

SUBSTITUTE FOR
SENATE BILL NO. 749

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding sections 3185 and 3285.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3185. (1) IF A DEFENDANT IN AN ACTION TO FORECLOSE A
2 MORTGAGE ON REAL ESTATE OR A LAND CONTRACT IS A SERVICE MEMBER AND
3 EITHER THE DEFENDANT ENTERED INTO THE MORTGAGE OR LAND CONTRACT
4 BEFORE BECOMING A SERVICE MEMBER OR THE DEFENDANT IS DEPLOYED IN
5 OVERSEAS SERVICE, THE COURT ON ITS OWN MOTION MAY, OR ON MOTION OF
6 OR IN BEHALF OF THE SERVICE MEMBER SHALL, DO EITHER OR BOTH OF THE
7 FOLLOWING, UNLESS THE COURT DETERMINES THAT THE ABILITY OF THE
8 DEFENDANT TO COMPLY WITH THE TERMS OF THE OBLIGATION SECURED BY THE
9 MORTGAGE OR LAND CONTRACT IS NOT MATERIALLY AFFECTED BY THE SERVICE
10 MEMBER'S MILITARY SERVICE:

11 (A) STAY PROCEEDINGS IN THE ACTION UNTIL 6 MONTHS AFTER THE

1 END OF THE SERVICE MEMBER'S PERIOD OF MILITARY SERVICE.

2 (B) ISSUE ANOTHER ORDER THAT IS EQUITABLE TO CONSERVE THE
3 INTERESTS OF THE PARTIES.

4 (2) THIS SECTION DOES NOT APPLY TO A MORTGAGE OR LAND CONTRACT
5 ENTERED INTO BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
6 ADDED THIS SECTION.

7 (3) AS USED IN THIS SECTION:

8 (A) "ACTIVE DUTY" MEANS FULL-TIME DUTY IN THE ACTIVE MILITARY
9 SERVICE OF THE UNITED STATES. ACTIVE DUTY INCLUDES FULL-TIME
10 TRAINING DUTY, ANNUAL TRAINING DUTY, AND ATTENDANCE, WHILE IN THE
11 ACTIVE MILITARY SERVICE, AT A SCHOOL DESIGNATED AS A SERVICE SCHOOL
12 BY LAW OR BY THE SECRETARY OF THE MILITARY DEPARTMENT CONCERNED.
13 ACTIVE DUTY DOES NOT INCLUDE FULL-TIME NATIONAL GUARD DUTY.

14 (B) "MILITARY SERVICE" MEANS ANY OF THE FOLLOWING:

15 (i) ACTIVE DUTY.

16 (ii) IF THE SERVICE MEMBER IS A MEMBER OF THE NATIONAL GUARD,
17 SERVICE UNDER A CALL TO ACTIVE SERVICE AUTHORIZED BY THE PRESIDENT
18 OR SECRETARY OF DEFENSE OF THE UNITED STATES FOR A PERIOD OF MORE
19 THAN 30 CONSECUTIVE DAYS UNDER 32 USC 502(F) TO RESPOND TO A
20 NATIONAL EMERGENCY DECLARED BY THE PRESIDENT AND SUPPORTED BY
21 FEDERAL MONEY.

22 (iii) A PERIOD DURING WHICH THE SERVICE MEMBER IS ABSENT FROM
23 ACTIVE DUTY BECAUSE OF SICKNESS, WOUNDS, LEAVE, OR OTHER LAWFUL
24 CAUSE.

25 (C) "PERIOD OF MILITARY SERVICE" MEANS THE PERIOD BEGINNING ON
26 THE DATE ON WHICH THE SERVICE MEMBER ENTERS MILITARY SERVICE AND
27 ENDING ON THE DATE ON WHICH THE SERVICE MEMBER IS RELEASED FROM

1 MILITARY SERVICE OR DIES WHILE IN MILITARY SERVICE.

2 (D) "SERVICE MEMBER" MEANS AN INDIVIDUAL WHO IS IN MILITARY
3 SERVICE AND IS A MEMBER OF THE ARMED SERVICES OR RESERVE FORCES OF
4 THE UNITED STATES OR A MEMBER OF THE MICHIGAN NATIONAL GUARD.

5 SEC. 3285. (1) IF A MORTGAGOR IS A SERVICE MEMBER, EITHER THE
6 MORTGAGOR ENTERED INTO THE MORTGAGE BEFORE BECOMING A SERVICE
7 MEMBER OR THE MORTGAGOR IS DEPLOYED IN OVERSEAS SERVICE, AND,
8 DURING THE SERVICE MEMBER'S PERIOD OF MILITARY SERVICE OR WITHIN 6
9 MONTHS AFTER THE END OF THE PERIOD OF MILITARY SERVICE, THE
10 MORTGAGE GIVEN BY THE SERVICE MEMBER IS FORECLOSED BY ADVERTISEMENT
11 OR THE MORTGAGED REAL ESTATE SOLD UNDER A POWER OF SALE, THE
12 FORECLOSURE OR SALE IS INVALID UNLESS THE FORECLOSURE OR SALE WAS
13 ORDERED BY A COURT.

14 (2) A PERSON SHALL NOT, INDIVIDUALLY OR ACTING THROUGH ANOTHER
15 PERSON, FORECLOSE, SELL, OR ATTEMPT TO FORECLOSE OR SELL REAL
16 ESTATE WITH THE KNOWLEDGE THAT THE FORECLOSURE OR SALE IS INVALID
17 UNDER THIS SECTION. A PERSON WHO VIOLATES THIS SUBSECTION IS
18 SUBJECT TO A CIVIL FINE OF \$2,000.00.

19 (3) THE ATTORNEY GENERAL MAY FILE AN ACTION IN THE CIRCUIT
20 COURT TO COLLECT A CIVIL FINE UNDER THIS SECTION. A CIVIL FINE
21 COLLECTED UNDER THIS SECTION SHALL BE DEPOSITED IN THE MILITARY
22 FAMILY RELIEF FUND CREATED IN SECTION 3 OF THE MILITARY FAMILY
23 RELIEF FUND ACT, 2004 PA 363, MCL 35.1213.

24 (4) THIS SECTION DOES NOT APPLY TO A MORTGAGE ENTERED INTO
25 BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
26 SECTION.

27 (5) AS USED IN THIS SECTION:

1 (A) "ACTIVE DUTY" MEANS FULL-TIME DUTY IN THE ACTIVE MILITARY
2 SERVICE OF THE UNITED STATES. ACTIVE DUTY INCLUDES FULL-TIME
3 TRAINING DUTY, ANNUAL TRAINING DUTY, AND ATTENDANCE, WHILE IN THE
4 ACTIVE MILITARY SERVICE, AT A SCHOOL DESIGNATED AS A SERVICE SCHOOL
5 BY LAW OR BY THE SECRETARY OF THE MILITARY DEPARTMENT CONCERNED.
6 ACTIVE DUTY DOES NOT INCLUDE FULL-TIME NATIONAL GUARD DUTY.

7 (B) "MILITARY SERVICE" MEANS ANY OF THE FOLLOWING:

8 (i) ACTIVE DUTY.

9 (ii) IF THE SERVICE MEMBER IS A MEMBER OF THE NATIONAL GUARD,
10 SERVICE UNDER A CALL TO ACTIVE SERVICE AUTHORIZED BY THE PRESIDENT
11 OR SECRETARY OF DEFENSE OF THE UNITED STATES FOR A PERIOD OF MORE
12 THAN 30 CONSECUTIVE DAYS UNDER 32 USC 502 (F) TO RESPOND TO A
13 NATIONAL EMERGENCY DECLARED BY THE PRESIDENT AND SUPPORTED BY
14 FEDERAL MONEY.

15 (iii) A PERIOD DURING WHICH THE SERVICE MEMBER IS ABSENT FROM
16 ACTIVE DUTY BECAUSE OF SICKNESS, WOUNDS, LEAVE, OR OTHER LAWFUL
17 CAUSE.

18 (C) "PERIOD OF MILITARY SERVICE" MEANS THE PERIOD BEGINNING ON
19 THE DATE ON WHICH THE SERVICE MEMBER ENTERS MILITARY SERVICE AND
20 ENDING ON THE DATE ON WHICH THE SERVICE MEMBER IS RELEASED FROM
21 MILITARY SERVICE OR DIES WHILE IN MILITARY SERVICE.

22 (D) "SERVICE MEMBER" MEANS AN INDIVIDUAL WHO IS IN MILITARY
23 SERVICE AND IS A MEMBER OF THE ARMED SERVICES OR RESERVE FORCES OF
24 THE UNITED STATES OR A MEMBER OF THE MICHIGAN NATIONAL GUARD.