forces. The bill would prohibit a person, in connection with the collection of any obligation, from falsely claiming to be a member or civilian employee of, among other things, the Armed Forces or of a component of the active militia or identifying himself or herself through the use of any military rank, rating, or title. The bill would additionally prohibit a person, in connection with the collection of any obligation from a member of the active militia or a member of the active or reserve components of the Armed Forces, from contacting the member's military unit or chain of command without the written consent of the member given after the obligation becomes due and payable. By creating a new crime, this bill would impose a state-mandated local program.

(2) Under existing law, in any action or proceeding commenced in any court, if there is a default of any appearance by the defendant, the plaintiff, before entering judgment, is required to file in the court a declaration under penalty of perjury setting forth facts showing that the defendant is not in the military service. Under existing law, if the defendant is in the military service, a court may not make an order until after the court appoints an attorney to represent the defendant and protect his or her interests, and the court is required to make that appointment on application.

This bill, among other things, would, if an attorney appointed under this section to represent a service member cannot locate the service member, prohibit actions by the attorney in the case from waiving any defense of the service member or otherwise binding the service member.

Existing law provides that, at any stage in any action or proceeding in which a service member is involved, during the period of military service or 60 days thereafter, the court may, in its discretion, and is required to, on application by the service member,

stay an action or proceeding unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his or her military service.

This bill would extend these protections to 120 days after the period of military service. The bill would additionally authorize a service member who is granted a stay of a civil action or proceeding under these provisions to apply for an additional stay based on continuing material effect of military duty on the service member's ability to appear, and require the court, if it refuses to grant an additional stay of proceedings, to appoint counsel to represent the service member in the action or proceeding.

(3) Existing law prohibits an obligation or liability bearing interest at a rate in excess of 6% per year incurred by a service member before that person's entry into service from bearing interest at a rate in excess of 6% per year during any part of the period of military service. Under existing law, for an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage, this prohibition extends to one year after the period of military service.

This bill would extend this prohibition, for an obligation or liability consisting of a student loan, to one year after the period of military service. This bill would extend this prohibition, for an obligation that does not consist of a student loan, mortgage, trust deed, or other security in the nature of a mortgage, to 120 days after the period of military service.

Existing law authorizes a member of the United States Military Reserve or the National Guard who is called to active duty, as specified, to defer payments on specified obligations, including credit cards and vehicle loans, while serving on active duty.

This bill would include student loans under these provisions.

(4) Existing law authorizes a person to terminate a lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes in any case in which the lease was executed by or on the behalf of the person who, after the execution of that lease, entered military service, as specified.

This bill would recast those provisions, and extend them to additionally authorize a person to terminate a lease of a motor vehicle, as specified. By creating a new crime, this bill would impose a state-mandated local program.

(5) This bill would additionally require any person who receives a good faith request from a service member for relief pursuant to any of the provisions described above and who believes the request is incomplete or otherwise not legally sufficient or that the service member is not entitled to the relief requested, to, within 30 days of the request, provide the service member with a written response acknowledging the request, as specified. The bill would provide that if the person fails to make such a response in the timeframe above, the person waives any objection to the request, and the service member shall be entitled to the relief requested.

This bill would incorporate additional changes to Section 800 of the Military and Veterans Code proposed by AB 2521 to be operative only if this bill and AB 2521 are enacted and this bill is enacted last.

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 no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 400 of the Military and Veterans Code is repealed.

SEC. 2. Section 400 is added to the Military and Veterans Code, to read:

400. For the purposes of this chapter, the following definitions apply:

(a) "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) "Military orders," with respect to a service member, means official military orders, or any notification, certification, or verification from the service member's commanding officer with respect to the service member's current or future military duty status.

(c) "Military service" means, as to a member of the militia, full-time active state service or full-time active federal service. As to a person who is not a member of the militia, "military service" means full-time active duty for a period in excess of seven days in any 14-day period.

(d) "Service member" means all of the following:

(1) A member of the militia, as defined in Section 120, called or ordered into active state or federal service pursuant to Section 143 or 146 or federal law.

(2) A member of an active or reserve component of the Armed Forces who is ordered into active duty pursuant to federal law.

SEC. 3. 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.

(5) An annotation in a service member's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information identifying the service member as a member of the active militia, as defined in Section 120, or an active or reserve component of the Armed Forces.

(b) A person shall not, in connection with the collection of any obligation, including any debt or payment, falsely claim to be a member or civilian employee of the Armed Forces, a component of the active militia, as defined in Section 120, the Department of Defense, the Department of Homeland Security, or the Military Department, or identify himself or herself through the use of any military rank, rating, or title.

(c) A person shall not, in connection with the collection of any obligation, including any debt or payment, from a member of the active militia, as defined in Section 120, or a member of an active or reserve component of the Armed Forces, contact the member's military unit or chain of command without the written consent of the member given after the obligation becomes due and payable.

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

(e) 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 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. If an attorney appointed under this section to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 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. Any person violating any provision of this section is also liable for actual damages, reasonable attorney's fees, and costs incurred by the injured party.

(c) In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subdivision upon application of counsel, or on the court's own motion, if the court determines that there may be a defense to the action and a defense cannot be presented without the presence of the defendant, or, after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

(d) 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.

(e) 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.

(f) For purposes of this section and any declaration made under this section, a defendant shall be deemed to be "in the military service" if he or she is either:

(1) Currently in the military service.

(2) Was in the military service within the preceding 120 days.

SEC. 5. Section 403 of the Military and Veterans Code is amended to read:

403. (a) At any stage in any action or proceeding in which a service member is involved, either as plaintiff or defendant, during a period of military service or within 120 days thereafter, the court may, in its discretion on its own motion, and shall, on application to it by the service member or some person on his or her behalf, stay the action or proceeding unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his or her defense is not materially affected by reason of his or her military service.

(b) When an action for compliance with the terms of any contract is stayed pursuant to this section, no fine or penalty shall accrue by reason of failure to comply with the terms of the contract during the period of the stay, and in any case where a person fails to perform any obligation and if a fine or penalty for the nonperformance is incurred a court may, on those terms as may be just, provide relief against the enforcement of that fine or penalty if it appears that the person who would suffer by that fine or penalty was in the military service when the penalty was incurred and that by reason of military service the ability of the person to pay or perform was thereby materially impaired.

(c) In any action or proceeding against a service member, before or during the period of the service, or within 120 days thereafter, the court may, in its discretion on its own motion, or shall, upon application to it by the service member or some person on his or her behalf, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his or her military service, do either of the following:

(1) Stay the execution of any judgment or order entered against a service member.

(2) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment.

(d) Any stay of any action, proceeding, attachment, or execution ordered by any court under this section may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of that period, and subject to those terms as may be just, including terms with respect to payment in installments of those amounts at those times as the court may fix. If the service member is a codefendant with others the plaintiff may nevertheless, by leave of court, proceed against the others.

(e) A service member who is granted a stay of a civil action or proceeding under this section may apply for an additional stay based on continuing material effect of military duty on the service member's ability to appear. If the court refuses to grant an

additional stay of proceedings, it shall appoint counsel to represent the service member in the action or proceeding.

(f) An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction.

SEC. 6. Section 404 of the Military and Veterans Code is amended to read:

404. (a) A 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.

SEC. 7. 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 current period of military service shall, except as provided in subdivision (b), bear interest at a rate in excess of 6 percent per year as follows:

(1) For an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage, or any student loan, during any part of the period of military service and one year thereafter.

(2) For any other obligation or liability, during any part of the period of military service and 120 days thereafter.

(b) Notwithstanding subdivision (a), if in the opinion of a court, upon application thereto by the obligee, the ability of the service member to pay interest upon an obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of that service, the court may make that order as in its opinion may be just.

(c) 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.

(d) Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in this section is forgiven. The amount of any periodic payment due from a service member shall be reduced by the amount of the interest forgiven under this section that is allocable to the period for which the payment is made.

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

SEC. 8. 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, until 120 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. 9. 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 into a period of 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, or for 120 days thereafter, 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. 10. 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.

(b) In any proceeding commenced in any court during, or within one year after, the period of military service to enforce that obligation as provided in subdivision (a), 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 one year thereafter, except pursuant to an agreement between the parties made after the nonpayment or breach, 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. 11. Section 409 of the Military and Veterans Code is repealed.

SEC. 12. Section 409 is added to the Military and Veterans Code, to read:

409. (a) The lessee on a lease described in subdivision (b) may, at the lessee's option, terminate the lease at any time after the lessee's entry into military service, or the date of the lessee's military orders described in subdivision (b). A lessee's termination of a lease pursuant to this subdivision shall terminate any obligation a dependent of the lessee has under the lease.

(b) This section applies to the following leases:

(1) A lease of premises occupied, or intended to be occupied, by a service member or a service member's dependents for a residential, professional, business, agricultural, or similar purpose if the lease is executed by or on behalf of a person who does either of the following:

(A) During the term of the lease, enters a period of military service.

(B) While in a period of military service, executes the lease and then receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(2) A lease of a motor vehicle used, or intended to be used, by a service member or a service member's dependents for personal or business transportation if the lease is executed by or on behalf of a person who does either of the following:

(A) During the term of the lease, enters a period of military service under a call or order specifying a period of not less than 180 days.

(B) During the term of the lease, enters a period of military service under a call or order specifying a period of less than 180 days, and then receives orders extending the period of military service to a period of not less than 180 days.

(C) While in a period of military service, executes the lease and then receives military orders for a change of permanent station from a location in the continental United States to a location outside the continental United States, or from a location in a state outside the continental United States to any location outside that state, or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.

(c) (1) Termination of a lease under subdivision (a) shall be made by delivery by the lessee of written notice of that termination, and a copy of the service member's military orders, to the lessor or the lessor's grantee, or to the lessor's agent or the agent's grantee, and in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor or the lessor's grantee, or to the lessor's agent or the agent's grantee, not later than 15 days after the date of the delivery of written notice.

(2) Notice under paragraph (1) may be accomplished by hand delivery, private business carrier, or by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor or the lessor's grantee, or to the lessor's agent or the agent's grantee, and depositing the written notice in the United States mail system.

(d) (1) In the case of a lease described in paragraph (1) of subdivision (b) that provides for monthly payment of rent, termination of the lease under subdivision (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subdivision (c) is delivered. In the case of any other lease described in paragraph (1) of subdivision (b), termination of the lease under subdivision (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) In the case of a lease described in paragraph (2) of subdivision (b), termination of the lease under subdivision (a) is effective on the day on which the requirements of subdivision (c) are met for that termination.

(e) (1) Rent amounts for a lease described in paragraph (1) of subdivision (b) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time of termination of the lease, shall be paid by the lessee.

(2) Lease amounts for a lease described in paragraph (2) of subdivision (b) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease, shall be paid by the lessee.

(f) Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor, or the lessor's assignee or the assignee's agent, within 30 days of the effective date of the termination of the lease.

(g) Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a service member may be modified as justice and equity require.

(h) Any person who knowingly seizes, holds, or detains the personal effects, clothing, furniture, security deposit, or other property of any person who has lawfully terminated a lease covered by this section, or in any manner interfered with the removal of that property from the premises covered by that lease, for the purpose of subjecting or attempting to subject any of the property to a claim for rent accruing subsequent to the date of termination of the lease, 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 that fine and imprisonment.

SEC. 13. 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 on the property or personal effects of a service member, including liens for storage, repair, or cleaning, during that person's period of military service and for 120 days thereafter, except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, or if requested by a service member whose ability to comply with the obligation resulting in the proceeding is materially affected by military service, stay the proceeding for a period of time as justice and equity require, or adjust the obligation to preserve 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) 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. 14. Section 409.2 of the Military and Veterans Code is amended to read:

409.2. (a) This section shall apply when any taxes or assessments, whether general or special, other than taxes on income, whether falling due prior to or during his or her most current period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a service member or his or her dependents at the commencement of the service member's most current period of military service and still so occupied by the service member's dependents or employees are not paid.

(b) No sale of this property shall be made to enforce the collection of any tax or assessment, or any proceeding or action commenced for that purpose, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the service member to pay the taxes or assessments is not materially affected by reason of that service, may stay the proceedings or sale, as provided in this section, for a period extending not more than six months after the termination of the most current period of military service.

(c) When by law this property may be sold or forfeited to enforce the collection of any tax or assessment, the service member shall have the right to redeem or commence an action to redeem that property, at any time not later than six months after the termination of the period of military service.

(d) Whenever any tax or assessment shall not be paid when due, the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year, and no other penalty or interest shall be incurred by reason of that nonpayment. Any lien for any unpaid taxes or assessment shall also include that interest thereon.

SEC. 15. 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 before 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 before 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) If, after notice and hearing, the court finds the ability of the service member to comply with the terms of any such obligation or liability, or to pay any such tax or assessment, has been materially affected by reason of his or her most current period of military service as defined in this chapter, the court may grant the following relief:

(1) In the case of an obligation payable 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 deferment of the payments due on the obligation for a period of time equal to the period of military service, even if the service member requests the relief after the start of his or her current period of military service, subject to subdivision (a), and even if such payments extend beyond the termination of the period of military service. The obligation shall be extended for the period of time that payments were deferred, and the deferred payments shall be paid 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. Penalties shall not be imposed on the nonpayment of principal or interest during this period. Interest shall not be charged or accumulated on the principal or interest on which the payment was delayed.

(2) In the case of any other obligation, liability, tax, or assessment, a deferment of any payments on the obligation during the service member'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. Penalties shall not be imposed on the nonpayment of principal or interest during this period. Interest shall not be charged or accumulated on the principal or interest on which the payment was delayed.

(e) (1) When any court has granted a deferment as provided in this section, no fine or penalty shall accrue during the period the terms and conditions of the deferment 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 deferment was granted, including penalties on the nonpayment of principal or interest during this period. Interest shall not be charged or accumulated on the principal or interest on which the payment was delayed. Foreclosure or repossession of property on which payment has been deferred shall not take place during the period specified in this section.

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

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

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

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

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

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

(i) This section shall not permit a service member ordered to military service to obtain a delay, deferment, or stay on an obligation to pay child support. This section shall not 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 before the order to service.

SEC. 16. 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 current period of military service to reinstatement of any health insurance that was in effect on the day before the current period of 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 current 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. 17. Section 409.15 is added to the Military and Veterans Code, to read:

409.15. (a) Any person who receives a good faith request from a service member for relief pursuant to this chapter and who believes the request is incomplete or otherwise not legally sufficient, or that the service member is not entitled to the relief requested, shall, within 30 days of the request, provide the service member with a written response acknowledging the request, setting forth the person's basis for believing or asserting that the request is incomplete or not legally sufficient, or that the service member is not entitled to the relief requested. The response shall clearly identify the specific information or materials that are missing from the request and that would be required to grant the relief requested, and provide contact information, including a mailing address and telephone number, which the service member can use to contact the person.

(b) If the person fails to make such a response in the timeframe set forth in this section, the person waives any objection to the request, and the service member shall be entitled to the relief requested.

SEC. 18. Section 800 of the Military and Veterans Code is amended to read:

800. (a) Subject to subdivision (b), in addition to any other benefits provided by law and to the extent permitted by federal law, a reservist who is called to active duty may defer payments on any of the following obligations while serving on active duty:

(1) An obligation secured by a mortgage or deed of trust.

(2) Credit card, as defined in Section 1747.02 of the Civil Code.

(3) Retail installment contract, as defined in Section 1802.6 of the Civil Code.

(4) Retail installment account, installment account, or revolving account, as defined in Section 1802.7 of the Civil Code.

(5) Up to two vehicle loans. For purposes of this chapter, "vehicle" means a vehicle as defined in Section 670 of the Vehicle Code.

(6) A payment of property tax or any special assessment of in-lieu property tax imposed on real property that is assessed on residential property owned by the reservist and used as that reservist's primary place of residence on the date the reservist was ordered to active duty.

(7) An obligation owed to a utility company.

(8) A student loan.

(b) (1) In order for an obligation or liability of a reservist to be subject to the provisions of this chapter, the reservist or the reservist's designee shall deliver to the obligor both of the following:

(A) A request by or on behalf of the reservist for a deferment of financial obligations.

(B) A copy of the reservist's military orders.

(2) If required by a financial institution, proof that the reservist's employer does not provide continuing income to the reservist while the reservist is on active military duty, including the reservist's military pay, of more than 90 percent of the reservist's monthly salary and wage income earned before the call to active duty.

(c) Upon request of the reservist or the reservist's dependent or designee and within five working days of that request, if applicable, the employer of a reservist shall furnish the letter or other comparable evidence showing that the employer's compensation policy does not provide continuing income to the reservist, including the reservist's military pay, of more than 90 percent of the reservist's monthly salary and wage income earned before the call to active duty.

(d) The deferral period on financial obligations shall be the lesser of 180 days or the period of active duty plus 60 calendar days and shall apply only to those payments due subsequent to the notice provided to a lender as provided in subdivision (b). In addition, the total period of the deferment shall not exceed 180 days within a 365-day period.

(e) If a lender defers payments on a closed end credit obligation or an open-end credit obligation with a maturity date, pursuant to this chapter, the lender shall extend the term of the obligation by the amount of months the obligation was deferred.

(f) If a lender defers payments on an open-end credit obligation pursuant to this chapter, the lender may restrict the availability of additional credit with respect to that obligation during the term of the deferral.

SEC. 18.5. Section 800 of the Military and Veterans Code is amended to read:

800. (a) Subject to subdivision (b), in addition to any other benefits provided by law and to the extent permitted by federal law, a reservist who is called to active duty may defer payments on any of the following obligations while serving on active duty:

(1) An obligation secured by a mortgage or deed of trust.

(2) Credit card, as defined in Section 1747.02 of the Civil Code.

(3) Retail installment contract, as defined in Section 1802.6 of the Civil Code.

(4) Retail installment account, installment account, or revolving account, as defined in Section 1802.7 of the Civil Code.

(5) Up to two vehicle loans. For purposes of this chapter, "vehicle" means a vehicle as defined in Section 670 of the Vehicle Code.

(6) A payment of property tax or any special assessment of in-lieu property tax imposed on real property that is assessed on residential property owned by the reservist and used as that reservist's primary place of residence on the date the reservist was ordered to active duty.

(7) An obligation owed to a utility company.

(8) A student loan.

(b) (1) In order for an obligation or liability of a reservist to be subject to the provisions of this chapter, the reservist or the reservist's designee shall deliver to the obligor both of the following:

(A) A written request by or on behalf of the reservist for a deferment of financial obligations. For purposes of this subparagraph, "written request" includes an electronic communication.

(B) A copy of the reservist's military orders.

(2) If required by a financial institution, proof that the reservist's employer does not provide continuing income to the reservist while the reservist is on active military duty, including the reservist's military pay, of more than 90 percent of the reservist's monthly salary and wage income earned before the call to active duty.

(c) Upon request of the reservist or the reservist's dependent or designee and within five working days of that request, if applicable, the employer of a reservist shall furnish the letter or other comparable evidence showing that the employer's compensation policy does not provide continuing income to the reservist, including the reservist's military pay, of more than 90 percent of the reservist's monthly salary and wage income earned before the call to active duty.

(d) The deferral period on financial obligations shall be the lesser of 180 days or the period of active duty plus 60 calendar days and shall apply only to those payments due subsequent to the notice provided to a lender as provided in subdivision (b). In addition, the total period of the deferment shall not exceed 180 days within a 365-day period.

(e) If a lender defers payments on a closed end credit obligation or an open-end credit obligation with a maturity date, pursuant to this chapter, the lender shall extend the term of the obligation by the amount of months the obligation was deferred.

(f) If a lender defers payments on an open-end credit obligation pursuant to this chapter, the lender may restrict the availability of additional credit with respect to that obligation during the term of the deferral.

SEC. 19. Section 803 of the Military and Veterans Code is amended to read:

803. The following definitions apply for purposes of this chapter:

(a) "Reservist" means either of the following:

(1) A member of the militia, as defined in Section 120, called or ordered into state military service pursuant to Section 143 or 146 or federal law.

(2) A member of a reserve component of the Armed Forces of the United States, as defined by Section 101 of Title 10 of the United States Code, who is ordered to active duty pursuant to federal law.

(b) "Military orders" means, with respect to a service member, official military orders, or any notification, certification, or verification from the service member's commanding officer, with respect to the service member's current or future military duty status.

(c) "Military service" means either of the following:

(1) Full-time active state service or full-time active federal service of a service member who is a member of the militia, as described in paragraph (1) of subdivision (a).

(2) Full-time active duty of a service member who is a reservist, as described in paragraph (2) of subdivision (a), for a period of no less than 30 consecutive days.

SEC. 20. Section 811 of the Military and Veterans Code is amended to read:

811. (a) The spouse or legal dependent, or both, of a reservist who is called to active duty, shall be entitled to the benefits accorded to a reservist under this chapter, provided that the reservist is eligible for the benefits.

(b) This chapter applies only to an obligation specified in this chapter that was incurred prior to the date that a reservist was called to his or her current period of active duty.

SEC. 21. Section 813 is added to the Military and Veterans Code, to read:

813. (a) Any person who receives a good faith request from a service member for relief pursuant to this chapter and who believes the request is incomplete or otherwise not legally sufficient, or that the service member is not entitled to the relief requested, shall, within 30 days of the request, provide the service member with a written response acknowledging the request, setting forth the person's basis for believing or asserting that the request is incomplete or not legally sufficient, or that the service member is not entitled to the relief requested. The response shall clearly identify the specific information or materials that are missing from the request and that would be required to grant the relief requested, and provide contact information, including a mailing address and telephone number, which the service member can use to contact the person.

(b) If the person fails to make such a response in the timeframe set forth in this section, the person waives any objection to the request, and the service member shall be entitled to the relief requested.

SEC. 22. Section 821 of the Military and Veterans Code is amended to read:

821. For purposes of this chapter, the following definitions apply:

(a) "Service member" means either of the following:

(1) A member of the militia, as defined in Section 120, called or ordered into military service pursuant to Section 143 or 146 or federal law.

(2) A member of a reserve component of the Armed Forces of the United States, as defined by Section 101 of Title 10 of the United States Code, who is ordered to active duty pursuant to federal law.

(b) "Military orders" means, with respect to a service member, official military orders, or any notification, certification, or verification from the service member's commanding officer, with respect to the service member's current or future military duty status.

(c) "Military service" means either of the following:

(1) Full-time active state service or full-time active federal service of a service member who is a member of the militia, as described in paragraph (1) of subdivision (a).

(2) Full-time active duty of a service member who is a reservist, as described in paragraph (2) of subdivision (a), for a period of no less than 30 consecutive days.

SEC. 23. Section 822 of the Military and Veterans Code is amended to read:

822. No county recorder in this state may impose a fee for the recordation of a power of attorney to act as the agent for a service member.

SEC. 24. Section 823.5 of the Military and Veterans Code is amended to read:

823.5. (a) No person or entity licensed under the Business and Professions Code, Corporations Code, Financial Code, or Insurance Code shall market financial services or products to a service member or former service member, or the spouse of a service member or former service member, in a misleading or deceptive manner that suggests any of the following:

(1) That the person or entity marketing the financial service or product is acting on behalf of one or more branches of the United States military or the United States Department of Veterans Affairs.

(2) That the person or entity marketing the financial service or product is an affiliate of one or more branches of the United States military or the United States Department of Veterans Affairs.

(3) That the financial service or product is being offered on behalf of one or more branches of the United States military or the United States Department of Veterans Affairs.

(b) If a person who violates this section is licensed under any state licensing law, a violation of this section shall be deemed a violation of the laws under which that person is licensed.

(c) This section shall not apply to either of the following:

(1) Any bank as defined in Section 103 of the Financial Code.

(2) Any credit union as defined in Section 14002 of the Financial Code.

(d) For purposes of this section:

(1) "Service member" means a member of an active duty or reserve component of the Armed Forces of the United States or of the active militia, as defined by Section 120.

(2) "Former service member" means a veteran as defined by Section 980.

SEC. 25. Section 824 of the Military and Veterans Code is amended to read:

824. (a) An institution shall, upon request, grant an academic leave of absence for military service to any student who is a member of the active militia, as defined by Section 120, or a reserve component of the Armed Forces of the United States, as defined by Section 101 of Title 10 of the United States Code, who is ordered to active duty pursuant to Section 143 or 146 or federal law.

(b) If requested by a student granted an academic leave of absence for military service, not later than one year after the student's release from military service, other than a dishonorable release, the institution in which the student is enrolled shall do one of the following, as elected by the student:

(1) The institution shall make arrangements to reasonably accommodate and assist the student so that he or she is able to meet any and all coursework requirements that he or she may have missed due to military service.

(2) The institution shall refund the tuition and fees paid by the student for the academic term in which the student is required to report for military service regardless of whether the student was called to military service before the academic term had commenced or after the academic term had commenced. The refund shall equal 100 percent of the tuition and fee charges the student paid the institution for the applicable academic term.

(c) If requested by a student granted an academic leave of absence for military service, not later than one year after the student's release from military service, other than a dishonorable release, the institution shall restore the student to the educational status the student had attained prior to being called to military service without loss of academic credits earned, scholarships or grants awarded, or tuition and other fees paid prior to the commencement of military service.

(d) If an institution fails to comply with this section, the student may bring an action against the institution to enforce its provisions in any court of competent jurisdiction of the county in which the student resides. If the student resides outside of this state, the action shall be brought in the court of the county in which the campus of the institution previously attended by the student is located. The court may award reasonable attorney's fees and expenses if the student prevails in the action.

(e) The Legislature hereby requests that the University of California adopt policies similar to those set forth in this section.

(f) For purposes of this section, "institution" includes any public postsecondary educational institution and any private postsecondary educational institution, as defined in Section 94858 of the Education Code.

SEC. 26. Section 826 of the Military and Veterans Code is amended to read:

826. (a) On or after the effective date of the act adding this chapter, any service member who terminates a motor vehicle lease pursuant to the federal Servicemembers Civil Relief Act, or pursuant to Section 409, shall be allowed by the lessor to make payment of any arrearages and other obligations that are due and unpaid at the time of termination of the lease in equal installments over a period equal to at least the period of military service.

(b) Any person who files or completes a notice, application, or certification of lien sale or certificate of repossession shall, as part of that document, state under penalty of perjury that the lien sale or repossession was conducted in accordance with the requirements of Sections 407, 408, 409.1, and 409.3, and with the requirements of Sections 3952, 3953, and 3958 of Title 50 of the United States Code.

SEC. 27. Section 827 of the Military and Veterans Code is amended to read:

827. (a) A qualified customer may apply for and shall receive shutoff protection from a service provider for a period of 180 days. The service provider may grant extensions after the initial 180-day period.

(b) A qualified customer may apply for shutoff protection for utility service by notifying the service provider that he or she is in need of assistance because of a reduction in household income as the result of a member of a qualified household being called to active duty status in the military.

(c) Notification of the need for assistance shall be submitted in writing and accompanied by a copy of the activation or deployment order of a service member that specifies the duration of the active duty status. The written notification shall also include self-certification that the qualified household of the qualified customer will be occupied by the qualified customer's legal dependent or dependents during the duration of the shutoff protection period.

(d) A qualified customer receiving assistance under this section shall notify the service provider if the active duty status of the service member will be extended.

(e) If the qualified customer moves out of the residence that is receiving shutoff protection, he or she shall provide the service provider a written notice that includes the date of service termination and a forwarding address.

(f) Unless waived by the service provider, the shutoff protection provided under this section shall not void or limit the obligation of the qualified customer to pay for utility services received during the time of assistance.

(g) All service providers shall do the following:

(1) Establish a repayment plan requiring minimum monthly payments that allows the qualified customer to pay any past due amounts over a reasonable time period not to exceed one year after the service member's release from active military duty.

(2) Not charge late payment fees or interest to the qualified customer during the period of military service or the repayment period.

(h) This section shall not affect or amend any rules or orders of the Public Utilities Commission pertaining to billing standards.

(i) If terms and conditions under this section are not followed by the qualified customer, the service provider may follow its procedures and rules on customer standards and billing practices for providing electric, water, and gas residential services.

(j) For public utilities regulated by the Public Utilities Commission, the commission shall allow recovery of reasonable costs incurred to implement this section.

(k) For purposes of this section:

(1) "Service provider" means a provider of utility services, including, but not limited to, public utilities that are subject to the jurisdiction of the Public Utilities Commission, local publicly owned electric utilities, as defined by Section 224.3 of the Public Utilities Code, and public water, sewer, or solid waste collection services, or any combination thereof. "Service provider" does not include any corporation described in subdivision (a) of Section 234 of the Public Utilities Code.

(2) "Qualified customer" means the customer of record of a qualified household.

(3) A "qualified household" is a residential household for which the income is reduced because the customer of record, the spouse of the customer of record, or the registered domestic partner of the customer of record, as defined by Section 297.5 of the Family Code, is a service member called to full-time active military service under Section 143 or 146 or federal law.

SEC. 28. Section 830 is added to the Military and Veterans Code, to read:

830. (a) Any person who receives a good faith request from a service member for relief pursuant to this chapter and who believes the request is incomplete or otherwise not legally sufficient, or that the service member is not entitled to the relief requested, shall, within 30 days of the request, provide the service member with a written response acknowledging the request, setting forth the person's basis for believing or asserting that the request is incomplete or not legally sufficient, or that the service member is not entitled to the relief requested. The response shall clearly identify the specific information or materials that are missing from the request and that would be required to grant the relief requested, and provide contact information, including a mailing address and telephone number, which the service member can use to contact the person.

(b) If the person fails to make such a response in the timeframe set forth in this section, the person waives any objection to the request, and the service member shall be entitled to the relief requested.

SEC. 29. Section 18.5 of this bill incorporates amendments to Section 800 of the Military and Veterans Code proposed by both this bill and Assembly Bill 2521. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 800 of the Military and Veterans Code, and (3) this bill is enacted after Assembly Bill 2521, in which case Section 18 of this bill shall not become operative.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.