

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: S3/17/03

A Bill

SENATE BILL 731

5 By: Senators Wilkinson, Salmon, Trusty, J. Bookout, Baker
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For An Act To Be Entitled

8 THE ARKANSAS SOLDIERS' AND AIRMEN'S CIVIL RELIEF
9 ACT.
10

Subtitle

11 THE ARKANSAS SOLDIERS' AND AIRMEN'S
12 CIVIL RELIEF ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 *SECTION 1. Title.*

20 *This subchapter may be referred to as the "Arkansas Soldiers' and*
21 *Airmen's Civil Relief Act".*
22

23 *SECTION 2. Findings.*

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

28 *(b) Relief should be provided to the soldiers and airmen when they are*
29 *called into extended active military service for the State of Arkansas.*
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31 *SECTION 3. Purpose.*

32 *The purpose of this act is to provide civil relief to soldiers and*
33 *airmen of the Arkansas National Guard who are called into extended active*
34 *military service of the state of Arkansas.*
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36 *SECTION 4. Applicability.*



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

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

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

11
12 SECTION 5. Residential Leases.

13 When a soldier or airman is ordered to active military service of the
14 State of Arkansas for more than one hundred and eighty (180) days under
15 section 4 of this act, the soldier, airman, or the spouse of the soldier or
16 airman is entitled to terminate and cancel the lease for the primary
17 residence of the soldier, airman, or spouse of the soldier or airman as
18 follows:

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

23 (2) The notice shall state:

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

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

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

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

36 (i) Payment of the current month's rent and any

1 monthly charges regularly assessed as a monthly consideration of the lease;
2 and

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

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

9
10 SECTION 6. Reopening Default Judgments.

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

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

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

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

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

25
26 SECTION 7. Stay of proceedings.

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

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

36

1 SECTION 8. Fines and penalties on contracts.

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

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

10
11 SECTION 9. Exercise of rights not to affect future financial
12 transactions.

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

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

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

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

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

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

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

31
32 SECTION 10. Stay of execution of judgment.

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

1 person on his or her behalf:

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

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

7
8 SECTION 11. Duration of stays.

9 (a) Any stay of an action, proceeding, attachment, or execution
10 ordered by any court under this subchapter may be ordered for the period of
11 military service, plus sixty (60) days after its termination or any part of
12 that time period.

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

16
17 SECTION 12. Statutes of limitations affected by military service.

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

25
26 SECTION 13. Maximum rate of interest for state active military
27 service.

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

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

3
4 SECTION 14. Eviction or distress of dependents of state active
5 military service members.

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

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

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

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

26 (d) Any person who knowingly takes part in any eviction or distress
27 otherwise than as provided in subsection (a), or attempts to do so, is guilty
28 of an unclassified misdemeanor.

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

33
34 SECTION 15. Installment contracts.

35 (a) The creditor of a service member who, before entry into military
36 service, has entered into an installment contract for the purchase of real or

1 personal property shall not terminate the contract or repossess the property
2 for nonpayment or any breach occurring during military service without an
3 order from a court of competent jurisdiction.

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

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

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

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

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

18
19 SECTION 16. Mortgage foreclosures.

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

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

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

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

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

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

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

6 (2) The obligation originated before the service member's entry
7 into military service;

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

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

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

15
16 SECTION 17. Application for relief.

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

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

25 (1) In the case of an obligation payable under its terms in
26 installments under a contract for the purchase of real estate or secured by a
27 mortgage or other instrument in the nature of a mortgage upon real estate, a
28 stay of the enforcement of the obligation during the applicant's period of
29 military service, and from the date of termination of the period of military
30 service or from the date of application if made after termination of military
31 service, for a period equal to the period of the remaining life of the
32 installment contract or other instrument plus a period of time equal to the
33 period of military service of the applicant, or any part of the combined
34 period, subject to payment of the balance of principal and accumulated
35 interest due and unpaid at the date of termination of the period of military
36 service or from the date of application, in equal installments during the

1 combined period at the rate of interest on the unpaid balance as is
 2 prescribed in the contract, or other instrument evidencing the obligation,
 3 for installments paid when due, and subject to any other terms as the court
 4 may consider just.

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

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

20
 21 **SECTION 18. Storage liens.**

22 (a)(1) A person may not exercise any right to foreclose or enforce any
 23 lien for storage of household goods, furniture, or personal effects of a
 24 service member in military service during the service member's period of
 25 military service and for sixty (60) days after termination or discharge,
 26 except upon an order previously granted by a court upon application and a
 27 return to the court made and approved by the court.

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

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

35 or

36 (B) Make any other disposition the court considers to be

1 equitable to conserve the interest of all the parties.

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

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5 /s/ Wilkinson
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