

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 1887

By: Russell, Simpson, Ivester,  
Garrison, Coates, Anderson,  
3 Treat, Ellis, Laster and  
4 Eason McIntyre of the  
Senate

5 and

6 Virgin of the House

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9 An Act relating to dissolution of marriage; amending  
10 43 O.S. 2011, Sections 121 and 134, which relate to  
the division of property and alimony; modifying  
11 certain military retainer pay division  
determinations; providing methods for the calculation  
12 of asset divisions; relocating provisions related to  
the division of certain military benefits; and  
13 providing an effective date.

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15 AUTHORS: Remove Virgin as principal House author and substitute  
16 Jordan as principal House author and show Virgin as first  
coauthor and add the following House coauthors: Stiles,  
17 Brumbaugh, Roberts (Dustin), Rousselot and Bennett

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18 AMENDMENT NO. 1. Page 1, lines 8 through 11 1/2, strike the title

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2 BILL NO. 1887

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12 determinations; providing methods for the calculation  
13 of asset divisions; relocating provisions related to  
14 the division of certain military benefits; and  
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 43 O.S. 2011, Section 121, is  
18 amended to read as follows:

19 Section 121. A. When a ~~divorce~~ dissolution of marriage is  
20 granted, the decree shall restore:

21 1. To the wife her maiden or former name, if her name was  
22 changed as a result of the marriage and if she so desires;

23 2. To the husband his former name, if his name was changed as a  
24 result of the marriage and if he so desires.

B. The court shall enter its decree confirming in each spouse  
the property owned by him or her before marriage and the undisposed-

1 of property acquired after marriage by him or her in his or her own  
2 right. Either spouse may be allowed such alimony out of real and  
3 personal property of the other as the court shall think reasonable,  
4 having due regard to the value of such property at the time of the  
5 ~~divorce~~ dissolution of marriage. Alimony may be allowed from real  
6 or personal property, or both, or in the form of money judgment,  
7 payable either in gross or in installments, as the court may deem  
8 just and equitable. As to such property, whether real or personal,  
9 which has been acquired by the parties jointly during their  
10 marriage, whether the title thereto be in either or both of said  
11 parties, the court shall, subject to a valid antenuptial contract in  
12 writing, make such division between the parties as may appear just  
13 and reasonable, by a division of the property in kind, or by setting  
14 the same apart to one of the parties, and requiring the other  
15 thereof to be paid such sum as may be just and proper to effect a  
16 fair and just division thereof. The court may set apart a portion  
17 of the separate estate of a spouse to the other spouse for the  
18 support of the children of the marriage where custody resides with  
19 that spouse.

20 C. Pursuant to the federal Uniformed Services Former Spouses'  
21 Protection Act, 10 U.S.C., Section 1408, a court may treat  
22 disposable retired or retainer pay payable to a military member  
23 either as property solely of the member or as property of the member  
24 and the spouse of the member. If a state court determines that the

1 disposable retired or retainer pay of a military member is marital  
2 property, the court shall award an amount consistent with the rank,  
3 pay grade, and time of service of the member at the date of filing  
4 of the petition unless the court finds a more equitable date.

5 D. Unless otherwise agreed to by the parties, any division of  
6 an active duty military member's retirement or retainer pay shall  
7 use the following language:

8 "The former spouse is awarded a percentage of the member's  
9 disposable military retired pay, to be computed by multiplying fifty  
10 percent (50%) times a fraction, the numerator of which is x  
11 months of marriage during the member's creditable military service,  
12 divided by the member's total number of months of creditable  
13 military service."

14 E. In the case of a member's retiring from reserve duty, unless  
15 otherwise agreed by the parties, any division of a reservist's  
16 retirement or retainer pay shall use the following language:

17 "The former spouse is awarded a percentage of the member's  
18 disposable military retired pay, to be computed by multiplying fifty  
19 percent (50%) times a fraction, the numerator of which is  
20 x reserve retirement points earned during the period of the  
21 marriage, divided by the member's total number of reserve retirement  
22 points earned."

23 SECTION 2. AMENDATORY 43 O.S. 2011, Section 134, is  
24 amended to read as follows:

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

19       B. The court shall also provide in the ~~divorce~~ dissolution of  
20 marriage decree that upon the death or remarriage of the recipient,  
21 the payments for support, if not already accrued, shall terminate.  
22 The court shall order the judgment for the payment of support to be  
23 terminated, and the lien released upon the presentation of proper  
24 proof of death of the recipient unless a proper claim is made for

1 any amount of past-due support payments by an executor,  
2 administrator, or heir within ninety (90) days from the date of  
3 death of the recipient. Upon proper application the court shall  
4 order payment of support terminated and the lien discharged after  
5 remarriage of the recipient, unless the recipient can make a proper  
6 showing that some amount of support is still needed and that  
7 circumstances have not rendered payment of the same inequitable,  
8 provided the recipient commences an action for such determination,  
9 within ninety (90) days of the date of such remarriage. Any  
10 modification of alimony payments shall be effective upon the date of  
11 the filing of the requested modification.

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

1 notification procedures used in other divorce decree modification  
2 actions. The court that entered the ~~divorce~~ dissolution of marriage  
3 decree shall have jurisdiction over the modification application.

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

15 ~~E. Pursuant to the federal Uniformed Services Former Spouses'~~  
16 ~~Protection Act, 10 U.S.C., Section 1408, a court may treat~~  
17 ~~disposable retired or retainer pay payable to a military member~~  
18 ~~either as property solely of the member or as property of the member~~  
19 ~~and the spouse of the member. If a state court determines that the~~  
20 ~~disposable retired or retainer pay of a military member 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 provisions of subsections C and D of this section shall~~  
9 ~~have retrospective and prospective application with regards to~~  
10 ~~modifications of the provisions of a final judgment or order for~~  
11 ~~alimony as support, or of a divorce decree pertaining to the payment~~  
12 ~~of alimony as support, regardless of the date that the order,~~  
13 ~~judgment, or decree was entered.~~

14       SECTION 3. This act shall become effective November 1, 2012.

15       Passed the Senate the 12th day of March, 2012.

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Presiding Officer of the Senate

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19       Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

20 2012.

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Presiding Officer of the House  
of Representatives

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