

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 1951

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

5 and

6 Jordan of the House

7

8

9 An Act relating to support payments; creating the
10 Wounded Warrior Protection Act; providing short
title; amending 43 O.S. 2011, Sections 118B and 134,
11 which relate to computation of income and alimony
payments; * * * providing for noncodification; and
12 providing an effective date.

13

14 AUTHORS: Add the following House Coauthors: Bennett, Hardin,
15 Roberts (Dustin), Roan, Sherrer, Hoskin and Mulready

16 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
17 and insert

18 "An Act relating to support payments; creating the
19 Wounded Warrior Protection Act; providing short
title; amending 43 O.S. 2011, Sections 121 and 134,
20 which relate to divorce decrees and alimony
payments; specifying certain property as separate
21 property; requiring certain proof; prohibiting
inclusion of certain benefits as income for
22 specified purpose; providing for noncodification;
and declaring an emergency.

23

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

1 SECTION 1. NEW LAW A new section of law not to be
2 codified in the Oklahoma Statutes reads as follows:

3 This act shall be known and may be cited as the "Wounded Warrior
4 Protection Act".

5 SECTION 2. AMENDATORY 43 O.S. 2011, Section 121, is
6 amended to read as follows:

7 Section 121. A. When a divorce is granted, the decree shall
8 restore:

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

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

13 B. The court shall enter its decree confirming in each spouse
14 the property owned by him or her before marriage and the
15 undisposed-of property acquired after marriage by him or her in his
16 or her own right. Either spouse may be allowed such alimony out of
17 real and personal property of the other as the court shall think
18 reasonable, having due regard to the value of such property at the
19 time of the divorce. Alimony may be allowed from real or personal
20 property, or both, or in the form of money judgment, payable either
21 in gross or in installments, as the court may deem just and
22 equitable. As to such property, whether real or personal, which has
23 been acquired by the parties jointly during their marriage, whether
24 the title thereto be in either or both of said parties, the court

1 shall, subject to a valid antenuptial contract in writing, make such
2 division between the parties as may appear just and reasonable, by a
3 division of the property in kind, or by setting the same apart to
4 one of the parties, and requiring the other thereof to be paid such
5 sum as may be just and proper to effect a fair and just division
6 thereof. The court may set apart a portion of the separate estate
7 of a spouse to the other spouse for the support of the children of
8 the marriage where custody resides with that spouse.

9 C. A servicemember's portion of Special Monthly Compensation
10 (SMC) awarded by or from the United States Department of Veterans
11 Affairs for service-connected loss or loss of use of specific organs
12 or extremities shall be separate property, not divisible as a
13 marital asset nor as community property. For purposes of
14 identifying SMC, it is the sole responsibility of the servicemember
15 to prove with competent evidence what amount of his or her
16 disability compensation is SMC.

17 D. A servicemember's portion of Combat-Related Special
18 Compensation (CRSC) shall be separate property, not divisible as a
19 marital asset nor as community property, if a specific dollar amount
20 of CRSC can be proved by the servicemember as compensation for
21 combat-related loss of limb or loss of bodily function and the CRSC
22 award was applied for and established prior to the date of the
23 filing of the dissolution of marriage action.

24

1 SECTION 3. AMENDATORY 43 O.S. 2011, Section 134, is
2 amended to read as follows:

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

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

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

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

1 actions. The court that entered the divorce decree shall have
2 jurisdiction over the modification application.

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

13 E. In no event shall an award of alimony, whether designated
14 for support or for property division, be based on the
15 servicemember's portion of any Special Monthly Compensation (SMC)
16 award from the United States Department of Veterans Affairs.

17 F. Pursuant to the federal Uniformed Services Former Spouses'
18 Protection Act, 10 U.S.C., Section 1408, a court may treat
19 disposable retired or retainer pay payable to a military member
20 either as property solely of the member or as property of the member
21 and the spouse of the member. If a state court determines that the
22 disposable retired or retainer pay of a military member is marital
23 property, the court shall award an amount consistent with the rank,
24

1 pay grade, and time of service of the member at the time of
2 separation.

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

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

16 SECTION 4. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval."
20
21
22
23
24

1 Passed the House of Representatives the 24th day of April, 2012.

2
3
4 Presiding Officer of the House of
Representatives
5

6 Passed the Senate the ____ day of _____, 2012.

7
8
9 Presiding Officer of the Senate
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24