

By: Herrero

H.B. No. 3857

A BILL TO BE ENTITLED

AN ACT

relating to foreclosure of liens on real or personal property owned by members of the military; providing a criminal penalty.

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

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

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

(1) "Active duty military service" means:

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

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

(2) "Military servicemember" means:

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

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

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

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

2               (1) that is secured by a mortgage, deed of trust, or  
3 other contract lien on real or personal property owned by a military  
4 servicemember;

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

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

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

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

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

20       (d) A sale, foreclosure, or seizure of property under a  
21 mortgage, deed of trust, or other contract lien described by  
22 Subsection (b) may not be conducted during the military  
23 servicemember's period of active duty military service or during  
24 the nine months after the date on which that service period  
25 concludes unless the sale, foreclosure, or seizure is conducted  
26 under:

27               (1) a court order issued before the sale, foreclosure,

1 or seizure; or

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

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

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

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

9 (3) made under a written agreement:

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

12 (B) specifying the legal instrument to which the  
13 waiver applies and, if the servicemember is not a party to the  
14 instrument, the servicemember concerned.

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

19 (g) A court that issues a stay or takes any other action  
20 under this section regarding the enforcement of an obligation that  
21 is subject to this section may grant a similar stay or take similar  
22 action with respect to a surety, guarantor, endorser, accommodation  
23 maker, comaker, or other person who is or may be primarily or  
24 secondarily subject to the obligation.

25 (h) If a judgment or decree is vacated or set aside wholly or  
26 partly under this section, the court may also set aside or vacate,  
27 as applicable, the judgment or decree with respect to a surety,

1 guarantor, endorser, accommodation maker, comaker, or other person  
2 who is or may be primarily or secondarily subject to the obligation  
3 that is subject to the judgment or decree.

4 (i) This section does not prevent a waiver in writing by a  
5 surety, guarantor, endorser, accommodation maker, comaker, or  
6 other person, whether primarily or secondarily liable on an  
7 obligation, of the protections provided under Subsections (g) and  
8 (h). A waiver described by this subsection is effective only if it  
9 is executed as an instrument separate from the obligation with  
10 respect to which it applies. If a waiver under this subsection is  
11 executed by an individual who after the execution of the waiver  
12 enters active duty military service, or by a dependent of an  
13 individual who after the execution of the waiver enters active duty  
14 military service, the waiver is not valid after the beginning of the  
15 period of the active duty military service unless the waiver was  
16 executed by the individual or dependent during the applicable  
17 period described by 50 U.S.C. App. Section 516, as that section  
18 existed on January 1, 2009.

19 SECTION 2. The change in law made by this Act applies only  
20 to a sale, foreclosure, or seizure of property under a judgment in  
21 an action filed on or after the effective date of this Act or with  
22 respect to which a notice of default is given under Section  
23 51.002(d), Property Code, on or after the effective date of this  
24 Act. A sale, foreclosure, or seizure under a judgment in an action  
25 filed before the effective date of this Act or with respect to which  
26 notice of default is given before the effective date of this Act is  
27 governed by the law in effect immediately before the effective date

1 of this Act, and that law is continued in effect for that purpose.

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