

1 **SENATE FLOOR VERSION**

2 March 1, 2011

3 SENATE BILL NO. 917

By: Russell of the Senate

4 and

5 Banz of the House

6
7
8 An Act relating to support payments; amending Section
9 3, Chapter 407, O.S.L. 2008 and 43 O.S. 2001, Section
10 134, as amended by Section 11, Chapter 407, O.S.L.
11 2008 (43 O.S. Supp. 2010, Sections 118B and 134),
12 which relate to computation of income and alimony
13 payments; creating the Wounded Warrior Protection
14 Act; providing short title; prohibiting certain
15 application; prohibiting inclusion of certain
16 benefits as income for specified purpose; providing
17 for noncodification; and providing an effective date.

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

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

21 This act shall be known as the Wounded Warrior Protection Act.

22 SECTION 2. AMENDATORY Section 3, Chapter 407, O.S.L.
23 2008 (43 O.S. Supp. 2010, Section 118B), is amended to read as
24 follows:

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

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

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

6 a. salaries,

7 b. wages,

8 c. tips

9 d. commissions,

10 e. bonuses,

11 f. severance pay, and

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

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

17 a. dividends,

18 b. pensions,

19 c. rent,

20 d. interest income,

21 e. trust income,

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

24 g. annuities,

- 1 h. social security benefits,
- 2 i. workers' compensation benefits,
- 3 j. unemployment insurance benefits,
- 4 k. disability insurance benefits,
- 5 l. gifts,
- 6 m. prizes,
- 7 n. gambling winnings,
- 8 o. lottery winnings, and
- 9 p. royalties.

10 B. Income specifically excluded is:

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

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

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

17 a. Temporary Assistance for Needy Families (TANF),

18 b. Supplemental Security Income (SSI),

19 c. Food Stamps, and

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

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

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

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

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

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

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

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

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

17 D. Imputed income.

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

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

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- 1 a. whether a parent has been determined by the court to
2 be willfully or voluntarily underemployed or
3 unemployed, including whether unemployment or
4 underemployment for the purpose of pursuing additional
5 training or education is reasonable in light of the
6 obligation of the parent to support his or her
7 children and, to this end, whether the training or
8 education will ultimately benefit the child in the
9 case immediately under consideration by increasing the
10 parent's level of support for that child in the
11 future,
- 12 b. when there is no reliable evidence of income,
- 13 c. the past and present employment of the parent,
- 14 d. the education, training, and ability to work of the
15 parent,
- 16 e. the lifestyle of the parent, including ownership of
17 valuable assets and resources, whether in the name of
18 the parent or the current spouse of the parent, that
19 appears inappropriate or unreasonable for the income
20 claimed by the parent,
- 21 f. the role of the parent as caretaker of a handicapped
22 or seriously ill child of that parent, or any other
23 handicapped or seriously ill relative for whom that
24 parent has assumed the role of caretaker which

1 eliminates or substantially reduces the ability of the
2 parent to work outside the home, and the need of that
3 parent to continue in that role in the future, or
4 g. any additional factors deemed relevant to the
5 particular circumstances of the case.

6 E. Self-employment income.

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

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

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

21 F. Fringe benefits.

22 1. Fringe benefits for inclusion as income or in-kind
23 remuneration received by a parent in the course of employment, or
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1 operation of a trade or business, shall be counted as income if they
2 significantly reduce personal living expenses.

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

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

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

13 G. Social Security Title II benefits.

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

21 2. Child support greater than social security benefit.

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

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

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

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

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

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

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

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

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

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

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

11 H. Notwithstanding any other provision of law, the Department
12 of Human Services shall neither make application to the Veterans
13 Administration for garnishment or assignment of wages from any type
14 of service-related injury compensation or combat-related disability
15 compensation for purposes of assisting in the care of a child, nor
16 shall the Department include such pay as income as defined pursuant
17 to this section when calculating child support payment obligations.

18 SECTION 3. AMENDATORY 43 O.S. 2001, Section 134, as
19 amended by Section 11, Chapter 407, O.S.L. 2008 (43 O.S. Supp. 2010,
20 Section 134), is amended to read as follows:

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

1 dollar amount of all or a portion of the payment which is a payment
2 pertaining to a division of property. The court shall specify in
3 the decree that the payments pertaining to a division of property
4 shall continue until completed. Payments pertaining to a division
5 of property are irrevocable and not subject to subsequent
6 modification by the court making the award. An order for the
7 payment of money pursuant to a divorce decree, whether designated as
8 support or designated as pertaining to a division of property shall
9 not be a lien against the real property of the person ordered to
10 make such payments unless the court order specifically provides for
11 a lien on real property. An arrearage in payments of support
12 reduced to a judgment may be a lien against the real property of the
13 person ordered to make such payments. In no event shall an award of
14 alimony payments, whether designated for support or for property
15 division, be based on income received from any type of service-
16 related injury compensation or combat-related disability
17 compensation.

18 B. The court shall also provide in the divorce decree that upon
19 the death or remarriage of the recipient, the payments for support,
20 if not already accrued, shall terminate. The court shall order the
21 judgment for the payment of support to be terminated, and the lien
22 released upon the presentation of proper proof of death of the
23 recipient unless a proper claim is made for any amount of past-due
24 support payments by an executor, administrator, or heir within

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

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

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

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

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

1 limitations, beginning on the date of the final divorce decree, for
2 a party to apply for division of disposable retired or retainer pay.

3 G. The provisions of subsections C and D of this section shall
4 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 decree pertaining to the payment
7 of alimony as support, regardless of the date that the order,
8 judgment, or decree was entered.

9 SECTION 4. This act shall become effective November 1, 2011.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-22-11 - DO
11 PASS, As Coauthored.

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