

HOUSE BILL No. 2297

By Committee on Veterans, Military and Homeland Security

2-11

1 AN ACT concerning service members; relating to civil relief in
2 foreclosure proceedings.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. For the purposes of this section:

6 (a) “Dependent” means:

7 (1) The service member’s spouse;

8 (2) the service member’s minor child; or

9 (3) an individual for whom the service member provided more than
10 ½ of the individual’s support for 180 days immediately preceding an
11 application for relief under this act.

12 (b) “Military service” means a service member under a call to active
13 service authorized by the president of the United States or the secretary of
14 defense for a period of more than 30 consecutive days.

15 (c) “National guard” means that part of the military force of the
16 state that is organized, equipped and federally recognized under the
17 provisions of the national defense act of the United States.

18 (d) “Service member” means any resident of the state of Kansas
19 that is a member of the national guard or member of a military reserve
20 component.

21 (e) “Uniformed services” means the armed forces of the United
22 States as defined by 10 U.S.C. § 101(a)(4), including reserved
23 components of the armed forces, the army national guard and the air
24 national guard, the commissioned corps of the public health service, and
25 any other category of persons designated by the president in time of war
26 or emergency.

27 Sec. 2. (a) This section applies to any civil action or proceeding in
28 which a service member or the service member’s dependent is a
29 defendant and does not make an appearance under applicable court rules
30 or by law.

31 (b) In any civil action for foreclosure, the court, before entering
32 judgment for the plaintiff, shall require the plaintiff to file with the court
33 an affidavit:

34 (1) Stating whether the defendant is in military service, or is a
35 dependent of a service member in military service, and showing
36 necessary facts to support the affidavit; or

1 (2) if the plaintiff is unable to determine whether the defendant is in
2 military service, or is a dependent of a service member in military
3 service, stating that the plaintiff is unable to determine whether the
4 defendant is in military service or is a dependent of a service member in
5 military service.

6 (c) (1) To determine whether or not a defendant is a dependent of a
7 service member in military service, the plaintiff may serve on or mail via
8 first-class mail to the defendant a written notice in substantially the
9 following form:

10 "NOTICE: State and federal laws provide protections to
11 defendants who are service members on active duty in the military
12 and to their dependents. Dependents of a service member include
13 the service member's spouse, minor child and individuals for whom
14 the service member provided more than ½ of the individual's
15 support for 180 days immediately preceding an application for
16 relief. One protection provided is the protection against the entry of
17 a default judgment in foreclosure proceedings. If you are the
18 dependent of a service member under a call to active service for a
19 period of more than 30 consecutive days, you should notify the
20 plaintiff or the plaintiff's attorney(s) in writing of your status as such
21 within 20 days of receipt of this notice. If you fail to do so, then a
22 court may presume that you are not a dependent of a service
23 member under a call to active service and proceed with the entry of
24 an order of default judgment without further proof of your status.
25 Your response to the plaintiff or plaintiff's attorney(s) about your
26 status does not constitute an appearance for jurisdictional purposes
27 in any pending litigation nor a waiver of your rights."

28 (2) If the notice is either served on the defendant 20 or more days
29 prior to an application for an order of default or a default judgment or
30 mailed to the defendant more than 23 days prior to such application, and
31 the defendant fails to timely respond, then for purposes of entry of an
32 order of default or default judgment, the court or administrative officer
33 may presume that the defendant is not a dependent of a person in military
34 service under this act.

35 (3) Nothing prohibits the plaintiff from allowing a defendant more
36 than 20 days to respond to the notice, or from amending the notice to so
37 provide.

38 (d) If in an action covered by this section it appears that the
39 defendant is in military service or is a dependent of a service member in
40 military service, the court may not enter a judgment until after the court
41 appoints an attorney to represent the defendant. If an attorney appointed
42 under this section to represent a service member or a service member's
43 dependent cannot locate the service member or dependent, actions by the

1 attorney in the case do not waive any defense of the service member or
2 dependent or otherwise bind the service member or dependent.

3 (e) In a civil action for foreclosure in which the defendant is in
4 military service or is a dependent of a service member in military service,
5 the court shall grant a stay of proceedings until 180 days after termination
6 of or release from military service, upon application of defense counsel or
7 on the court's own motion, if the court determines that:

8 (1) There may be a defense to the action, and a defense cannot be
9 presented without presence of the defendant; or

10 (2) after due diligence, counsel has been unable to contact the
11 defendant or otherwise determine if a meritorious defense exists. The
12 defendant's failure to communicate or cooperate with counsel after
13 having been contacted is not grounds to find that counsel has been unable
14 to contact the defendant or that counsel has been unable to determine if a
15 meritorious defense exists.

16 (f) If a service member or dependent who is a defendant in an action
17 covered by this section receives actual notice of the action, the service
18 member or dependent may request a stay of proceedings under section 6
19 of this act, and amendments thereto.

20 (g) A person who makes or uses an affidavit permitted under this
21 section knowing it to be false, is guilty of a severity level 10 nonperson
22 felony.

23 (h) If a default judgment is entered in an action covered by this
24 section against a service member or the service member's dependent
25 during the service member's period of military service or within 180 days
26 after the termination of or release from military service, the court entering
27 the judgment, upon application by or on behalf of the service member or
28 the service member's dependent, shall reopen the judgment for the
29 purpose of allowing the service member or the service member's
30 dependent to defend the action if it appears that:

31 (1) The service member or dependent was materially affected by
32 reason of that military service in making a defense to the action; and

33 (2) the service member or dependent has a meritorious or legal
34 defense to the action or some part thereof.

35 (i) If a court vacates, sets aside or reverses a default judgment
36 against a service member or the service member's dependent, and the
37 vacating, setting aside or reversing is because of a provision of this act,
38 that action does not impair a right or title acquired by a bona fide
39 purchaser for value.

40 Sec. 3. (a) This section applies to any civil action for foreclosure
41 in which a defendant at the time of filing an application under this
42 section:

43 (1) (A) Is in military service, or it is within 180 days after

1 termination of or release from military service; or

2 (B) is a dependent of a service member in military service; and

3 (2) has received actual notice of the action or proceeding.

4 (b) At any stage before final judgment in a foreclosure proceeding in
5 which a service member or the service member's dependent described in
6 subsection (a) is a party, the court may on its own motion and, upon
7 application by the service member or the service member's dependent,
8 shall stay the action until 180 days after termination of or release from
9 military service, if the conditions in subsection (c) are met.

10 (c) An application for a stay under subsection (b) shall include the
11 following:

12 (1) A letter or other communication setting forth facts stating the
13 manner in which current military duty requirements materially affect the
14 service member's or dependent's ability to appear and stating a date when
15 the service member or dependent will be available to appear; and

16 (2) a letter or other communication from the service member's
17 commanding officer stating that the service member's current military
18 duty prevents either the service member's or dependent's appearance and
19 that military leave is not authorized for the service member at the time of
20 the letter.

21 (d) An application for a stay under this section does not constitute an
22 appearance for jurisdictional purposes and does not constitute a waiver of
23 any substantive or procedural defense, including a defense relating to lack
24 of personal jurisdiction.

25 (e) If the court refuses to grant a stay of proceedings under
26 subsection (b), the court shall appoint counsel to represent the service
27 member or the service member's dependent in the action or proceeding.

28 Sec. 4. This act shall take effect and be in force from and after its
29 publication in the statute book.

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