

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 1519

By: Simpson

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5
6 AS INTRODUCED

7 An Act relating to support payments; amending 43 O.S.
8 2011, Sections 118B and 134, as last amended by
9 Section 2, Chapter 334, O.S.L. 2012 (43 O.S. Supp.
10 2013, Section 134), which relate to computation of
11 income and alimony payments; specifying certain
12 property as separate property; requiring certain
13 proof; prohibiting inclusion of certain benefits as
14 income for specified purpose; and providing an
15 effective date.

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

17 SECTION 1. AMENDATORY 43 O.S. 2011, Section 118B, is
18 amended to read as follows:

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

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

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

a. salaries,

- 1 b. wages,
- 2 c. tips
- 3 d. commissions,
- 4 e. bonuses,
- 5 f. severance pay, and
- 6 g. military pay, including ~~hostile fire or imminent~~
- 7 ~~danger pay, combat pay,~~ family separation pay, or
- 8 hardship duty location pay; and

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

- 11 a. dividends,
- 12 b. pensions,
- 13 c. rent,
- 14 d. interest income,
- 15 e. trust income,
- 16 f. support alimony being received from someone other than
- 17 the other parent in this case,
- 18 g. annuities,
- 19 h. social security benefits,
- 20 i. workers' compensation benefits,
- 21 j. unemployment insurance benefits,
- 22 k. disability insurance benefits,
- 23 l. gifts,
- 24 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

1 children and, to this end, whether the training or
2 education will ultimately benefit the child in the
3 case immediately under consideration by increasing the
4 parent's level of support for that child in the
5 future,

6 b. when there is no reliable evidence of income,

7 c. the past and present employment of the parent,

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

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

15 f. the role of the parent as caretaker of a handicapped
16 or seriously ill child of that parent, or any other
17 handicapped or seriously ill relative for whom that
18 parent has assumed the role of caretaker which
19 eliminates or substantially reduces the ability of the
20 parent to work outside the home, and the need of that
21 parent to continue in that role in the future, or

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

24 E. Self-employment income.

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

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

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

15 F. Fringe benefits.

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

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

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

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

6 G. Social Security Title II benefits.

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

14 2. Child support greater than social security benefit.

15 If the child support award due after calculating the child
16 support guidelines is greater than the social security benefit
17 received on behalf of the child, the obligor shall be required to
18 pay the amount exceeding the social security benefit as part of the
19 child support award in the case.

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

22 a. If the child support award due after calculating the
23 child support guidelines is less than or equal to the
24 social security benefit received on behalf of the

1 child, the child support obligation of that parent is
2 met and no additional child support amount must be
3 paid by that parent.

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

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

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

15 b. The court may determine if, under the circumstances of
16 the case, it is appropriate to credit social security
17 benefits paid to the custodial person prior to a
18 modification of child support against the past-due
19 child support obligation of the noncustodial parent.

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

23 d. Any credit granted by the court pursuant to
24 subparagraph b of this paragraph shall be limited to

1 the time period during which the social security
2 benefit was paid, or the time period covered by a lump
3 sum for past social security benefits.

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

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

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

- 14 a. attributable to an injury for which the member was
15 awarded the Purple Heart,
16 b. incurred as a direct result of armed conflict, or
17 c. sustained through an instrumentality of war while
18 serving in a combat theater.

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

- 1 a. a DD-214 or NGB-22 or similar statement of service
2 which identifies the combat theater in which the
3 member served,
- 4 b. a Bureau of Veterans Administration ("BVA" or "VA")
5 Award letter which sets for the specific combat-
6 related loss of limb or loss of bodily function, and
7 the specific amount of CRSC paid for such injuries,
8 and
- 9 c. a 1099 from the BVA or VA which details the specific
10 amount of CRSC for combat-related loss of limb or loss
11 of bodily function.

12 SECTION 2. AMENDATORY 43 O.S. 2011, Section 134, as last
13 amended by Section 2, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2013,
14 Section 134), is amended to read as follows:

15 Section 134. A. In any dissolution of marriage decree which
16 provides for periodic alimony payments, the court shall plainly
17 state, at the time of entering the original decree, the dollar
18 amount of all or a portion of each payment which is designated as
19 support and the dollar amount of all or a portion of the payment
20 which is a payment pertaining to a division of property. The court
21 shall specify in the decree that the payments pertaining to a
22 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 dissolution of marriage
2 decree, whether designated as support or designated as pertaining to
3 a division of property shall not be a lien against the real property
4 of the person ordered to make such payments unless the court order
5 specifically provides for a lien on real property. An arrearage in
6 payments of support reduced to a judgment may be a lien against the
7 real property of the person ordered to make such payments. In no
8 event shall an award of alimony payments, whether designated for
9 support or for property division, be based on income received from
10 any type of service-related injury compensation or combat-related
11 disability compensation.

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

1 provided the recipient commences an action for such determination,
2 within ninety (90) days of the date of such remarriage. Any
3 modification of alimony payments shall be effective upon the date of
4 the filing of the requested modification.

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

22 D. Except as otherwise provided in subsection C of this
23 section, the provisions of any dissolution of marriage decree
24 pertaining to the payment of alimony as support may be modified upon

1 proof of changed circumstances relating to the need for support or
2 ability to support which are substantial and continuing so as to
3 make the terms of the decree unreasonable to either party.

4 Modification by the court of any dissolution of marriage decree
5 pertaining to the payment of alimony as support, pursuant to the
6 provisions of this subsection, may extend to the terms of the
7 payments and to the total amount awarded; provided however, such
8 modification shall only have prospective application.

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

13 F. Pursuant to the federal Uniformed Services Former Spouses'
14 Protection Act, 10 U.S.C., Section 1408, a court may treat
15 disposable retired or retainer pay payable to a military member
16 either as property solely of the member or as property of the member
17 and the spouse of the member. If a state court determines that the
18 disposable retired or retainer pay of a military member is the sole
19 and separate property of the military member, the court shall submit
20 clear and concise written findings of such determination to be
21 included in the decree or final order. If a state court determines
22 that the disposable retired or retainer pay of a military member is
23 marital property, the court shall submit clear and concise written
24 findings of such determination to be included in the decree or final

1 order and shall award an amount consistent with the rank, pay grade,
2 and time of service of the member at the date of the filing of the
3 petition, unless the court finds a more equitable date due to the
4 economic separation of the parties.

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

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

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

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

23 I. The provisions of subsection D of this section shall have
24 retrospective and prospective application with regards to

1 modifications for the purpose of obtaining support or payments
2 pertaining to a division of property on dissolution of marriage
3 decrees which become final after June 26, 1981. There shall be a
4 two-year statute of limitations, beginning on the date of the final
5 dissolution of marriage decree, for a party to apply for division of
6 disposable retired or retainer pay.

7 J. The provisions of subsections C and D of this section shall
8 have retrospective and prospective application with regards to
9 modifications of the provisions of a final judgment or order for
10 alimony as support, or of a dissolution of marriage decree
11 pertaining to the payment of alimony as support, regardless of the
12 date that the order, judgment, or decree was entered.

13 SECTION 3. This act shall become effective November 1, 2014.

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