

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1053

By: Banz and Tibbs of the House

and

Anderson of the Senate

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10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to marriage; amending 43 O.S. 2001,
12 Section 134, as amended by Section 11, Chapter 407,
13 O.S.L. 2008 (43 O.S. Supp. 2009, Section 134), which
14 relates to payments pertaining to support and
15 division of property; providing considerations for a
16 state court to review when determining classification
of certain pay; excluding certain compensation from
consideration; providing for termination of certain
payments upon proof of certain cohabitation or
remarriage; requiring certain briefings; and
providing an effective date.

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19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. AMENDATORY 43 O.S. 2001, Section 134, as
21 amended by Section 11, Chapter 407, O.S.L. 2008 (43 O.S. Supp. 2009,
22 Section 134), is amended to read as follows:

23 Section 134. A. In any divorce decree which provides for
24 periodic alimony payments, the court shall plainly state, at the

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1 time of entering the original decree, the dollar amount of all or a
2 portion of each payment which is designated as support and the
3 dollar amount of all or a portion of the payment which is a payment
4 pertaining to a division of property. The court shall specify in
5 the decree that the payments pertaining to a division of property
6 shall continue until completed. Payments pertaining to a division
7 of property are irrevocable and not subject to subsequent
8 modification by the court making the award, except as provided in
9 subsection H of this section. An order for the payment of money
10 pursuant to a divorce decree, whether designated as support or
11 designated as pertaining to a division of property shall not be a
12 lien against the real property of the person ordered to make such
13 payments unless the court order specifically provides for a lien on
14 real property. An arrearage in payments of support reduced to a
15 judgment may be a lien against the real property of the person
16 ordered to make such payments.

17 B. The court shall also provide in the divorce decree that upon
18 the death or remarriage of the recipient, the payments for support,
19 if not already accrued, shall terminate. The court shall order the
20 judgment for the payment of support to be terminated, and the lien
21 released upon the presentation of proper proof of death of the
22 recipient unless a proper claim is made for any amount of past-due
23 support payments by an executor, administrator, or heir within
24 ninety (90) days from the date of death of the recipient. Upon

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1 proper application the court shall order payment of support
2 terminated and the lien discharged after remarriage of the
3 recipient, unless the recipient can make a proper showing that some
4 amount of support is still needed and that circumstances have not
5 rendered payment of the same inequitable, provided the recipient
6 commences an action for such determination, within ninety (90) days
7 of the date of such remarriage.

8 C. The voluntary cohabitation of a former spouse with a member
9 of the opposite sex shall be a ground to modify provisions of a
10 final judgment or order for alimony as support. If voluntary
11 cohabitation is alleged in a motion to modify the payment of
12 support, the court shall have jurisdiction to reduce or terminate
13 future support payments upon proof of substantial change of
14 circumstances of either party to the divorce relating to need for
15 support or ability to support. As used in this subsection, the term
16 cohabitation means the dwelling together continuously and habitually
17 of a man and a woman who are in a private conjugal relationship not
18 solemnized as a marriage according to law, or not necessarily
19 meeting all the standards of a common-law marriage. The petitioner
20 shall make application for modification and shall follow
21 notification procedures used in other divorce decree modification
22 actions. The court that entered the divorce decree shall have
23 jurisdiction over the modification application.

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1 D. Except as otherwise provided in subsection C of this
2 section, the provisions of any divorce decree pertaining to the
3 payment of alimony as support may be modified upon proof of changed
4 circumstances relating to the need for support or ability to support
5 which are substantial and continuing so as to make the terms of the
6 decree unreasonable to either party. Modification by the court of
7 any divorce decree pertaining to the payment of alimony as support,
8 pursuant to the provisions of this subsection, may extend to the
9 terms of the payments and to the total amount awarded; provided
10 however, such modification shall only have prospective application.

11 E. Pursuant to the federal Uniformed Services Former Spouses'
12 Protection Act, 10 U.S.C., Section 1408, a court may treat
13 disposable retired or retainer pay payable to a military member
14 either as property solely of the member or as property of the member
15 and the spouse of the member. ~~If a state~~ The court determines that
16 the disposable retired shall consider the ability of the former
17 spouse to provide for the former spouse's own support in determining
18 classification of military retirement or retainer pay of a military
19 member is as marital or separate property. If a state court
20 determines that the disposable retired or retained pay is marital
21 property, the court shall award an amount consistent with the rank,
22 pay grade, and time of service of the member at the time of
23 separation.

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1 F. The provisions of subsection D of this section shall have
2 retrospective and prospective application with regards to
3 modifications for the purpose of obtaining support or payments
4 pertaining to a division of property on divorce decrees which become
5 final after June 26, 1981. There shall be a two-year statute of
6 limitations, beginning on the date of the final divorce decree, for
7 a party to apply for division of disposable retired or retainer pay.

8 G. The court shall not consider disability compensation
9 received by a party from the United States Department of Veterans
10 Affairs for service-related injuries for any purpose. In addition,
11 the court shall not offset any disability income with other assets
12 of the military member.

13 H. 1. The court shall provide in the divorce decree that
14 payments of disposable retired pay to the former spouse shall
15 terminate upon:

- 16 a. the voluntary cohabitation, as defined in subsection C
17 of this section, with a member of the opposite sex, or
18 b. remarriage of the former spouse.

19 2. Upon application and proof of voluntary cohabitation or
20 remarriage, the court shall modify the provisions of the final order
21 or judgment to terminate payments as provided for in paragraph 1 of
22 this subsection.

23 I. The Adjutant General shall ensure that all Army National
24 Guard and Air National Guard personnel are briefed annually on the

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1 possible division of military retirement or retainer pay in a
2 divorce action. In addition, the Adjutant General shall ensure that
3 all Army National Guard and Air National Guard personnel are briefed
4 on the possible division of military retirement or retainer pay in a
5 divorce action upon reenlistment.

6 J. The provisions of ~~subsection~~ subsections D and H of this
7 section shall have retrospective and prospective application with
8 regards to modifications for the purpose of obtaining support or
9 termination of payments pertaining to a division of property on
10 divorce decrees which become final after June 26, 1981. There shall
11 be a two-year statute of limitations, beginning on the date of the
12 final divorce decree, for a party to apply for division of
13 disposable retired or retainer pay for divorce decrees.

14 ~~G.~~ K. The provisions of subsections C and D of this section
15 shall have retrospective and prospective application with regards to
16 modifications of the provisions of a final judgment or order for
17 alimony as support, or of a divorce decree pertaining to the payment
18 of alimony as support, regardless of the date that the order,
19 judgment, or decree was entered.

20 SECTION 2. This act shall become effective July 1, 2011.

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