

**ARKANSAS SENATE**  
84th General Assembly - Regular Session, 2003  
**Amendment Form**

\*\*\*\*\*  
**Subtitle of Senate Bill No. 731**  
"THE ARKANSAS SOLDIERS' AND AIRMEN'S CIVIL RELIEF ACT."  
\*\*\*\*\*

**Amendment No. 1 to Senate Bill No. 731.**

Amend Senate Bill No. 731 as originally introduced:

Delete all language after the enacting clause and substitute the following:

**SECTION 1. Title.**

This subchapter may be referred to as the "Arkansas Soldiers' and Airmen's Civil Relief Act".

**SECTION 2. Findings.**

(a) Soldiers and airmen of the Arkansas National Guard who are called into active military service for the State of Arkansas are ineligible for civil relief under the federal law, namely, the Soldiers and Sailors Civil Relief Act of 1941, 50 App. U.S.C. § 501 et seq.

(b) Relief should be provided to the soldiers and airmen when they are called into extended active military service for the State of Arkansas.

**SECTION 3. Purpose.**

The purpose of this act is to provide civil relief to soldiers and airmen of the Arkansas National Guard who are called into extended active military service of the state of Arkansas.

**SECTION 4. Applicability.**

This act and the benefits of this act apply to and may be claimed by a soldier, airman, or the spouse of a soldier or airman of the Arkansas National Guard who meets one of the following requirements:

(1) The soldier or airmen is ordered into active military service of the State of Arkansas by the Governor under state law for a period of more than one hundred eighty (180) continuous days; or

(2) The soldier or airman is ordered into active military service of the State of Arkansas by the Governor under the provisions of Title 32, United States Code, for a period of more than one hundred eighty (180) continuous days.

**SECTION 5. Residential Leases.**

When a soldier or airman is ordered to active military service of the State of Arkansas for more than one hundred and eighty (180) days under



section 4 of this act, the soldier, airman, or the spouse of the soldier or airman is entitled to terminate and cancel the lease for the primary residence of the soldier, airman, or spouse of the soldier or airman as follows:

(1) The airman, soldier, spouse of the soldier or airman, attorney-in-fact, or lawfully appointed agent shall deliver a written notice to the lessor or the lessor's agent by any manner of mail, courier, or personal delivery accompanied by a written receipt as evidence of delivery;

(2) The notice shall state:

(A) The beginning date, and the ending date, if known, that the soldier or airman has been ordered into the military service of the state;

(B) The unit name, address, and telephone number of the soldier's or airman's commanding officer or military superior who may verify the authenticity of the orders and where the soldier, airman, or spouse may be written; and

(C) That the soldier, airman, or spouse of the soldier or airman claims the benefits of the Arkansas Soldiers' and Airmen's Civil Relief Act and gives notice that his or her residential lease will be terminated as provided by this act; and

(3)(A) The notice shall be accompanied by:

(i) Payment of the current month's rent and any monthly charges regularly assessed as a monthly consideration of the lease; and

(ii) Payment of the next month's rent and any monthly charges regularly assessed as a monthly consideration of the lease that shall accrue through the last day of the next month following the month during which the notice was mailed or delivered.

(B) Any prepaid monthly consideration, security deposit, or other sums held by the lessor may be deducted from the payment amounts.

#### SECTION 6. Reopening Default Judgments.

(a) A default judgment rendered in any civil action against a service member during a period of military service or within thirty (30) days after termination of the military service may be set aside if:

(1) The person was prejudiced by reason of his or her military service in making a defense to the action;

(2) Application by the person or his or her legal representative is made to the court rendering the judgment not later than sixty (60) days after the termination of the military service; and

(3) The application provides enough facts that it appears that the person has a meritorious or legal defense to the action or some part of the action.

(b) Vacating, setting aside, or reversing any judgment because of any of the provisions of this subchapter may not impair any right or title acquired by any bona fide purchaser for value under the judgment.

#### SECTION 7. Stay of proceedings.

(a) If at any point during an action or proceeding it appears that a plaintiff or defendant is a service member, and in the conduct of the proceedings, may be adversely affected by his or her military service, the court may, on its own motion, stay the proceedings.

(b) The court may stay the proceedings if the service member or another person on his or her behalf makes a request in writing to the court, unless the court determines on the record that the ability of the plaintiff to pursue the action or the defendant to conduct his or her defense is not materially affected by reason of his or her military service.

SECTION 8. Fines and penalties on contracts.

(a) If compliance with the terms of a contract is stayed under this subchapter, a fine or penalty may not accrue by reason of failure to comply during the period of the stay.

(b) If a service member has not obtained a stay and a fine or penalty is imposed for nonperformance of an obligation, a court may relieve enforcement if the service member was in military service when the penalty was incurred and his or her ability to pay or perform was materially impaired.

SECTION 9. Exercise of rights not to affect future financial transactions.

Application by a service member in military service for, or receipt of, a stay, postponement, or suspension under this subchapter in the payment of any fine, penalty, insurance premium, or other civil obligation or liability may not be used for any of the following:

(1) A determination by any lender or other person that the service member is unable to pay any civil obligation or liability in accordance with its terms;

(2) With respect to a credit transaction between a creditor and a service member:

(A) A denial or revocation of credit by the creditor;

(B) A change by the creditor in the terms of an existing credit arrangement; or

(C) A refusal by the creditor to grant credit to the service member in substantially the amount or on substantially the terms requested; or

(3) An adverse report relating to the creditworthiness of the service member by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information.

SECTION 10. Stay of execution of judgment.

Unless the court determines on the record that the ability of the service member to comply with the judgment or order entered or sought is not materially affected by reason of his or her military service, the court may, on its own motion, or upon application to it by the service member or another person on his or her behalf:

(1) Stay the execution of any judgment or order entered against the service member, as provided in this subchapter; and

(2) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this subchapter.

SECTION 11. Duration of stays.

(a) Any stay of an action, proceeding, attachment, or execution ordered by any court under this subchapter may be ordered for the period of

military service, plus sixty (60) days after its termination or any part of that time period.

(b) Where the service member in military service is a codefendant with others, the plaintiff may, with leave of the court, proceed against the others.

SECTION 12. Statutes of limitations affected by military service.

The period of military service is not included in computing any period limited by law, rule, or order for bringing an action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his or her heirs, executors, administrators, or assigns, whether the cause of action or the right or privilege to institute the action or proceeding has accrued before or during the period of military service.

SECTION 13. Maximum rate of interest for state active military service.

(a) An obligation or liability bearing interest at a rate in excess of six percent (6%) per year incurred by a service member in military service before his or her entry into state active military service may not, during any part of the period of military service, bear interest at a rate in excess of six percent (6%) per year unless, in the opinion of the court and upon application to the court by the obligee, the ability of the service member to pay interest on the obligation or liability at a rate in excess of six percent (6%) per year is not materially affected by reason of his or her service.

(b) The court may make any order in the action that, in its opinion, is just.

SECTION 14. Eviction or distress of dependents of state active military service members.

(a)(1) Except as provided in subsection (a)(2) of this section, a landlord may not evict or take and hold property of a service member or his or her dependents for nonpayment of rent during the period of military service if the rent on the premises occupied by the service member or his or her dependents is less than one thousand two hundred dollars (\$1,200) per month.

(2) If the landlord petitions the court for an order affecting the service member or his or her dependent's right of possession, then a court may allow the landlord to evict and hold the property of a service member or his or her dependents under this subsection.

(b) In any action affecting the right of possession, the court may, on its own motion, stay the proceedings for not longer than three (3) months, or make any order the court determines to be reasonable and just under the circumstances, unless the court finds that the ability of the tenant to pay the agreed rent is not materially affected by reason of the service member's military service.

(c) When a stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application, to relief with respect to the premises to the extent and for any period as the court determines to be just and reasonable under the circumstances.

(d) Any person who knowingly takes part in any eviction or distress

otherwise than as provided in subsection (a), or attempts to do so, is guilty of an unclassified misdemeanor.

(e) The Governor may order an allotment of the pay of a service member in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by any dependents of the service member.

#### SECTION 15. Installment contracts.

(a) The creditor of a service member who, before entry into military service, has entered into an installment contract for the purchase of real or personal property shall not terminate the contract or repossess the property for nonpayment or any breach occurring during military service without an order from a court of competent jurisdiction.

(b) The court, upon application to it under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the contract is not materially affected by reason of his or her military service:

(1) Order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) Order a stay of the proceedings on its own motion, or on a motion by the service member or another person on his or her behalf; or

(3) Make any other disposition of the case it considers to be equitable to conserve the interests of all parties.

(c) Any person who knowingly repossesses property that is the subject of this section other than as provided in subsection (a) is guilty of an unclassified misdemeanor.

#### SECTION 16. Mortgage foreclosures.

(a) The creditor of a service member who, before entry into military service, has entered into a mortgage contract with the service member or his or her dependent for the purchase of real or personal property may not foreclose on the mortgage or repossess the property for nonpayment or any breach occurring during military service without an order from a court of competent jurisdiction.

(b) The court, upon application under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the mortgage is not materially affected by reason of his or her military service:

(1) Order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) Order a stay of the proceedings on its own motion, or on motion by the service member or another person on his or her behalf; or

(3) Make any other disposition of the case as it considers to be equitable to conserve the interests of all parties.

(c) In order to come within the provisions of this section, the service member or dependent shall establish the following:

(1) The relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property;

(2) The obligation originated before the service member's entry

into military service;

(3) The property was owned by the service member or his or her dependent before the commencement of military service; and

(4) The property is still owned by the service member or his or her dependent at the time relief is sought.

(d) Any person who knowingly forecloses on property which is the subject of this section other than as provided in subsection (a) is guilty of an unclassified misdemeanor.

#### SECTION 17. Application for relief.

(a) A person may, at any time during his or her period of military service or within sixty (60) days after discharge or termination, apply to a court for relief in respect of any obligation or liability incurred by the person before his or her period of military service.

(b) The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of the obligation or liability has not been materially affected by reason of his or her military service, may grant the following relief:

(1) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's period of military service, and from the date of termination of the period of military service or from the date of application if made after termination of military service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of the combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, in equal installments during the combined period at the rate of interest on the unpaid balance as is prescribed in the contract, or other instrument evidencing the obligation, for installments paid when due, and subject to any other terms as the court may consider just.

(2) In the case of any other obligation or liability, a stay of the enforcement during the applicant's period of military service, and from the date of termination of the period of military service or from the date of application, if made after termination of the period of military service, for a period of time equal to the period of military service of the applicant, or any part of that period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or the date of application, in equal periodic installments during the extended period at the rate of interest prescribed for the obligation or liability, if paid when due, and subject to other terms the court considers to be reasonable and just.

(c) When any court has granted a stay as provided in this section, a fine or penalty may not be accrued for failure to comply with the terms or conditions of the obligation or liability for which the stay was granted during the period the terms and conditions of the stay are complied with.

#### SECTION 18. Storage liens.

(a)(1) A person may not exercise any right to foreclose or enforce any

lien for storage of household goods, furniture, or personal effects of a service member in military service during the service member's period of military service and for sixty (60) days after termination or discharge, except upon an order previously granted by a court upon application and a return to the court made and approved by the court.

(2) In the proceeding the court may, after hearing the matter, on its own motion, and shall, on application to it by the service member in military service or another person on his or her behalf, unless in the opinion of the court the ability of the service member to pay the storage charges due is not materially affected by reason of his or her military service:

(A) Stay the proceedings as provided in this subchapter;

or

(B) Make any other disposition the court considers to be equitable to conserve the interest of all the parties.

(b) Any person who knowingly takes any action contrary to the provisions of this section, or attempts to do so, is guilty of a misdemeanor."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator Wilkinson  
JSE/RCK - 031220031441  
RCK666

\_\_\_\_\_  
Secretary