

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2286

6 By: Virgin

7 COMMITTEE SUBSTITUTE

8 An Act relating to marriage and family; amending 43  
9 O.S. 2011, Section 121, which relates to the division  
10 of property in marriage dissolution proceedings;  
11 modifying certain military retainer pay division  
12 determinations; providing methods for the calculation  
13 of asset divisions; amending 43 O.S. 2011, Section  
14 134, which relates to alimony determinations;  
15 relocating provisions related to the division of  
16 certain military benefits; and providing an effective  
17 date.

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

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

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

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

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

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

22 C. Pursuant to the federal Uniformed Services Former Spouses'  
23 Protection Act, 10 U.S.C., Section 1408, a court may treat  
24 disposable retired or retainer pay payable to a military member

1 either as property solely of the member or as property of the member  
2 and the spouse of the member. If a state court determines that the  
3 disposable retired or retainer pay of a military member is marital  
4 property, the court shall award an amount consistent with the rank,  
5 pay grade, and time of service of the member at the date of filing  
6 of the petition or granting of the decree of dissolution of  
7 marriage.

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

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

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

20 "The former spouse is awarded a percentage of the member's  
21 disposable military retired pay, to be computed by multiplying fifty  
22 percent (50%) times a fraction, the numerator of which is  
23 X reserve retirement points earned during the period of the  
24

1 marriage, divided by the member's total number of reserve retirement  
2 points earned."

3 F. There shall be a two-year statute of limitations, beginning  
4 on the date of the final dissolution of marriage, for a party to  
5 apply for division of disposable retired or retainer pay.

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

8 Section 134. A. In any ~~divorce~~ dissolution of marriage decree  
9 which provides for periodic alimony payments, the court shall  
10 plainly state, at the time of entering the original decree, the  
11 dollar amount of all or a portion of each payment which is  
12 designated as support and the dollar amount of all or a portion of  
13 the payment which is a payment pertaining to a division of  
14 property. The court shall specify in the decree that the payments  
15 pertaining to a division of property shall continue until  
16 completed. Payments pertaining to a division of property are  
17 irrevocable and not subject to subsequent modification by the court  
18 making the award. An order for the payment of money pursuant to a  
19 ~~divorce~~ dissolution of marriage decree, whether designated as  
20 support or designated as pertaining to a division of property shall  
21 not be a lien against the real property of the person ordered to  
22 make such payments unless the court order specifically provides for  
23 a lien on real property. An arrearage in payments of support  
24

1 reduced to a judgment may be a lien against the real property of the  
2 person ordered to make such payments.

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

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

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

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

23 ~~E. Pursuant to the federal Uniformed Services Former Spouses'~~  
24 ~~Protection Act, 10 U.S.C., Section 1408, a court may treat~~

1 ~~disposable retired or retainer pay payable to a military member~~  
2 ~~either as property solely of the member or as property of the member~~  
3 ~~and the spouse of the member. If a state court determines that the~~  
4 ~~disposable retired or retainer pay of a military member is marital~~  
5 ~~property, the court shall award an amount consistent with the rank,~~  
6 ~~pay grade, and time of service of the member at the time of~~  
7 ~~separation.~~

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

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

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

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23 53-2-9591 SDR 02/21/12

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