

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1053

By: Banz

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7 COMMITTEE SUBSTITUTE

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

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

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

17 Section 134. A. In any divorce decree which provides for periodic alimony payments, the court
18 shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of
19 each payment which is designated as support and the dollar amount of all or a portion of the payment
20 which is a payment pertaining to a division of property. The court shall specify in the decree that the
21 payments pertaining to a division of property shall continue until completed. Payments pertaining to a
22 division of property are irrevocable and not subject to subsequent modification by the court making the
23 award, except as provided in subsection F of this section. An order for the payment of money pursuant
24 to a divorce decree, whether designated as support or designated as pertaining to a division of property

1 shall not be a lien against the real property of the person ordered to make such payments unless the
2 court order specifically provides for a lien on real property. An arrearage in payments of support
3 reduced to a judgment may be a lien against the real property of the person ordered to make such
4 payments.

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

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

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

10 E. Pursuant to the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C.,
11 Section 1408, a court may treat disposable retired or retainer pay payable to a military member either
12 as property solely of the member or as property of the member and the spouse of the member. ~~If a~~
13 ~~state court determines that the disposable retired or retainer pay of a military member is marital~~
14 ~~property, the court shall award an amount consistent with the rank, pay grade, and time of service of~~
15 ~~the member at the time of separation~~ Equitable division of the military retirement pay shall include the
16 following considerations for review by the state court in determining classification of the pay as
17 marital or separate property:

- 18 1. The ability of the former spouse to provide for the former spouse's own support;
- 19 2. The length of service and pay grade at the time of divorce and not at the future date of
20 retirement;
- 21 3. The education and experience the former spouse received during the marriage;
- 22 4. Any criminal activity, abuse, or nonconformance to military lifestyle of the former spouse;
- 23 5. The combat service of the military member;
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1 6. The disability status of the military member; provided, that a court shall not offset any
2 disability income with other assets of the military member; and

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

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

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

8 b. remarriage of the former spouse.

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

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

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

22 SECTION 2. This act shall become effective November 1, 2009.
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