



January 30, 2012

To: House Committee on Judiciary

From: Doug Wareham, Kansas Bankers Association

**Re: HB 2297: Military Service Members and Foreclosure Actions**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today as a neutral party to HB 2297, which would enact some state provisions for foreclosure proceedings. The bill provides for an affidavit to be filed indicating that the foreclosing party (bank) stating whether the property owner is a military service member or a dependent of a service member, and establishes procedures for the foreclosure proceeding to be followed should the property owner be a service member or service member's dependent.

Our concern with the bill is two-fold: duplication of duties on the part of the foreclosing party; and confusion caused by similar but differing requirements in two sets of laws.

Some of you may be aware that Congress enacted a Federal Law entitled the Service Members Civil Relief Act. The Act contains similar provisions relating to foreclosure proceedings when a military member is the property owner. For example, there are provisions which suspend the foreclosure proceeding while the service member is in service, and for a certain period afterwards.

It is also our understanding, that courts currently require the foreclosing party to indicate in its pleadings, whether the property owner or any defendant is a service member, before being allowed to proceed with a foreclosure.

KBA members are now complying with the requirements of the federal Act, and with existing court requirements. The addition of a new state law will bring with it some duplication of effort. For example, will this state law require separate disclosures, or will the existing court required disclosure suffice? Will additional disclosures bring meaningful relief to our service members?

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We also have concern with the similar, but different nature of the federal law and this proposed state law. There will be confusion, especially among banks that operate in more than one state, about what each law requires the foreclosing party to do. This can lead to mistakes at a very critical time for both parties. There is also concern that if each state has a slightly different version of state law, coupled with trying to comply with a federal law, the confusion multiplies as state boundaries are virtually nonexistent. With service members moving duty station to duty station, it could also create confusion for them as they pass from state to state.

One final thought to share is that there has been a military unit established within the new Consumer Financial Protection Bureau (CFPB). It is our understanding the CFPB will be looking at the need for additional protections and procedures in many areas where service members are concerned. We would simply ask the Committee to consider whether there is truly a need for an additional, duplicative state law at this time.

Thank you for your time and attention to our concerns.

<b>Servicemembers Civil Relief Act Notice Disclosure</b>	<b>U.S. Department of Housing and Urban Development Office of Housing</b>	<b>OMB Approval 2502-0584 Exp 7/31/2012</b>
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## **Legal Rights and Protections Under the SCRA**

Servicemembers on “active duty” or “active service,” or a spouse or dependent of such a servicemember may be entitled to certain legal protections and debt relief pursuant to the Servicemembers Civil Relief Act (50 USC App. §§ 501-597b) (SCRA).

### **Who May Be Entitled to Legal Protections Under the SCRA?**

- Regular members of the U.S. Armed Forces (Army, Navy, Air Force Marine Corps and Coast Guard).
- Reserve and National Guard personnel who have been activated and are on Federal active duty
- National Guard personnel under a call or order to active duty for more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds
- Active service members of the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration.
- Certain United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action.

### **What Legal Protections Are Servicemembers Entitled To Under the SCRA?**

- The SCRA states that a debt incurred by a servicemember, or servicemember and spouse jointly, prior to entering military service shall not bear interest at a rate above 6 % during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage, or during the period of military service in the case of any other obligation or liability.
- The SCRA states that in a legal action to enforce a debt against real estate that is filed during, or within 9 months after the servicemember’s military service, a court may stop the proceedings for a period of time, or adjust the debt. In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during, or within 9 months after the servicemember’s military service unless the creditor has obtained a valid court order approving the sale, foreclosure, or seizure of the real estate.
- The SCRA contains many other protections besides those applicable to home loans.

### **How Does A Servicemember or Dependent Request Relief Under the SCRA?**

- In order to request relief under the SCRA from loans with interest rates above 6% a servicemember or spouse must provide a written request to the lender, together with a copy of the servicemember’s military orders. [Note: Lender should place its name, address, and contact information here.]
- There is no requirement under the SCRA, however, for a servicemember to provide a written notice or a copy of a servicemember’s military orders to the lender in connection with a foreclosure or other debt enforcement action against real estate. Under these circumstances, lenders should inquire about the military status of a person by searching the Department of Defense’s Defense Manpower Data Center’s website, contacting the servicemember, and examining their files for indicia of military service. Although there is no requirement for servicemembers to alert the lender of their military status in these situations, it still is a good idea for the servicemember to do so.

### **How Does a Servicemember or Dependent Obtain Information About the SCRA?**

- Servicemembers and dependents with questions about the SCRA should contact their unit’s Judge Advocate, or their installation’s Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at <http://legalassistance.law.af.mil/content/locator.php>
- “Military OneSource” is the U. S. Department of Defense’s information resource. If you are listed as entitled to legal protections under the SCRA (see above), please go to [www.militaryonesource.com/scra](http://www.militaryonesource.com/scra) or call 1-800-342-9647 (toll free from the United States) to find out more information. Dialing instructions for areas outside the United States are provided on the website.