

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 3099

By: Banz

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7 COMMITTEE SUBSTITUTE

8 An Act relating to marriage; amending 43 O.S. 2001,
9 Section 134, which relates to payments pertaining to
10 support and division of property; providing
11 considerations for a state court to review when
12 determining classification of certain pay; providing
13 for termination of payments upon proof of certain
14 cohabitation or remarriage; providing for statute of
15 limitations; and providing an effective date.

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

17 SECTION 1. AMENDATORY 43 O.S. 2001, Section 134, is
18 amended to read as follows:

19 Section 134. A. In any divorce decree which provides for
20 periodic alimony payments, the court shall plainly state, at the
21 time of entering the original decree, the dollar amount of all or a
22 portion of each payment which is designated as support and the
23 dollar amount of all or a portion of the payment which is a payment
24 pertaining to a division of property. The court shall specify in
the decree that the payments pertaining to a division of property
shall continue until completed. Payments pertaining to a division

1 of property are irrevocable and not subject to subsequent
2 modification by the court making the award, except as provided for
3 in subsection F of this section. An order for the payment of money
4 pursuant to a divorce decree, whether designated as support or
5 designated as pertaining to a division of property shall not be a
6 lien against the real property of the person ordered to make such
7 payments unless the court order specifically provides for a lien on
8 real property. An arrearage in payments of support reduced to a
9 judgment may be a lien against the real property of the person
10 ordered to make such payments.

11 B. The court shall also provide in the divorce decree that upon
12 the death or remarriage of the recipient, the payments for support,
13 if not already accrued, shall terminate. The court shall order the
14 judgment for the payment of support to be terminated, and the lien
15 released upon the presentation of proper proof of death of the
16 recipient unless a proper claim is made for any amount of past-due
17 support payments by an executor, administrator, or heir within
18 ninety (90) days from the date of death of the recipient. Upon
19 proper application the court shall order payment of support
20 terminated and the lien discharged after remarriage of the
21 recipient, unless the recipient can make a proper showing that some
22 amount of support is still needed and that circumstances have not
23 rendered payment of the same inequitable, provided the recipient

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1 commences an action for such determination, within ninety (90) days
2 of the date of such remarriage.

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

19 D. Except as otherwise provided in subsection C of this
20 section, the provisions of any divorce decree pertaining to the
21 payment of alimony as support may be modified upon proof of changed
22 circumstances relating to the need for support or ability to support
23 which are substantial and continuing so as to make the terms of the
24 decree unreasonable to either party. Modification by the court of

1 any divorce decree pertaining to the payment of alimony as support,
2 pursuant to the provisions of this subsection, may extend to the
3 terms of the payments and to the total amount awarded; provided
4 however, such modification shall only have prospective application.

5 E. Pursuant to the federal Uniformed Services Former ~~Spouse's~~
6 Spouses' Protection Act (PL 97-252), the, 10 U.S.C., Section 1408, a
7 court may treat disposable retired pay payable to a military member
8 either as property solely of the member or as property of the member
9 and the spouse of the member. Equitable division of the military
10 retirement pay shall include the following considerations for review
11 by the state court in determining classification of the pay as
12 marital or separate property:

13 1. The ability of the former spouse to provide for the former
14 spouse's own support;

15 2. The length of service and pay grade at the time of divorce
16 and not at the future date of retirement;

17 3. The education and experience the former spouse received
18 during the marriage;

19 4. Any criminal activity, abuse, or nonconformance to military
20 lifestyle of the former spouse;

21 5. The combat service of the military member;

22 6. The disability status of the military member; and

23 7. Any career detriment received by the former spouse due to
24 service of the military member.

1 F. 1. The court shall provide in the divorce decree that
2 payments of disposable retired pay to the former spouse shall
3 terminate upon:

4 a. the voluntary cohabitation, as defined in subsection C
5 of this section, with a member of the opposite sex, or

6 b. remarriage of the former spouse.

7 2. Upon application and proof of voluntary cohabitation or
8 remarriage, the court shall modify the provisions of the final order
9 or judgment to terminate payments.

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

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

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SECTION 2. This act shall become effective November 1, 2008.

51-2-10531 SD 03/04/08