

THE HOUSE OF REPRESENTATIVES
Monday, February 16, 2009

Committee Substitute for
House Bill No. 1053

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1053 - By: BANZ of the House and FORD of the Senate.

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

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

1 SECTION 1. AMENDATORY 43 O.S. 2001, Section 134, as amended by
2 Section 11, Chapter 407, O.S.L. 2008 (43 O.S. Supp. 2008, Section 134), is amended to
3 read as follows:
4 Section 134. A. In any divorce decree which provides for periodic alimony
5 payments, the court shall plainly state, at the time of entering the original decree, the
6 dollar amount of all or a portion of each payment which is designated as support and the
7 dollar amount of all or a portion of the payment which is a payment pertaining to a
8 division of property. The court shall specify in the decree that the payments pertaining
9 to a division of property shall continue until completed. Payments pertaining to a
10 division of property are irrevocable and not subject to subsequent modification by the

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

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

19 C. The voluntary cohabitation of a former spouse with a member of the opposite sex
20 shall be a ground to modify provisions of a final judgment or order for alimony as
21 support. If voluntary cohabitation is alleged in a motion to modify the payment of
22 support, the court shall have jurisdiction to reduce or terminate future support payments

1 upon proof of substantial change of circumstances of either party to the divorce relating
2 to need for support or ability to support. As used in this subsection, the term
3 cohabitation means the dwelling together continuously and habitually of a man and a
4 woman who are in a private conjugal relationship not solemnized as a marriage
5 according to law, or not necessarily meeting all the standards of a common-law marriage.
6 The petitioner shall make application for modification and shall follow notification
7 procedures used in other divorce decree modification actions. The court that entered the
8 divorce decree shall have jurisdiction over the modification application.

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

17 E. Pursuant to the federal Uniformed Services Former Spouses' Protection Act, 10
18 U.S.C., Section 1408, a court may treat disposable retired or retainer pay payable to a
19 military member either as property solely of the member or as property of the member
20 and the spouse of the member. ~~If a state court determines that the disposable retired or~~
21 ~~retainer pay of a military member is marital property, the court shall award an amount~~
22 ~~consistent with the rank, pay grade, and time of service of the member at the time of~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 ~~separation~~ Equitable division of the military retirement pay shall include the following
2 considerations for review by the state court in determining classification of the pay as
3 marital or separate property:

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

5 2. The length of service and pay grade at the time of divorce and not at the future

6 date of retirement;

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

8 4. Any criminal activity, abuse, or nonconformance to military lifestyle of the

9 former spouse;

10 5. The combat service of the military member;

11 6. The disability status of the military member; provided, that a court shall not

12 offset any disability income with other assets of the military member; and

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

14 member.

15 F. 1. The court shall provide in the divorce decree that payments of disposable

16 retired pay to the former spouse shall terminate upon:

17 a. the voluntary cohabitation, as defined in subsection C of this section,

18 with a member of the opposite sex, or

19 b. remarriage of the former spouse.

20 2. Upon application and proof of voluntary cohabitation or remarriage, the court

21 shall modify the provisions of the final order or judgment to terminate payments as

22 provided for in paragraph 1 of this subsection.

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

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

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

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-12-09 - DO PASS,
14 As Amended and Coauthored.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.