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H.B. No. 3857

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to foreclosure of liens on real property and certain  
3 personal property owned by members or dependents of the military;  
4 providing a criminal penalty.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 51, Property Code, is amended by adding  
7 Section 51.015 to read as follows:

8 Sec. 51.015. SALE OF CERTAIN PROPERTY OWNED BY MEMBER OF THE  
9 MILITARY. (a) In this section:

10 (1) "Active duty military service" means:

11 (A) service as a member of the armed forces of the  
12 United States; and

13 (B) with respect to a member of the Texas  
14 National Guard or the National Guard of another state or a member of  
15 a reserve component of the armed forces of the United States, active  
16 duty under an order of the president of the United States.

17 (2) "Dwelling" means a residential structure or  
18 manufactured home that contains one to four family housing units.

19 (3) "Military servicemember" means:

20 (A) a member of the armed forces of the United  
21 States;

22 (B) a member of the Texas National Guard or the  
23 National Guard of another state serving on active duty under an  
24 order of the president of the United States; or

1           (C) a member of a reserve component of the armed  
2 forces of the United States who is on active duty under an order of  
3 the president of the United States.

4           (4) "Person" has the meaning assigned by Section  
5 311.005, Government Code.

6           (b) This section applies only to an obligation:

7           (1) that is secured by a mortgage, deed of trust, or  
8 other contract lien on real property or personal property that is a  
9 dwelling owned by a military servicemember;

10           (2) that originates before the date on which the  
11 servicemember's active duty military service commences; and

12           (3) for which the servicemember is still obligated.

13           (c) In an action filed during a military servicemember's  
14 period of active duty military service or during the nine months  
15 after the date on which that service period concludes to foreclose a  
16 lien or otherwise enforce an obligation described by Subsection  
17 (b), the court may after a hearing and on the court's own motion,  
18 and shall on the application by a servicemember whose ability to  
19 comply with the obligations of the contract secured by the lien is  
20 materially affected by the servicemember's military service:

21           (1) stay the proceedings for a period of time as  
22 justice and equity require; or

23           (2) adjust the obligations of the contract secured by  
24 the lien to preserve the interests of all parties.

25           (d) A sale, foreclosure, or seizure of property under a  
26 mortgage, deed of trust, or other contract lien described by  
27 Subsection (b) may not be conducted during the military

1 servicemember's period of active duty military service or during  
2 the nine months after the date on which that service period  
3 concludes unless the sale, foreclosure, or seizure is conducted  
4 under:

5 (1) a court order issued before the sale, foreclosure,  
6 or seizure; or

7 (2) an agreement that complies with Subsection (e).

8 (e) A military servicemember may waive the servicemember's  
9 rights under this section only as provided by this subsection. The  
10 waiver must be:

11 (1) in writing in at least 12-point type;

12 (2) executed as an instrument separate from the  
13 obligation to which the waiver applies; and

14 (3) made under a written agreement:

15 (A) executed during or after the servicemember's  
16 period of active duty military service; and

17 (B) specifying the legal instrument to which the  
18 waiver applies and, if the servicemember is not a party to the  
19 instrument, the servicemember concerned.

20 (f) A person commits an offense if the person knowingly  
21 makes or causes to be made a sale, foreclosure, or seizure of  
22 property that is prohibited by Subsection (d). An offense under  
23 this subsection is a Class A misdemeanor.

24 (g) On application to a court, a dependent of a military  
25 servicemember is entitled to the protections of this section if the  
26 dependent's ability to comply with an obligation that is secured by  
27 a mortgage, deed of trust, or other contract lien on real property

1 or personal property that is a dwelling is materially affected by  
2 the servicemember's military service.

3 (h) A court that issues a stay or takes any other action  
4 under this section regarding the enforcement of an obligation that  
5 is subject to this section may grant a similar stay or take similar  
6 action with respect to a surety, guarantor, endorser, accommodation  
7 maker, comaker, or other person who is or may be primarily or  
8 secondarily subject to the obligation.

9 (i) If a judgment or decree is vacated or set aside wholly or  
10 partly under this section, the court may also set aside or vacate,  
11 as applicable, the judgment or decree with respect to a surety,  
12 guarantor, endorser, accommodation maker, comaker, or other person  
13 who is or may be primarily or secondarily subject to the obligation  
14 that is subject to the judgment or decree.

15 (j) This section does not prevent a waiver in writing by a  
16 surety, guarantor, endorser, accommodation maker, comaker, or  
17 other person, whether primarily or secondarily liable on an  
18 obligation, of the protections provided under Subsections (h) and  
19 (i). A waiver described by this subsection is effective only if it  
20 is executed as an instrument separate from the obligation with  
21 respect to which it applies. If a waiver under this subsection is  
22 executed by an individual who after the execution of the waiver  
23 enters active duty military service, or by a dependent of an  
24 individual who after the execution of the waiver enters active duty  
25 military service, the waiver is not valid after the beginning of the  
26 period of the active duty military service unless the waiver was  
27 executed by the individual or dependent during the applicable

1 period described by 50 U.S.C. App. Section 516, as that section  
2 existed on January 1, 2009.

3         SECTION 2. The change in law made by this Act applies only  
4 to a sale, foreclosure, or seizure of property under a judgment in  
5 an action filed on or after the effective date of this Act or with  
6 respect to which a notice of default is given under Section  
7 51.002(d), Property Code, on or after the effective date of this  
8 Act. A sale, foreclosure, or seizure under a judgment in an action  
9 filed before the effective date of this Act or with respect to which  
10 notice of default is given before the effective date of this Act is  
11 governed by the law in effect immediately before the effective date  
12 of this Act, and that law is continued in effect for that purpose.

13         SECTION 3. This Act takes effect immediately if it receives  
14 a vote of two-thirds of all the members elected to each house, as  
15 provided by Section 39, Article III, Texas Constitution. If this  
16 Act does not receive the vote necessary for immediate effect, this  
17 Act takes effect September 1, 2009.