ENROLLED SENATE
BILL NO. 1951

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

and

Jordan, Bennett, Hardin, Roberts (Dustin), Roan, Sherrer, Hoskin and Mulready of the House

<StartFT>An Act relating to support payments; creating the Wounded Warrior Protection Act; providing short title; amending 43 O.S. 2011, Sections 121 and 134, which relate to divorce decrees 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 declaring an emergency.

SUBJECT: Property division in divorce cases

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 121, is amended to read as follows:

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

1. To the wife her maiden or former name, if her name was 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.

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

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

D. A servicemember's 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 proved by the servicemember as compensation for combat-related loss of limb or loss of bodily function and the CRSC award was applied for and established prior to the date of the filing of the dissolution of marriage action.

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.

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

<u>F.</u> 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.~~ G. 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.~~ H. 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. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 8th day of May, 2012.

_____
Presiding Officer of the Senate

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

_____
Presiding Officer of the House
of Representatives