

## **BILL ANALYSIS**

Senate Research Center  
81R13524 AJA-D

H.B. 3857  
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Jurisprudence  
5/21/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In these hard economic times, many Texans are facing foreclosure on their homes. An increasing number of active duty military servicemembers are falling victim to house foreclosures mainly because the conditions of their service make it extremely difficult and burdensome for them 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). H.B. 3857 attempts to give Texan servicemembers the same level of protection as the SCRA.

H.B. 3857 allows for active duty military servicemembers (and non active duty servicemembers during the nine months after the date on which their service concluded) to either stay foreclosure proceedings or adjust the servicemembers' obligations under a contract. H.B. 3857 does not release the servicemember from all mortgage and contractual obligations, it simply gives the servicemember an opportunity to fulfill the servicemember's contractual obligations on a timeline that is better suited to the servicemember's particular situation.

H.B. 3857 relates to foreclosure of liens on real property and certain personal property owned by members or dependents of the military and provides a criminal penalty.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 51, Property Code, by adding Section 51.015, as follows:

Sec. 51.015. SALE OF CERTAIN PROPERTY OWNED BY MEMBER OF THE MILITARY. (a) Defines "active duty military service," "dwelling," "military servicemember," and "person."

(b) Provides that this section applies 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.

(c) Authorizes the court, in an action filed 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 to foreclose a lien or otherwise enforce an obligation described by Subsection (b), after a hearing and on the court's own motion, and requires the court on the application by a servicemember whose ability to comply with the obligations of the contract secured by the lien is materially affected by the servicemember's military service to stay the proceedings for a period of time as justice and equity require, or adjust the obligations of the contract secured by the lien to preserve the interests of all parties.

(d) Prohibits a sale, foreclosure, or seizure of property under a mortgage, deed of trust, or other contract lien described by Subsection (b) from being conducted during the military servicemember's period of active duty military service or during the nine months after the date on which that service period concludes unless the sale, foreclosure, or seizure is conducted under a court order issued before the sale, foreclosure, or seizure or an agreement that complies with Subsection (e).

(e) Authorizes a military servicemember to waive the servicemember's rights under this section only as provided by this subsection. Requires that the waiver be:

- (1) in writing in at least 12-point type;
- (2) executed as an instrument separate from the obligation to which the waiver applies; and
- (3) made under a written agreement executed during or after the servicemember's period of active duty military service; and specifying the legal instrument to which the waiver applies and, if the servicemember is not a party to the instrument, the servicemember concerned.

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

(g) Entitles a dependent of a military servicemember, on application to a court, to the protections of this section 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.

(h) Authorizes a court that issues a stay or takes any other action under this section regarding the enforcement of an obligation that is subject to this section 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.

(i) Authorizes the court, if a judgement or decree is vacated or set aside wholly or partly under this section, 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.

(j) Provides that this section does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person, whether primarily or secondarily liable on an obligation, of the protections provided under Subsections (h) and (i). Provides that a waiver described by this subsection is effective only if it is executed as an instrument separate from the obligation with respect to which it applies. Provides that if a waiver under this subsection 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 50 U.S.C. App. Section 516, as that section existed on January 1, 2009.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2009.