

1 STATE OF OKLAHOMA

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

3 2ND CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL 1887

6 By: Russell, Simpson, Ivester,  
7 Garrison, Coates, Anderson,  
8 Treat, Ellis, Laster and  
9 Eason McIntyre of the  
10 Senate

11 and

12 Jordan, Virgin, Stiles,  
13 Brumbaugh, Roberts  
14 (Dustin), Rousselot and  
15 Bennett of the House

16 2ND CONFERENCE COMMITTEE SUBSTITUTE

17 An Act relating to dissolution of marriage; amending  
18 43 O.S. 2011, Sections 121 and 134, which relate to  
19 the division of property and alimony; modifying  
20 certain military retainer pay division  
21 determinations; requiring court to submit written  
22 findings under certain circumstances; providing  
23 methods for the calculation of asset divisions; and  
24 providing an effective date.

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

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

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

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

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

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

3 C. Pursuant to the federal Uniformed Services Former Spouses'  
4 Protection Act, 10 U.S.C., Section 1408, a court may treat  
5 disposable retired or retainer pay payable to a military member  
6 either as property solely of the member or as property of the member  
7 and the spouse of the member. If a state court determines that the  
8 disposable retired or retainer pay of a military member is the sole  
9 and separate property of the military member, the court shall submit  
10 clear and concise written findings of such determination to be  
11 included in the decree or final order. If a state court determines  
12 that the disposable retired or retainer pay of a military member is  
13 marital property, the court shall submit clear and concise written  
14 findings of such determination to be included in the decree or final  
15 order and shall award an amount consistent with the rank, pay grade,  
16 and time of service of the member at the date of the filing of the  
17 petition, unless the court finds a more equitable date due to the  
18 economic separation of the parties.

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

22 "The former spouse is awarded a percentage of the member's  
23 disposable military retired pay, to be computed by multiplying fifty  
24 percent (50%) times a fraction, the numerator of which is x

1 months of marriage during the member's creditable military service,  
2 divided by the member's total number of months of creditable  
3 military service."

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

7 "The former spouse is awarded a percentage of the member's  
8 disposable military retired pay, to be computed by multiplying fifty  
9 percent (50%) times a fraction, the numerator of which is  
10 X reserve retirement points earned during the period of the  
11 marriage, divided by the member's total number of reserve retirement  
12 points earned."

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

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

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

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

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1 modification of alimony payments shall be effective upon the date of  
2 the filing of the requested modification.

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

20 D. Except as otherwise provided in subsection C of this  
21 section, the provisions of any divorce dissolution of marriage  
22 decree pertaining to the payment of alimony as support may be  
23 modified upon proof of changed circumstances relating to the need  
24 for support or ability to support which are substantial and

1 continuing so as to make the terms of the decree unreasonable to  
2 either party. Modification by the court of any divorce dissolution  
3 of marriage decree pertaining to the payment of alimony as support,  
4 pursuant to the provisions of this subsection, may extend to the  
5 terms of the payments and to the total amount awarded; provided  
6 however, such modification shall only have prospective application.

7 E. Pursuant to the federal Uniformed Services Former Spouses'  
8 Protection Act, 10 U.S.C., Section 1408, a court may treat  
9 disposable retired or retainer pay payable to a military member  
10 either as property solely of the member or as property of the member  
11 and the spouse of the member. If a state court determines that the  
12 disposable retired or retainer pay of a military member is the sole  
13 and separate property of the military member, the court shall submit  
14 clear and concise written findings of such determination to be  
15 included in the decree or final order. If a state court determines  
16 that the disposable retired or retainer pay of a military member is  
17 marital property, the court shall submit clear and concise written  
18 findings of such determination to be included in the decree or final  
19 order and shall award an amount consistent with the rank, pay grade,  
20 and time of service of the member at the ~~time of separation~~ date of  
21 the filing of the petition, unless the court finds a more equitable  
22 date due to the economic separation of the parties.

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1 F. Unless otherwise agreed to by the parties, any division of  
2 an active duty military member's retirement or retainer pay shall  
3 use the following language:

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

10 G. In the case of a member's retiring from reserve duty, unless  
11 otherwise agreed by the parties, any division of a reservist's  
12 retirement or retainer pay shall use the following language:

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

19 H. The provisions of subsection D of this section shall have  
20 retrospective and prospective application with regards to  
21 modifications for the purpose of obtaining support or payments  
22 pertaining to a division of property on divorce dissolution of  
23 marriage decrees which become final after June 26, 1981. There  
24 shall be a two-year statute of limitations, beginning on the date of

1 the final divorce dissolution of marriage decree, for a party to  
2 apply for division of disposable retired or retainer pay.

3 ~~G.~~ I. The provisions of subsections C and D of this section  
4 shall have retrospective and prospective application with regards to  
5 modifications of the provisions of a final judgment or order for  
6 alimony as support, or of a divorce dissolution of marriage decree  
7 pertaining to the payment of alimony as support, regardless of the  
8 date that the order, judgment, or decree was entered.

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

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