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## A BILL FOR AN ACT

RELATING TO MORTGAGE FORECLOSURES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 667, Hawaii Revised Statutes, is  
2 amended by adding three new sections to part I to be  
3 appropriately designated and to read as follows:

4           "§667- Definitions. As used in this part, unless the  
5 context requires otherwise:

6           "Active duty":

7           (1) Means full-time duty in the active military service of  
8 the United States;

9           (2) Includes full-time training duty, annual training  
10 duty, and attendance, while in the active military  
11 service, at a school designated as a service school by  
12 law;

13           (3) Does not include full-time national guard duty.

14           "Military service" means any of the following:

15           (1) Active duty;

16           (2) If the service member is a member of the national  
17 guard, service under a call to active service  
18 authorized by the President or Secretary of Defense of



1           the United States for a period of more than thirty  
2           consecutive days to respond to a national emergency  
3           declared by the President and supported by federal  
4           money;

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

8           "Period of military service" means the period beginning on  
9           the date on which the service member enters military service and  
10           ending on the date on which the service member is released from  
11           military service or dies while in military service.

12           "Service member" means an individual who is in military  
13           service and is a member of the armed services or reserve forces  
14           of the United States or a member of the Hawaii national guard.

15           **§667- Foreclosure by action; active duty service**  
16           **members; stay of proceedings.** If a defendant in a foreclosure  
17           by action is a service member and either the defendant entered  
18           into the mortgage before becoming a service member or the  
19           defendant is deployed in overseas service, the circuit court on  
20           its own motion may, or on motion of or on behalf of the service  
21           member shall, do either or both of the following, unless the  
22           circuit court determines that the ability of the defendant to



1 comply with the terms of the obligation secured by the mortgage  
2 is not materially affected by the service member's military  
3 service:

4 (1) Stay proceedings in the action until six months after  
5 the end of the service member's period of military  
6 service; or

7 (2) Issue another order that is equitable to conserve the  
8 interests of the parties.

9 §667- Foreclosure by power of sale; active duty service  
10 members; invalidity. (a) If a mortgagor is a service member  
11 and either:

12 (1) Entered into the mortgage before becoming a service  
13 member; or

14 (2) Is deployed in overseas service; and  
15 during the service member's period of military service or within  
16 six months after the end of the period of military service, the  
17 mortgage given by the service member is foreclosed under power  
18 of sale, the foreclosure and sale shall be invalid; provided  
19 that the foreclosure or sale was not ordered by the circuit  
20 court.

21 (b) A person shall not, individually or acting through  
22 another person, foreclose, sell, or attempt to foreclose or sell



1 real property with the knowledge that the foreclosure or sale is  
2 invalid under this section. A person who violates this section  
3 is subject to a civil fine of \$2,000.

4 (c) The attorney general may file an action in the circuit  
5 court to collect a civil fine under this section."

6 SECTION 2. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:



JAN 21 2011



**Report Title:**

Mortgage Foreclosures

**Description:**

Provides mortgage foreclosure protections to active duty military service members under certain circumstances.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

