ENGROSSED SENATE
BILL NO. 1951

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

and

Jordan of the House

An Act relating to support payments; creating the Wounded Warrior Protection Act; providing short title; amending 43 O.S. 2011, Sections 118B and 134, which relate to computation of income and alimony payments; specifying certain property as separate property; requiring certain proof; prohibiting inclusion of certain benefits as income for specified purpose; providing for noncodification; and providing an effective date.

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

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

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

SECTION 2. AMENDATORY 43 O.S. 2011, Section 118B, is amended to read as follows:

Section 118B. A. As used in ~~this act~~ <u>Section 118 et seq. of this title</u>:

1. "Gross income" includes earned and passive income from any source, except as excluded in this section;

2. "Earned income" is defined as income received from labor or the sale of goods or services and includes, but is not limited to, income from:

a. salaries,

b. wages,

c. tips

d. commissions,

e. bonuses,

f. severance pay, and

g. military pay, including hostile fire or imminent danger pay, combat pay, family separation pay, or hardship duty location pay; and

3. "Passive income" is defined as all other income and includes, but is not limited to, income from:

a. dividends,

b. pensions,

c. rent,

d. interest income,

e. trust income,

f. support alimony being received from someone other than the other parent in this case,

g. annuities,

h. social security benefits,

i. workers' compensation benefits,

j. unemployment insurance benefits,

k. disability insurance benefits,

l. gifts,

m. prizes,

n. gambling winnings,

o. lottery winnings, and

p. royalties.

B. Income specifically excluded is:

1. Actual child support received for children not before the court;

2. Adoption Assistance subsidy paid by the Department of Human Services;

3. Benefits received from means-tested public assistance programs including, but not limited to:

a. Temporary Assistance for Needy Families (TANF),

b. Supplemental Security Income (SSI),

c. Food Stamps, and

d. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

4. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child; and

5. Payments received by the parent for the care of foster children.

C. 1. For purposes of computing gross income of the parents, gross income shall include for each parent whichever is the most equitable of:

a. all actual monthly income described in this section, plus such overtime and supplemental income as the court deems equitable,

b. the average of the gross monthly income for the time actually employed during the previous three (3) years,

c. the minimum wage paid for a forty-hour week, or

d. gross monthly income imputed as set forth in subsection D of this section.

2. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

D. Imputed income.

1. Instead of using the actual or average income of a parent, the court may impute gross income to a parent under the provisions of this section if equitable.

2. The following factors may be considered by the court when making a determination of willful and voluntary underemployment or unemployment:

a. whether a parent has been determined by the court to be willfully or voluntarily underemployed or unemployed, including whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the obligation of the parent to support his or her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future,

b. when there is no reliable evidence of income,

c. the past and present employment of the parent,

d. the education, training, and ability to work of the parent,

e. the lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent,

f. the role of the parent as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which

eliminates or substantially reduces the ability of the parent to work outside the home, and the need of that parent to continue in that role in the future, or

g. any additional factors deemed relevant to the particular circumstances of the case.

E. Self-employment income.

1. Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income.

2. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation. Amounts allowed by the Internal Revenue Service for accelerated depreciation or investment tax credits shall not be considered reasonable expenses.

3. The district or administrative court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount.

F. Fringe benefits.

1. Fringe benefits for inclusion as income or in-kind remuneration received by a parent in the course of employment, or

operation of a trade or business, shall be counted as income if they significantly reduce personal living expenses.

2. Such fringe benefits might include, but are not limited to, company car, housing, or room and board.

3. Basic Allowance for Housing, Basic Allowance for Subsistence, and Variable Housing Allowances for service members are considered income for the purposes of determining child support.

4. Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, such as employer contributions to portions of health insurance premiums or employer contributions to a retirement or pension plan.

G. Social Security Title II benefits.

1. Social Security Title II benefits received by a child shall be included as income to the parent on whose account the benefit of the child is drawn and applied against the support obligation ordered to be paid by that parent. If the benefit of the child is drawn from the disability of the child, the benefit of the child is not added to the income of either parent and not deducted from the obligation of either parent.

2. Child support greater than social security benefit.

If the child support award due after calculating the child support guidelines is greater than the social security benefit received on behalf of the child, the obligor shall be required to

pay the amount exceeding the social security benefit as part of the child support award in the case.

3. Child support equal to or less than social security benefits.

a. If the child support award due after calculating the child support guidelines is less than or equal to the social security benefit received on behalf of the child, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.

b. Any social security benefit amounts which are greater than the support ordered by the court shall be retained by the caretaker for the benefit of the child and shall not be used as a reason for decreasing the child support order or reducing arrearages.

c. The child support computation form shall include a notation regarding the use of social security benefits as offset.

4. a. Calculation of child support as provided in subsection F of this section shall be effective no earlier than the date on which the motion to modify was filed.

b. The court may determine if, under the circumstances of the case, it is appropriate to credit social security benefits paid to the custodial person prior to a

modification of child support against the past-due child support obligation of the noncustodial parent.

c. The noncustodial parent shall not receive credit for any social security benefits paid directly to the child.

d. Any credit granted by the court pursuant to subparagraph b of this paragraph shall be limited to the time period during which the social security benefit was paid, or the time period covered by a lump sum for past social security benefits.

H. Notwithstanding any other provision of law, a portion of Combat-Related Special Compensation (CRSC) shall be separate property, not divisible as a marital asset nor as community property, if a specific dollar amount of CRSC can be proven by the service member as compensation paid for combat-related loss of limb or loss of bodily function.

1. To qualify as separate property, the CRSC shall be defined as separate compensation paid for the sole purpose of combat-related loss of limb or loss of bodily function.

2. An injury shall be deemed combat-related if such injury was:

a. attributable to an injury for which the member was awarded the Purple Heart,

b. incurred as a direct result of armed conflict, or

c. sustained through an instrumentality of war while serving in a combat theater.

3. For purposes of identifying CRSC, it is the sole responsibility of the service member to prove with competent evidence what amount of his or her disability compensation is CRSC. Competent evidence shall include, but is not limited to:

a. a DD-214 or NGB-22 or similar statement of service which identifies the combat theater in which the member served,

b. a Bureau of Veterans Administration ("BVA" or "VA") Award letter which sets for the specific combat-related loss of limb or loss of bodily function, and the specific amount of CRSC paid for such injuries, and

c. a 1099 from the BVA or VA which details the specific amount of CRSC for combat-related loss of limb or loss of bodily function.

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

Section 134. A. In any divorce decree which provides for periodic alimony payments, the court shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of each payment which is designated as support and the dollar amount of all or a portion of the payment which is a payment

pertaining to a division of property. The court shall specify in the decree that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to subsequent modification by the court making the award. An order for the payment of money pursuant to a divorce decree, whether designated as support or designated as pertaining to a division of property shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments. <u>In no event shall an award of alimony payments, whether designated for support or for property division, be based on CRSC as defined in paragraph 1 of subsection H of Section 118B of this title.</u>

B. The court shall also provide in the divorce decree that upon the death or remarriage of the recipient, the payments for support, if not already accrued, shall terminate. The court shall order the judgment for the payment of support to be terminated, and the lien released upon the presentation of proper proof of death of the recipient unless a proper claim is made for any amount of past-due support payments by an executor, administrator, or heir within ninety (90) days from the date of death of the recipient. Upon proper application the court shall order payment of support

terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable, provided the recipient commences an action for such determination, within ninety (90) days of the date of such remarriage.

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

D. Except as otherwise provided in subsection C of this section, the provisions of any divorce decree pertaining to the

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

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

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

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

SECTION 4. This act shall become effective November 1, 2012.

Passed the Senate the 13th day of March, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2012.

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Presiding Officer of the House
of Representatives