

SUBJECT: Suspending home foreclosures for active duty military service members

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 7 ayes — Corte, Vaught, Chavez, Edwards, Farias, Ortiz, Pickett

0 nays

2 absent — Maldonado, C. Turner

WITNESSES: For — (*Registered, but did not testify*: Morgan Little, Reserve Officers Association Department of Texas; Celeste May, Texas Bankers Association; *On committee substitute*: Melodie Stegall, Credit Union Legislative Coalition)

Against — None

DIGEST: CSHB 3857 would prohibit a sale, foreclosure, or seizure of property owned by a military service member and under a mortgage, deed of trust, or other contract lien from being conducted during that service member's period of active duty or during the nine months after the date on which that service period ends. Any person who knowingly made or caused a service member's home to be sold, seized, or foreclosed on could be charged with a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Exceptions would be made for court orders issued before the sale, foreclosure, or seizure and in cases in which the service member waived the member's rights under the bill. The waiver would have to be in writing in at least 12-point type, executed separately from the obligation to which the waiver applied, and made under a written agreement executed during or after the service member's period of active duty service and specifying the legal instrument to which the waiver applied and specifying the service member concerned, if he or she was not a party to the waiver. A waiver signed before the service member entered active duty military service would not be considered valid after the beginning of the active duty service period unless the waiver was executed during the active duty period, including the period from when a National Guard or Reserve

member received orders to report for duty until the date the member reported.

If a military service member had a home foreclosed during the member's period of active duty service or within nine months of that service period ending, and the military service materially affected the service member's ability to comply with the obligations secured by the mortgage, deed of trust or other contract lien, the member could apply to a court to stay the foreclosure proceedings or adjust the obligations of the contract.

The court would be allowed to hold a hearing on the application, and any stay or action taken or judgment or decree vacated by the court also would apply to any surety, guarantor, or other person who was primarily or secondarily subject to the obligation. A service member's dependent would be able to apply for the same protections provided under the bill if the dependent's ability to comply with an obligation secured by a mortgage, deed of trust, or contract lien was materially affected by the service member's active duty service.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009, and apply only to a sale, foreclosure, or seizure of property under a judgment in an action filed on or after the effective date.

NOTES:

The substitute differs from the bill as filed by allowing military dependents to apply for a stay of foreclosure or adjustment of contractual obligations, and by defining "dwelling" to mean a residential structure or manufactured home that contains one to four family housing units and a "person" to include corporations, organizations, governments or governmental subdivisions or agencies, business trusts, estates, trusts, partnerships, associations, and any other legal entities.