

1 HB287
2 116501-1
3 By Representatives Thigpen, Shiver, Boothe, Gipson, Lewis and
4 Newton (D)
5 RFD: Banking and Insurance
6 First Read: 14-JAN-10

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8 SYNOPSIS: This bill would prohibit a mortgagee from
9 initiating foreclosure proceedings against the
10 surviving spouse or the estate of a mortgagor who
11 dies while deployed overseas on active duty
12 military service for at least 180 days after the
13 death. This bill would create the Military Family
14 Relief Fund and provide that civil penalties would
15 be paid into the fund. This bill would also provide
16 that the moneys in the fund may be used by the
17 Department of Veterans Affairs as an assistance
18 fund for military families.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 To prohibit a mortgagee from initiating foreclosure
25 proceedings against the surviving spouse or the estate of a
26 mortgagor who died while deployed overseas on active duty
27 military service for at least 180 days after the death; to

1 provide civil penalties for violations; and to create the
2 Military Family Relief Fund in the State Treasury and provide
3 for its use.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. As used in this act, the following terms
6 have the following meanings:

7 (1) ACTIVE DUTY. Full-time duty in the active
8 military service of the United States. Active duty includes
9 full-time training duty, annual training duty, and attendance,
10 while in the active military service, at a school designated
11 as a military service school by law or by the secretary of the
12 military department concerned. Active duty does not include
13 full-time national guard duty.

14 (2) MILITARY SERVICE. Any of the following:

15 a. Active duty.

16 b. If the service member is a member of the Alabama
17 National Guard, service under a call to active service
18 authorized by the President or the Secretary of Defense of the
19 United States for a period of more than 30 consecutive days
20 under §32 USC 502(f) to respond to a national emergency
21 declared by the President of the United States and supported
22 by federal money.

23 c. A period during which the service member is
24 absent from active duty because of sickness, wounds, leave, or
25 other lawful cause.

26 (3) SERVICE MEMBER. An individual who is in military
27 service and is a member of the armed services or reserve

1 forces of the United States or a member of the Alabama
2 National Guard.

3 Section 2. (a) A mortgagee shall not initiate a
4 foreclosure proceeding pursuant to Chapter 10 of Title 35,
5 Code of Alabama 1975, against the surviving spouse or the
6 estate of a mortgagor who is a service member who dies while
7 deployed overseas on active duty military service for at least
8 180 days following the death of the service member.

9 (b) A mortgagee shall not, individually or acting
10 through another person, foreclose, sell, or attempt to
11 foreclose or sell real estate with the knowledge that the
12 foreclosure or sale is invalid under this section. A person
13 who violates this subsection is subject to a civil fine of two
14 thousand dollars (\$2,000).

15 (c) The Attorney General may file an action in the
16 circuit court to collect a civil fine under this section. A
17 civil fine collected under this section shall be deposited
18 into the Military Family Relief Fund created in the State
19 Treasury and used by the Department of Veterans Affairs, at
20 its discretion, to assist military families in need.

21 (d) This section does not apply to a mortgage
22 entered into before the effective date of this act.

23 Section 3. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.