



H.B. 386

127th General Assembly
(As Introduced)

Reps. Harwood, Fende, R. Hagan, Healy, Gerberry, Celeste, Strahorn, Brady, Hughes, B. Williams, Ujvagi, Skindell, Letson, Chandler, S. Williams, Fessler, Yuko, DeBose, Lundy, Bolon, Otterman, Domenick, Dyer, D. Stewart, DeGeeter, Evans, Goyal, Okey, Heard, Batchelder

BILL SUMMARY

- Exempts the property of a veteran, under certain circumstances, from being taken on a writ of execution.
- Prohibits a creditor, under certain circumstances, from foreclosing against a veteran on a mortgage loan.
- Establishes that a denial of the interest rate limitation right under the federal "Servicemembers Civil Relief Act" also is a violation of Ohio law.
- Prohibits the charging of court costs to a plaintiff seeking to enforce either the property execution exemption, mortgage foreclosure exemption, or the interest rate limitation, and requires the court to award certain litigation expenses to a plaintiff who prevails in such a court action.

CONTENT AND OPERATION

Property taken on execution

(R.C. 1349.38(A), (B), and (C))

Under current Ohio law, property, specifically "lands and tenements, including vested legal interests therein, permanent leasehold estates renewable forever, and goods and chattels," (R.C. 2329.01, not in the bill), unless otherwise exempted by law, may be taken on execution and sold for the payment of debts.

Execution, in this context, refers to a court order directing a sheriff or other officer to seize property in order to satisfy a judgment.

The bill creates a general exemption from being seized by a writ of execution for the property of a "veteran" (see definition below) who has made a good faith claim for disability benefits. Under the bill, the property of a veteran (including goods such as an automobile), under such circumstances, would be exempt from execution and sale pursuant to R.C. 2329.01. The bill makes the exemption effective for 18 months after the veteran's discharge from active duty (R.C. 1349.38(B)). The general exemption, however, presumably would not prohibit a secured party (the creditor) from taking possession of collateral, such as in an automobile repossession, without judicial process, if the creditor could do so without a breach of the peace (R.C. 1309.609, not in the bill).

The bill also specifically prohibits a creditor from foreclosing against a veteran on a mortgage loan, for 18 months after the veteran's discharge from active duty, if the veteran has done both of the following (R.C. 1349.38(C)):

(1) Made a good faith claim for disability benefits and the disability is a result of the person's active duty in the uniformed services;

(2) Submitted to the creditor, prior to the creditor's filing a motion for foreclosure, notarized documentation verifying the veteran's discharge from active duty and the veteran's application for disability benefits.

Servicemembers Civil Relief Act

(R.C. 1349.38(D))

Under the federal "Servicemembers Civil Relief Act," 117 Stat. 2835 (2003), 50 U.S.C. App. 527, servicemembers are entitled to a special interest rate limitation. Any liability bearing interest at a rate in excess of 6% per year that was incurred before the servicemember enters military service may not bear interest at a rate in excess of 6% per year during the period of military service. The bill establishes that denial of this right by a creditor, in addition to being a violation of federal law, would be a violation of the Ohio Revised Code.

Court costs and litigation expenses

(R.C. 1349.38(E))

Under the bill, an Ohio court is prohibited from charging court costs to any person seeking civil damages for denial of either the property execution exemption, mortgage foreclosure exemption, or the interest rate limitation as set forth in the bill. Also, an Ohio court is required to award attorney's fees, expert

witness fees, and other litigation expenses to a plaintiff who prevails in an action to enforce the exemptions in the bill. The bill also specifically prohibits a court from requiring the plaintiff to reimburse the defendant for attorney's fees when the plaintiff does receive a favorable judgment from the court (R.C. 1349.38(F)).

Definitions

(R.C. 1349.38(A))

"Veteran" means an individual who has served in the active military or naval service of the United States and who was discharged or released under circumstances other than dishonorable;

"Disability benefit" means a disability benefit in connection with military service administered by the veterans' administration under title 38 of the United States Code.

"Uniformed services" has the same meaning as in 10 U.S.C. 101.

HISTORY

ACTION	DATE
Introduced	11-07-07

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