

Act No. 138
Public Acts of 2008
Approved by the Governor
May 21, 2008
Filed with the Secretary of State
May 21, 2008
EFFECTIVE DATE: May 21, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Olshove, Allen, Garcia, Richardville, Pappageorge, Birkholz, Kahn, Jelinek, Van Woerkom, Cropsey, Hardiman, George, Gilbert, Patterson, McManus, Cassis, Kuipers, Jansen, Switalski, Stamas, Jacobs, Brown, Cherry, Barcia, Gleason, Whitmer, Sanborn, Bishop, Basham, Anderson, Schauer, Hunter, Scott, Clark-Coleman and Clarke

ENROLLED SENATE BILL No. 749

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," (MCL 600.101 to 600.9947) by adding sections 3185 and 3285.

The People of the State of Michigan enact:

Sec. 3185. (1) If a defendant in an action to foreclose a mortgage on real estate or a land contract is a service member and either the defendant entered into the mortgage or land contract before becoming a service member or the defendant is deployed in overseas service, the court on its own motion may, or on motion of or in behalf of the service member shall, do either or both of the following, unless the court determines that the ability of the defendant to comply with the terms of the obligation secured by the mortgage or land contract is not materially affected by the service member's military service:

- (a) Stay proceedings in the action until 6 months after the end of the service member's period of military service.
- (b) Issue another order that is equitable to conserve the interests of the parties.

(2) This section does not apply to a mortgage or land contract entered into before the effective date of the amendatory act that added this section.

(3) As used in this section:

(a) "Active duty" means full-time duty in the active military service of the United States. Active duty includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. Active duty does not include full-time national guard duty.

(b) "Military service" means any of the following:

(i) Active duty.

(ii) If the service member is a member of the national guard, service under a call to active service authorized by the president or secretary of defense of the United States for a period of more than 30 consecutive days under 32 USC 502(f) to respond to a national emergency declared by the president and supported by federal money.

(iii) A period during which the service member is absent from active duty because of sickness, wounds, leave, or other lawful cause.

(c) "Period of military service" means the period beginning on the date on which the service member enters military service and ending on the date on which the service member is released from military service or dies while in military service.

(d) "Service member" means an individual who is in military service and is a member of the armed services or reserve forces of the United States or a member of the Michigan national guard.

Sec. 3285. (1) If a mortgagor is a service member, either the mortgagor entered into the mortgage before becoming a service member or the mortgagor is deployed in overseas service, and, during the service member's period of military service or within 6 months after the end of the period of military service, the mortgage given by the service member is foreclosed by advertisement or the mortgaged real estate sold under a power of sale, the foreclosure or sale is invalid unless the foreclosure or sale was ordered by a court.

(2) A person shall not, individually or acting through another person, foreclose, sell, or attempt to foreclose or sell real estate with the knowledge that the foreclosure or sale is invalid under this section. A person who violates this subsection is subject to a civil fine of \$2,000.00.

(3) The attorney general may file an action in the circuit court to collect a civil fine under this section. A civil fine collected under this section shall be deposited in the military family relief fund created in section 3 of the military family relief fund act, 2004 PA 363, MCL 35.1213.

(4) This section does not apply to a mortgage entered into before the effective date of the amendatory act that added this section.

(5) As used in this section:

(a) "Active duty" means full-time duty in the active military service of the United States. Active duty includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. Active duty does not include full-time national guard duty.

(b) "Military service" means any of the following:

(i) Active duty.

(ii) If the service member is a member of the national guard, service under a call to active service authorized by the president or secretary of defense of the United States for a period of more than 30 consecutive days under 32 USC 502(f) to respond to a national emergency declared by the president and supported by federal money.

(iii) A period during which the service member is absent from active duty because of sickness, wounds, leave, or other lawful cause.

(c) "Period of military service" means the period beginning on the date on which the service member enters military service and ending on the date on which the service member is released from military service or dies while in military service.

(d) "Service member" means an individual who is in military service and is a member of the armed services or reserve forces of the United States or a member of the Michigan national guard.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor