

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB2194
Page 51 Section 11 Lines 3-1/2
Of the printed Bill
Of the Engrossed Bill

By inserting a new Section 11 to read as follows and by renumbering subsequent sections:

(please see attached document)

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Gary Banz

Adopted: _____

Reading Clerk

1 "SECTION 11. AMENDATORY 43 O.S. 2001, Section 118, as
2 last amended by Section 25, Chapter 1, O.S.L. 2007 (43 O.S. Supp.
3 2007, Section 118), is amended to read as follows:

4 Section 118. A. Except in those cases where parties
5 represented by counsel have agreed to a different disposition, there
6 shall be a rebuttable presumption in any judicial or administrative
7 proceeding for the award of child support, that the amount of the
8 award which would result from the application of the following
9 guidelines is the correct amount of child support to be awarded.

10 B. The district or administrative court may deviate from the
11 amount of child support indicated by the child support guidelines if
12 the amount of support so indicated is unjust, inequitable,
13 unreasonable, or inappropriate under the circumstances, or not in
14 the best interests of the child. If the district or administrative
15 court deviates from the amount of child support indicated by the
16 child support guidelines, the court shall make specific findings of
17 fact supporting such action.

18 C. The court shall not take into account any stepchildren of
19 such parent in making the determination, but in making such
20 determination, the court may take into account the reasonable
21 support obligations of either parent as to only natural, legal, or
22 legally adopted minor children in the custody of the parent.

23
24

1 D. For purposes of this section and in determining child
2 support, the noncustodial parent shall be designated the obligor and
3 the custodial parent shall be designated the obligee.

4 E. The child support guidelines are as follows:

5 1. All child support shall be computed as a percentage of the
6 combined gross income of both parents. The Child Support Guideline
7 Schedule as provided in Section 119 of this title shall be used for
8 such computation. The child support obligations of each parent
9 shall be computed. The obligor's share shall be paid monthly to the
10 obligee and shall be due on a specific date;

11 2. a. (1) "Gross income", subject to paragraph 3 of this
12 subsection, includes earned and passive income
13 from any source, except as excluded in this
14 section.

15 (2) "Earned income" is defined as income received
16 from labor, or the sale of goods or services and
17 includes, but is not limited to, income from:

- 18 (a) salaries,
- 19 (b) wages,
- 20 (c) commissions,
- 21 (d) bonuses, and
- 22 (e) severance pay.

23 (3) "Passive income" is defined as all other income
24 and includes, but is not limited to, income from:

- 1 (a) dividends,
- 2 (b) pensions,
- 3 (c) rent,
- 4 (d) interest income,
- 5 (e) trust income,
- 6 (f) annuities,
- 7 (g) social security benefits,
- 8 (h) workers' compensation benefits,
- 9 (i) unemployment insurance benefits,
- 10 (j) disability insurance benefits,
- 11 (k) gifts,
- 12 (l) prizes, and
- 13 (m) royalties.

14 b. Specifically excluded from gross income are:

- 15 (1) actual child support received for children not
- 16 before the court, ~~and~~
- 17 (2) benefits received from means-tested public
- 18 assistance programs including, but not limited
- 19 to:
- 20 (a) Temporary Assistance for Needy Families
- 21 (TANF),
- 22 (b) Supplemental Security Income (SSI),
- 23 (c) Food Stamps, and
- 24

1 (d) General Assistance and State Supplemental
2 Payments for Aged, Blind and the Disabled,
3 and

4 (3) payments from the military as follows:

5 (a) family separation pay,

6 (b) hostile fire/imminent danger pay, otherwise
7 known as combat pay,

8 (c) hardship duty-location pay,

9 (d) basic allowance for subsistence, and

10 (e) basic allowance for housing;

- 11 3. a. For income from self-employment, rent, royalties,
12 proprietorship of a business, or joint ownership of a
13 partnership or closely held corporation, "gross
14 income" is defined as gross receipts minus ordinary
15 and necessary expenses required for self-employment or
16 business operations.
- 17 b. Specifically excluded from ordinary and necessary
18 expenses for purposes of this paragraph are amounts
19 determined by the district or administrative court to
20 be inappropriate for determining gross income for
21 purposes of calculating child support.
- 22 c. The district or administrative court shall carefully
23 review income and expenses from self-employment or
24 operation of a business to determine an appropriate

1 level of gross income available to the parent to
2 satisfy a child support obligation.

3 d. The district or administrative court shall deduct from
4 self-employment gross income an amount equal to the
5 employer contribution for F.I.C.A. tax which an
6 employer would withhold from an employee's earnings on
7 an equivalent gross income amount. A determination of
8 business income for tax purposes shall not control for
9 purposes of determining a child support obligation.

10 e. Expense reimbursements or in-kind payments received by
11 a parent in the course of employment, self-employment,
12 or operation of a business shall be counted as income
13 if they are significant and reduce personal living
14 expenses. Such payments may include but are not
15 limited to a company car, free housing, or reimbursed
16 meals;

17 4. a. For purposes of computing gross income of the parents,
18 the district or administrative court shall include for
19 each parent, whichever is most equitable, either:

20 (1) all earned and passive monthly income,

21 (2) all passive income, and earned income equivalent
22 to a forty-hour work week plus such overtime and
23 supplemental income as the court deems equitable,
24

1 (3) the average of the gross monthly income for the
2 time actually employed during the previous three
3 (3) years, or

4 (4) the minimum wage paid for a forty-hour work week.

5 b. If equitable, the district or administrative court may
6 instead impute as gross monthly income for either
7 parent the amount a person with comparable education,
8 training and experience could reasonably expect to
9 earn.

10 c. If a parent is permanently physically or mentally
11 incapacitated, the child support obligation shall be
12 computed on the basis of actual monthly gross income;

13 5. The amount of any preexisting district or administrative
14 court order for current child support for children not before the
15 court or for support alimony arising in a prior case shall be
16 deducted from gross income to the extent payment is actually made
17 under the order;

18 6. The amount of reasonable expenses of the parties
19 attributable to debt service for preexisting, jointly acquired debt
20 of the parents may be deducted from gross income to the extent
21 payment of the debt is actually made. In any case where deduction
22 for debt service is made, the district or administrative court may
23 provide for prospective upward adjustments of support made possible

1 by the reasonably anticipated reduction or elimination of any debt
2 service;

3 7. The results of paragraphs 2, 3, 4, 5 and 6 of this
4 subsection shall be denominated "adjusted gross income";

5 8. In cases in which one parent has sole custody, the adjusted
6 monthly gross income of both parents shall be added together and the
7 Child Support Guideline Schedule consulted for the total combined
8 base monthly obligation for child support;

9 9. After the total combined child support is determined, the
10 percentage share of each parent shall be allocated by computing the
11 percentage contribution of each parent to the combined adjusted
12 gross income and allocating that same percentage to the child
13 support obligation to determine the base child support obligation of
14 each parent;

15 10. a. In cases where shared parenting time has been ordered
16 by a district court or agreed to by the parents, the
17 base monthly obligation shall be adjusted. "Shared
18 parenting time" means that each parent has physical
19 custody of the child or children overnight for more
20 than one hundred twenty (120) nights each year.

21 b. An adjustment for shared parenting time shall be made
22 to the base monthly child support obligation by the
23 following formula: The total combined base monthly
24 child support obligation shall be multiplied by one

1 and one-half (1 1/2). The result shall be designated
2 the adjusted combined child support obligation.

3 c. To determine each parent's adjusted child support
4 obligation, the adjusted combined child support
5 obligation shall be divided between the parents in
6 proportion to their respective adjusted gross incomes.

7 d. (1) The percentage of time a child spends with each
8 parent shall be calculated by determining the
9 number of nights the child is in the physical
10 custody of each parent and dividing that number
11 by three hundred sixty-five (365).

12 (2) Each parent's share of the adjusted combined
13 child support obligation shall then be multiplied
14 by the percentage of time the child spends with
15 the other parent to determine the base child
16 support obligation owed to the other parent.

17 (3) The respective adjusted base child support
18 obligations for each parent are then offset, with
19 the parent owing more base child support paying
20 the difference between the two amounts to the
21 other parent. The base child support obligation
22 of the parent owing the lesser amount is then set
23 at ~~zero dollars~~ Zero Dollars (\$0.00).

1 e. The parent owing the greater amount of base child
2 support shall pay the difference between the two
3 amounts as a child support order. In no case shall
4 the amount of child support ordered to be paid exceed
5 the amount of child support which would otherwise be
6 ordered to be paid if the parents did not participate
7 in shared parenting time.

8 f. In no event shall the provisions of this paragraph be
9 construed to authorize or allow the payment of child
10 support by the custodial parent to the noncustodial
11 parent;

12 11. a. The actual medical and dental insurance premium for
13 the child shall be allocated between the parents in
14 the same proportion as their adjusted gross income and
15 shall be added to the base child support obligation.
16 If the insurance policy covers a person other than the
17 child before the court, only that portion of the
18 premium attributed to the child before the court shall
19 be allocated and added to the base child support
20 obligation.

21 b. If the obligor pays the medical insurance premium, the
22 obligor shall receive credit against the base child
23 support obligation for the obligee's allocated share
24 of the medical insurance premium.

1 c. If the obligee pays the medical insurance premium, the
2 obligor shall pay the obligor's allocated share of the
3 medical insurance premium to the obligee as part of
4 the base child support obligation;

5 12. a. In cases of split custody, where each parent is
6 awarded custody of at least one of their natural or
7 legally adopted children, the child support obligation
8 for each parent shall be calculated by application of
9 the child support guidelines for each custodial
10 arrangement.

11 b. In cases of joint custody, where the parents share
12 physical and legal custody of at least one of their
13 natural or legally adopted children, the child support
14 obligation for each parent shall be calculated by
15 applying the child support guidelines.

16 c. In all cases the parent with the larger child support
17 obligation shall pay the difference between the two
18 amounts to the parent with the smaller child support
19 obligation;

20 13. a. The district or administrative court shall determine
21 the "actual" child care expenses reasonably necessary
22 to enable either or both parents to:

- 23 (1) be employed,
24 (2) seek employment, or

1 (3) attend school or training to enhance employment
2 income.

3 b. When the obligee is participating in the Department of
4 Human Services child care subsidy program as provided
5 under Section 230.50 of Title 56 of the Oklahoma
6 Statutes, the Child Care Eligibility/Rates Schedule
7 established by the Department shall be used to
8 determine the amount to be treated as actual child
9 care costs incurred. When applying the schedule to
10 determine the family share copayment amount, the
11 obligor's share of the base monthly obligation for
12 child support and the obligee's gross income shall be
13 considered as the obligee's monthly income. The
14 actual child care costs incurred shall be the family
15 share copayment amount indicated on the schedule which
16 shall be allocated and paid monthly in the same
17 proportion as base child support. The Department of
18 Human Services shall promulgate rules, as necessary,
19 to implement the provisions of this subparagraph.

20 c. The actual child care costs incurred for the purposes
21 authorized by this paragraph shall be allocated and
22 paid monthly in the same proportion as base child
23 support.
24

1 d. The district or administrative court shall require the
2 obligee to provide the obligor with timely
3 documentation of any change in the amount of the child
4 care costs. Upon request by the obligor, whose
5 requests shall not exceed one each month, or upon
6 order of the court, the obligee shall provide the
7 documentation of the amount of incurred child care
8 costs which are related to employment, employment
9 search or education or training as authorized by this
10 paragraph.

11 e. If the court determines that it will not cause
12 detriment to the child or will not cause undue
13 hardship to either parent, in lieu of payment of child
14 care expenses incurred during employment, employment
15 search, or while the obligee is attending school or
16 training, the obligor may provide care for the child
17 during that time;

18 14. Reasonable and necessary medical, dental, orthodontic,
19 optometric, psychological, or any other physical or mental health
20 expenses of the child incurred by either parent and not reimbursed
21 by insurance may be allocated in the same proportion as the parents'
22 adjusted gross income as separate items that are not added to the
23 base child support obligation. If reimbursement is required, the
24 parent who incurs the expense shall be reimbursed by the other

1 parent within thirty (30) days of receipt of documentation of the
2 expense;

3 15. Transportation expenses of a child between the homes of the
4 parents may be divided between the parents in proportion to their
5 adjusted gross income;

6 16. a. (1) Child support orders may be modified upon a
7 material change in circumstances which includes,
8 but is not limited to, an increase or decrease in
9 income, changes in actual child care expenses,
10 changes in medical or dental insurance, or when
11 one of the children in the child support order
12 reaches the age of majority or otherwise ceases to
13 be entitled to support pursuant to the support
14 order.

15 (2) Modification of the Child Support Guideline
16 Schedule shall not alone be a material change in
17 circumstances for child support orders in
18 existence on November 1, 1999.

19 (3) Providing support for children born to or adopted
20 by either parent after the entry of a child
21 support order shall not alone be considered a
22 material change in circumstances.

23 (4) An order of modification shall be effective upon
24 the date the motion to modify was filed, unless

1 the parties agree to the contrary or the court
2 makes a specific finding of fact that the
3 material change of circumstance did not occur
4 until a later date.

5 b. (1) A child support order shall not be modified
6 retroactively regardless of whether support was
7 ordered in a temporary order, a decree of
8 divorce, an order establishing paternity,
9 modification of an order of support, or other
10 action to establish or to enforce support.

11 (2) All final orders shall state whether past due
12 support and interest has accrued pursuant to any
13 temporary order and the amount due, if any;
14 however, failure to state a past due amount shall
15 not bar collection of that amount after entry of
16 the final support order.

17 c. The amount of a child support order shall not be
18 construed to be an amount per child unless specified
19 by the district or administrative court in the order.
20 A child reaching the age of majority or otherwise
21 ceasing to be entitled to support pursuant to the
22 support order shall constitute a material change in
23 circumstances, but shall not automatically serve to
24 modify the order;

- 1 17. a. When a child support order is entered or modified, the
2 parents may agree or the district or administrative
3 court may require a periodic exchange of information
4 for an informal review and adjustment process.
- 5 b. When an existing child support order does not contain
6 a provision which requires an informal review and
7 adjustment process, either parent may request the
8 other parent to provide the information necessary for
9 the informal review and adjustment process.
10 Information shall be provided to the requesting parent
11 within forty-five (45) days of the request.
- 12 c. Requested information may include verification of
13 income, proof and cost of children's medical
14 insurance, and current and projected child care costs.
15 If shared parenting time has been awarded by the
16 court, documentation of past and prospective overnight
17 visits shall be exchanged.
- 18 d. Exchange of requested information may occur once a
19 year or less often, by regular mail.
- 20 e. (1) If the parents agree to a modification of a child
21 support order, their agreement shall be in
22 writing using standard modification forms and the
23 child support computation form provided for in
24 Section 120 of this title.

1 (2) The standard modification forms and the standard
2 child support computation form shall be submitted
3 to the district or administrative court. The
4 court shall review the modification forms to
5 confirm that the child support obligation
6 complies with the child support guidelines and
7 that all necessary parties pursuant to Section
8 112 of this title have been notified. If the
9 court approves the modification forms, they shall
10 be filed with the court.

11 f. If the district court refuses to consider the parents'
12 agreed modification order or the parents do not agree
13 to a modification of the child support order, a parent
14 may request a modification through the Department of
15 Human Services Child Support Enforcement Division,
16 hereinafter referred to as the "Department", when the
17 child support services are being provided under the
18 state child support plan as provided in Section 237 of
19 Title 56 of the Oklahoma Statutes. If the parent does
20 not have an open case with the Department, the parent
21 shall make application for services and complete a
22 request for review;

23 18. Child support orders may include such provisions as the
24 district or administrative court deems appropriate to assure that

1 the child support payments to the custodial parent are used for the
2 support of the child;

3 19. The district or administrative court shall require and
4 enforce a complete disclosure of assets by both parents on a
5 financial affidavit form prescribed by the Administrative Office of
6 the Courts;

7 20. Child support orders issued for prior-born children of the
8 payor may not be modified for the purpose of providing support for
9 later-born children;

10 21. The court, to the extent reasonably possible, shall make
11 provision in an order for prospective adjustment of support to
12 address any foreseen changes including, but not limited to, changes
13 in medical insurance, child care expenses, medical expenses, and
14 extraordinary costs;

15 22. The social security numbers of both parents and the
16 children who are the subject of a paternity or child support order
17 shall be included in the support order summary form provided for in
18 Section 120 of this title; and

19 23. A completed support order summary form shall be presented
20 to the judge with all paternity and child support orders, and no
21 such order shall be signed by the judge without presentation of the
22 form.

23 SECTION 12. AMENDATORY 43 O.S. 2001, Section 134, is
24 amended to read as follows:

1 Section 134. A. In any divorce decree which provides for
2 periodic alimony payments, the court shall plainly state, at the
3 time of entering the original decree, the dollar amount of all or a
4 portion of each payment which is designated as support and the
5 dollar amount of all or a portion of the payment which is a payment
6 pertaining to a division of property. The court shall specify in
7 the decree that the payments pertaining to a division of property
8 shall continue until completed. Payments pertaining to a division
9 of property are irrevocable and not subject to subsequent
10 modification by the court making the award. An order for the
11 payment of money pursuant to a divorce decree, whether designated as
12 support or designated as pertaining to a division of property shall
13 not be a lien against the real property of the person ordered to
14 make such payments unless the court order specifically provides for
15 a lien on real property. An arrearage in payments of support
16 reduced to a judgment may be a lien against the real property of the
17 person ordered to make such payments.

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

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

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

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 ~~Spouse's~~
12 Spouses' Protection Act (PL 97-252), the, 10 U.S.C., Section 1408, a
13 court may treat disposable retired or retainer pay payable to a
14 military member either as property solely of the member or as
15 property of the member and the spouse of the member. If a state
16 court determines that the disposable retired or retainer pay of a
17 military member is marital property, the court shall award an amount
18 consistent with the rank, pay grade, and time of service of the
19 member at the time of separation.

20 F. The provisions of subsection D of this section shall have
21 retrospective and prospective application with regards to
22 modifications for the purpose of obtaining support or payments
23 pertaining to a division of property on divorce decrees which become
24 final after June 26, 1981. There shall be a two-year statute of

1 limitations, beginning on the date of the final divorce decree, for
2 a party to apply for division of disposable retired or retainer pay.

3 F. G. The provisions of subsections C and D of this section
4 shall have retrospective and prospective application with regards to
5 modifications of the provisions of a final judgment or order for
6 alimony as support, or of a divorce decree pertaining to the payment
7 of alimony as support, regardless of the date that the order,
8 judgment, or decree was entered."

9

10 51-2-11031 SAB 04/11/08

11

12

13

14

15

16

17

18

19

20

21

22

23

24