

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1548

By: McCullough

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6 AS INTRODUCED

7 An Act relating to marriage; creating the Fairness in
8 Fault Act; amending 43 O.S. 2011, Sections 101, 110
9 and 121, as last amended by Section 1, Chapter 334,
10 O.S.L. 2012 (43 O.S. Supp. 2012, Section 121), which
11 relate to dissolution of marriage; restricting the
12 use of incompatibility as a ground for divorce;
13 requiring parties to pay their own expenses in
14 certain cases; providing exception; requiring unequal
15 division of marital property if certain conditions
16 are met; providing for noncodification; and providing
17 an effective date.

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

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

23 This act shall be known and may be cited as the "Fairness in
24 Fault Act".

SECTION 2. AMENDATORY 43 O.S. 2011, Section 101, is
amended to read as follows:

Section 101. The district court may grant a divorce for any of
the following causes:

First. Abandonment for one (1) year.

1 Second. Adultery.

2 Third. Impotency.

3 Fourth. When the wife at the time of her marriage, was pregnant
4 by another than her husband.

5 Fifth. Extreme cruelty.

6 Sixth. Fraudulent contract.

7 Seventh. Incompatibility. Provided, however, that the court
8 shall not grant a divorce on the ground of incompatibility if:

9 1. There are living minor children of the marriage;

10 2. The parties have been married ten (10) years or longer; or

11 3. Either party files a written objection to the granting of a
12 divorce.

13 Eighth. Habitual drunkenness.

14 Ninth. Gross neglect of duty.

15 Tenth. Imprisonment of the other party in a state or federal
16 penal institution under sentence thereto for the commission of a
17 felony at the time the petition is filed.

18 Eleventh. The procurement of a final divorce decree without
19 this state by a husband or wife which does not in this state release
20 the other party from the obligations of the marriage.

21 Twelfth. Insanity for a period of five (5) years, the insane
22 person having been an inmate of a state institution for the insane
23 in the State of Oklahoma, or inmate of a state institution for the
24 insane in some other state for such period, or of a private

1 | sanitarium, and affected with a type of insanity with a poor
2 | prognosis for recovery; provided, that no divorce shall be granted
3 | because of insanity until after a thorough examination of such
4 | insane person by three physicians, one of which physicians shall be
5 | a superintendent of the hospital or sanitarium for the insane, in
6 | which the insane defendant is confined, and the other two physicians
7 | to be appointed by the court before whom the action is pending, any
8 | two of such physicians shall agree that such insane person, at the
9 | time the petition in the divorce action is filed, has a poor
10 | prognosis for recovery; provided, further, however, that no divorce
11 | shall be granted on this ground to any person whose husband or wife
12 | is an inmate of a state institution in any other than the State of
13 | Oklahoma, unless the person applying for such divorce shall have
14 | been a resident of the State of Oklahoma for at least five (5) years
15 | prior to the commencement of an action; and provided further, that a
16 | decree granted on this ground shall not relieve the successful party
17 | from contributing to the support and maintenance of the defendant.
18 | The court shall appoint a guardian ad litem to represent the insane
19 | defendant, which appointment shall be made at least ten (10) days
20 | before any decree is entered.

21 | SECTION 3. AMENDATORY 43 O.S. 2011, Section 110, is
22 | amended to read as follows:

23 | Section 110. A. 1. Except as otherwise provided by this
24 | subsection, upon the filing of a petition for dissolution of

1 marriage, annulment of a marriage or legal separation by the
2 petitioner and upon personal service of the petition and summons on
3 the respondent, or upon waiver and acceptance of service by the
4 respondent, an automatic temporary injunction shall be in effect
5 against both parties pursuant to the provisions of this section:

6 a. restraining the parties from transferring,
7 encumbering, concealing, or in any way disposing of,
8 without the written consent of the other party or an
9 order of the court, any marital property, except in
10 the usual course of business, for the purpose of
11 retaining an attorney for the case or for the
12 necessities of life and requiring each party to notify
13 the other party of any proposed extraordinary
14 expenditures and to account to the court for all
15 extraordinary expenditures made after the injunction
16 is in effect,

17 b. restraining the parties from:
18 (1) intentionally or knowingly damaging or destroying
19 the tangible property of the parties, or of
20 either of them, specifically including, but not
21 limited to, any electronically stored materials,
22 electronic communications, social network data,
23 financial records, and any document that
24 represents or embodies anything of value,

- 1 (2) making any withdrawal for any purpose from any
2 retirement, profit-sharing, pension, death, or
3 other employee benefit plan or employee savings
4 plan or from any individual retirement account or
5 Keogh account,
- 6 (3) withdrawing or borrowing in any manner all or any
7 part of the cash surrender value of any life
8 insurance policies on either party or their
9 children,
- 10 (4) changing or in any manner altering the
11 beneficiary designation on any life insurance
12 policies on the life of either party or any of
13 their children,
- 14 (5) canceling, altering, or in any manner affecting
15 any casualty, automobile, or health insurance
16 policies insuring the parties' property or
17 persons,
- 18 (6) opening or diverting mail addressed to the other
19 party, and
- 20 (7) signing or endorsing the other party's name on
21 any negotiable instrument, check, or draft, such
22 as tax refunds, insurance payments, and
23 dividends, or attempting to negotiate any
24 negotiable instruments payable to either party

1 without the personal signature of the other
2 party,

3 c. requiring the parties to maintain all presently
4 existing health, property, life and other insurance
5 which the individual is presently carrying on any
6 member of this family unit, and to cooperate as
7 necessary in the filing and processing of claims. Any
8 employer-provided health insurance currently in
9 existence shall remain in full force and effect for
10 all family members,

11 d. enjoining both parties from molesting or disturbing
12 the peace of the other party or of the children to the
13 marriage,

14 e. restraining both parties from disrupting or
15 withdrawing their children from an educational
16 facility and programs where the children historically
17 have been enrolled, or day care,

18 f. restraining both parties from hiding or secreting
19 their children from the other party,

20 g. restraining both parties from removing the minor
21 children of the parties, if any, beyond the
22 jurisdiction of the State of Oklahoma, acting directly
23 or in concert with others, except for vacations of two
24 (2) weeks or less duration, without the prior written

1 consent of the other party, which shall not be
2 unreasonably withheld, and

3 h. requiring, unless otherwise agreed upon by the parties
4 in writing, the delivery by each party to the other
5 within thirty (30) days from the earlier of either the
6 date of service of the summons or the filing of an
7 initial pleading by the respondent, the following
8 documents:

- 9 (1) the federal and state income tax returns of each
10 party for the past two (2) years and any
11 nonpublic, limited partnership and privately held
12 corporate returns for any entity in which either
13 party has an interest, together with all
14 supporting documentation for the tax returns,
15 including but not limited to W-2 forms, 1099
16 forms, K-1 forms, Schedule C and Schedule E. If
17 a return is not completed at the time of
18 disclosure, the parties shall provide the
19 documents necessary to prepare the tax return of
20 the party, to include W-2 forms, 1099 forms, K-1
21 forms, copies of extension requests and estimated
22 tax payments,
- 23 (2) two (2) months of the most recent pay stubs from
24 each employer for whom the party worked,

1 (3) statements for the past six (6) months for all
2 bank accounts held in the name of either party
3 individually or jointly, or in the name of
4 another person for the benefit of either party,
5 or held by either party for the benefit of the
6 minor child or children of the parties,

7 (4) documentation regarding the cost and nature of
8 available health insurance coverage for the
9 benefit of either party or the minor child or
10 children of the parties,

11 (5) documentation regarding the cost and nature of
12 employment or educationally related child care
13 expenses incurred for the benefit of the minor
14 child or children of the parties, and

15 (6) documentation regarding all debts in the name of
16 either party individually or jointly, showing the
17 most recent balance due and payment terms.

18 2. If either party is not in possession of a document required
19 pursuant to subparagraph h of paragraph 1 of this subsection or has
20 not been able to obtain the document in a timely fashion, the party
21 shall state in verified writing, under the penalty of perjury, the
22 specific document which is not available, the reasons the document
23 is not available, and what efforts have been made to obtain the
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1 document. As more information becomes available, there is a
2 continuing duty to supplement the disclosures.

3 3. Nothing in this subsection shall prohibit a party from
4 conducting further discovery pursuant to the Oklahoma Discovery
5 Code.

6 4. a. The provisions of the automatic temporary injunction
7 shall be printed as an attachment to the summons and
8 the petition and entitled "Automatic Temporary
9 Injunction Notice".

10 b. The automatic temporary injunction notice shall
11 contain a provision which will allow the parties to
12 waive the automatic temporary injunction. In
13 addition, the provision must state that unless both
14 parties have agreed and have signed their names in the
15 space provided, that the automatic temporary
16 injunction will be effective. Along with the waiver
17 provision, the notice shall contain a check box and
18 space available for the signatures of the parties.

19 5. The automatic temporary injunction shall become an order of
20 the court upon fulfillment of the requirements of paragraph 1 of
21 this subsection unless and until:

22 a. the automatic temporary injunction is waived by the
23 parties. Both parties must indicate on the automatic
24 temporary injunction notice in the space provided that

1 the parties have both agreed to waive the automatic
2 temporary injunction. Each party must sign his or her
3 own name on the notice in the space provided, or

4 b. a party, no later than three (3) days after service on
5 the party, files an objection to the injunction and
6 requests a hearing. Provided, the automatic temporary
7 injunction shall remain in effect until the hearing
8 and a judge orders the injunction removed.

9 6. The automatic temporary injunction shall be dissolved upon
10 the granting of the dissolution of marriage, final order of legal
11 separation or other final order.

12 7. Nothing in this subsection shall preclude either party from
13 applying to the court for further temporary orders, pursuant to this
14 section, an expanded automatic temporary injunction, or modification
15 or revocation thereto.

16 8. a. With regard to an automatic temporary injunction, when
17 a petition for dissolution of marriage, annulment of a
18 marriage, or a legal separation is filed and served, a
19 peace officer shall use every reasonable means to
20 enforce the injunction which enjoins both parties from
21 molesting or disturbing the peace of the other party
22 or the children of the marriage against a petitioner
23 or respondent, whenever:

1 (1) there is exhibited by a respondent or by the
2 petitioner to the peace officer a copy of the
3 petition or summons, with an attached Temporary
4 Injunction Notice, duly filed and issued pursuant
5 to this section, together with a certified copy
6 of the affidavit of service of process or a
7 certified copy of the waiver and acceptance of
8 service, and

9 (2) the peace officer has cause to believe that a
10 violation of the automatic temporary injunction
11 has occurred.

12 b. A peace officer shall not be held civilly or
13 criminally liable for his or her action pursuant to
14 this paragraph if his or her action is in good faith
15 and without malice.

16 B. After a petition has been filed in an action for dissolution
17 of marriage or legal separation either party may request the court
18 to issue:

19 1. A temporary order:

- 20 a. regarding child custody, support or visitation,
- 21 b. regarding spousal maintenance,
- 22 c. regarding payment of debt,
- 23 d. regarding possession of property,
- 24 e. regarding attorney fees, and

1 f. providing other injunctive relief proper in the
2 circumstances.

3 All applications for temporary orders shall set forth the
4 factual basis for the application and shall be verified by the party
5 seeking relief. The application and a notice of hearing shall be
6 served on the other party in any manner provided for in the Rules of
7 Civil Procedure.

8 The court shall not issue a temporary order until at least five
9 (5) days' notice of hearing is given to the other party.

10 After notice and hearing, a court may issue a temporary order
11 granting the relief as provided by this paragraph; and/or

12 2. A temporary restraining order. If the court finds on the
13 basis of a verified application and testimony of witnesses that
14 irreparable harm will result to the moving party, or a child of a
15 party if no order is issued before the adverse party or attorney for
16 the adverse party can be heard in opposition, the court may issue a
17 temporary restraining order which shall become immediately effective
18 and enforceable without requiring notice and opportunity to be heard
19 to the other party. Provided, for the purposes of this section, no
20 minor child or children temporarily residing in a licensed,
21 certified domestic violence shelter in the state shall be removed by
22 an ex parte order. If a temporary restraining order is issued
23 pursuant to this paragraph, the motion for a temporary order shall
24 be set within ten (10) days.

1 C. Any temporary orders and the automatic temporary injunction,
2 or specific terms thereof, may be vacated or modified prior to or in
3 conjunction with a final decree on a showing by either party of
4 facts necessary for vacation or modification. Temporary orders and
5 the automatic temporary injunction terminate when the final judgment
6 on all issues, except attorney fees and costs, is rendered or when
7 the action is dismissed. The court may reserve jurisdiction to rule
8 on an application for a contempt citation for a violation of a
9 temporary order or the automatic temporary injunction which is filed
10 any time prior to the time the temporary order or injunction
11 terminates.

12 D. Upon granting a decree of dissolution of marriage, annulment
13 of a marriage, or legal separation, the court ~~may~~ shall require
14 ~~either party~~ the parties to pay ~~such reasonable~~ their own expenses
15 ~~of the other as may be just and proper under the circumstances,~~
16 including attorney fees, except as provided in subsection E of this
17 section and in Section 112.6 of this title.

18 E. Upon granting a decree of dissolution of marriage, annulment
19 of a marriage, or legal separation, where the court finds by a
20 preponderance of the evidence that one spouse caused the
21 dissolution, annulment, or separation by committing at least one of
22 the grounds for divorce as listed in Section 101 of this title, the
23 court shall order that party to pay the other party's expenses,
24 including attorney fees.

1 ~~E.~~ F. The court may in its discretion make additional orders
2 relative to the expenses of any such subsequent actions, including
3 but not limited to writs of habeas corpus, brought by the parties or
4 their attorneys, for the enforcement or modification of any
5 interlocutory or final orders in the dissolution of marriage action
6 made for the benefit of either party or their respective attorneys.

7 SECTION 4. AMENDATORY 43 O.S. 2011, Section 121, as last
8 amended by Section 1, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2012,
9 Section 121), is amended to read as follows:

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

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

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

16 B. The court shall enter its decree confirming in each spouse
17 the property owned by him or her before marriage and the undisposed-
18 of property acquired after marriage by him or her in his or her own
19 right. Either spouse may be allowed such alimony out of real and
20 personal property of the other as the court shall think reasonable,
21 having due regard to the value of such property at the time of the
22 dissolution of marriage. Alimony may be allowed from real or
23 personal property, or both, or in the form of money judgment,
24 payable either in gross or in installments, as the court may deem

1 just and equitable. As to such property, whether real or personal,
2 which has been acquired by the parties jointly during their
3 marriage, whether the title thereto be in either or both of said
4 parties, the court shall, subject to a valid antenuptial contract in
5 writing, make such division between the parties as may appear just
6 and reasonable, by a division of the property in kind, or by setting
7 the same apart to one of the parties, and requiring the other
8 thereof to be paid such sum as may be just and proper to effect a
9 fair and just division thereof. However, where the court finds by a
10 preponderance of the evidence that one spouse caused the dissolution
11 of marriage by committing at least one of the grounds for divorce as
12 listed in Section 101 of this title, the court shall award only one-
13 quarter (1/4) of the marital property to that spouse and the other
14 spouse shall retain the remaining three-quarters (3/4) of the
15 marital property. The court may set apart a portion of the separate
16 estate of a spouse to the other spouse for the support of the
17 children of the marriage where custody resides with that spouse.

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

3 D. A servicemember's portion of Combat-Related Special
4 Compensation (CRSC) shall be separate property, not divisible as a
5 marital asset nor as community property, if a specific dollar amount
6 of CRSC can be proved by the servicemember as compensation for
7 combat-related loss of limb or loss of bodily function and the CRSC
8 award was applied for and established prior to the date of the
9 filing of the dissolution of marriage action.

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

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

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

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

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

21 SECTION 5. This act shall become effective November 1, 2013.

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