

BILL ANALYSIS

C.S.H.B. 3857
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Defense & Veterans' Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many Texas citizens are facing home foreclosures during the current economic downturn. An increasing number of active duty military servicemembers are experiencing foreclosures because the conditions of their service make it very difficult to comply with their financial obligations in a timely manner. Currently, when military servicemembers are ordered to active duty, certain financial protections are provided at the federal level through the Servicemembers Civil Relief Act (SCRA).

C.S.H.B. 3857 attempts to give Texas servicemembers the same level of protection as the SCRA by authorizing a court to stay foreclosure proceedings or adjust the obligations under the servicemember's contract for active duty servicemembers and nonactive duty servicemembers for a period of nine months following the date on which their service is concluded. The bill does not release the servicemember from all mortgage and contractual obligations, but rather grants servicemembers the opportunity to fulfill their contractual obligations on a timeline better suited to their particular situation.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3857 amends the Property Code to authorize a court, after a hearing and on the court's own motion, to stay foreclosure proceedings for a period of time or adjust the obligations of the contract secured by the lien to preserve the interests of all parties, if the action is filed during a servicemember's period of active duty military service or during the nine months after the date on which that service period concludes and requires the court to do this on the application by a servicemember whose ability to comply with the obligations is materially affected by the member's service. The bill prohibits a sale, foreclosure, or seizure of property under a mortgage, deed of trust, or other contract lien from being conducted during the servicemember's period of active duty or during the nine months after that service concludes unless the sale, foreclosure, or seizure is conducted under a previous court order, or under an agreement in which the servicemember waives the servicemember's rights under this provision. The bill authorizes a military servicemember to waive the rights to stay foreclosure proceedings or adjust the obligations of a contract secured by a lien, and sets forth the required form and content of the waiver. The bill creates a Class A misdemeanor offense for a person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property during a military servicemember's period of active duty military service or during the nine months after the date on which that service period concludes. The bill entitles a dependent of a military servicemember to these protections on application to a court if the dependent's ability to comply with an obligation that is secured by a mortgage, deed of trust, or other contract lien on real property or personal property that is a dwelling is materially affected by the servicemember's military service.

C.S.H.B. 3857 authorizes a court issuing a stay or taking any other action regarding the enforcement of an obligation to grant a similar stay or take similar action with respect to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation. The bill authorizes the court, if a judgment or decree is vacated or set aside wholly or partly, to also set aside or vacate, as applicable, the judgment or decree with respect to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation that is subject to the judgment or decree. The bill does not prevent a waiver of these protections in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person, whether primarily or secondarily liable on an obligation, and provides that the waiver is effective only if it is executed as an instrument separate from the obligation with respect to which it applies. The bill provides that if the waiver is executed by an individual who after the execution of the waiver enters active duty military service, or by a dependent of an individual who after the execution of the waiver enters active duty military service, the waiver is not valid after the beginning of the period of the active duty military service, unless the waiver was executed by the individual or dependent during the applicable period described by the federal Servicemembers Civil Relief Act.

C.S.H.B. 3857 applies its provisions only to an obligation that is secured by a mortgage, deed of trust, or other contract lien on real property or personal property that is a dwelling owned by a military servicemember that originates before the date on which the servicemember's active duty military service commences and for which the servicemember is still obligated. The bill defines "active duty military service," "dwelling," "military servicemember," and "person."

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3857 adds definitions not in the original for "dwelling" and "person."

C.S.H.B. 3857 differs from the original by specifying that the bill's provisions apply only to an obligation secured by a mortgage, deed of trust, or other contract lien on real property or personal property that is a dwelling owned by a military servicemember, rather than real or personal property owned by a military servicemember as in the original.

C.S.H.B. 3857 adds a provision not in the original entitling a dependent of a military servicemember to protections to stay foreclosure proceedings or adjust the obligations under the servicemember's contract if the dependent's ability to comply with a secured obligation is materially affected by the servicemember's military service.