

1 ENGROSSED SENATE
2 BILL NO. 528

By: Russell of the Senate

3 and

4 Banz of the House

5
6 [division of marital property - Military Retainer
7 Pay Protection Act - classification of certain pay -
8 noncodification - effective date]
9

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

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

13 This act shall be known as the "Military Retainer Pay Protection
14 Act".

15 SECTION 2. AMENDATORY 43 O.S. 2001, Section 134, as
16 amended by Section 11, Chapter 407, O.S.L. 2008 (43 O.S. Supp. 2010,
17 Section 134), is amended to read as follows:

18 Section 134. A. In any divorce decree which provides for
19 periodic alimony payments, the court shall plainly state, at the
20 time of entering the original decree, the dollar amount of all or a
21 portion of each payment which is designated as support and the
22 dollar amount of all or a portion of the payment which is a payment
23 pertaining to a division of property. The court shall specify in
24 the decree that the payments pertaining to a division of property

1 shall continue until completed. Payments pertaining to a division
2 of property are irrevocable and not subject to subsequent
3 modification by the court making the award, except as provided in
4 subsection G of this section. An order for the payment of money
5 pursuant to a divorce decree, whether designated as support or
6 designated as pertaining to a division of property shall not be a
7 lien against the real property of the person ordered to make such
8 payments unless the court order specifically provides for a lien on
9 real property. An arrearage in payments of support reduced to a
10 judgment may be a lien against the real property of the person
11 ordered to make such payments.

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

1 commences an action for such determination, within ninety (90) days
2 of the date of such remarriage.

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

19 D. Except as otherwise provided in subsection C of this
20 section, the provisions of any divorce decree pertaining to the
21 payment of alimony as support may be modified upon proof of changed
22 circumstances relating to the need for support or ability to support
23 which are substantial and continuing so as to make the terms of the
24 decree unreasonable to either party. Modification by the court of

1 any divorce decree pertaining to the payment of alimony as support,
2 pursuant to the provisions of this subsection, may extend to the
3 terms of the payments and to the total amount awarded; provided,
4 however, such modification shall only have prospective application.

5 E. 1. Pursuant to the federal Uniformed Services Former
6 Spouses' Protection Act, 10 U.S.C., Section 1408, a court may treat
7 disposable retired or retainer pay payable to a military member
8 either as property solely of the member or as property of the member
9 and the spouse of the member as follows: if the duration of the
10 marriage coincided with less than ten (10) years of the military
11 service, the court shall consider the retirement or retainer pay the
12 property solely of the member. If the duration of the marriage
13 coincided with ten (10) or more years of the military service, the
14 court may treat the retirement or retainer pay as marital or
15 separate property. If a state court determines that the disposable
16 retired or retainer pay ~~of a military member~~ is marital property,
17 the court shall award an amount consistent with the rank, pay grade,
18 and time of service of the member at the ~~time of separation~~ end of
19 the marriage.

20 ~~F.~~ 2. There shall be a two-year statute of limitations,
21 beginning on the date of the final divorce decree, for a party to
22 apply to the district court for division of disposable retired or
23 retainer pay, if any.

24 F. In making a disposition of property, a court shall not:

1 1. Consider any federal disability benefits awarded to a
2 veteran for combat-related disabilities pursuant to 38 U.S.C.
3 Chapter 11;

4 2. Indemnify the veteran's spouse or former spouse for any
5 prejudgment or postjudgment waiver or reduction in military
6 retirement or retainer pay related to the receipt of disability
7 benefits; or

8 3. Award any other income or property of the veteran to the
9 veteran's spouse or former spouse for any prejudgment or
10 postjudgment waiver or reduction in military retirement or retainer
11 pay related to receipt of disability benefits.

12 G. 1. The court shall provide in the divorce decree that
13 payments of disposable retired pay to the former spouse shall
14 terminate upon:

- 15 a. the voluntary cohabitation, as defined in subsection C
16 of this section, with a member of the opposite sex, or
17 b. remarriage of the former spouse.

18 2. Upon application and proof of voluntary cohabitation or
19 remarriage, the court shall modify the provisions of the final order
20 or judgment to terminate payments as provided for in paragraph 1 of
21 this subsection.

22 H. The Adjutant General shall ensure that all Oklahoma National
23 Guard personnel are briefed annually on the possible division of
24 military retirement or retainer pay in a divorce action. In

1 addition, the Adjutant General shall ensure that all Oklahoma
2 National Guard personnel are briefed on the possible division of
3 military retirement or retainer pay in a divorce action upon
4 reenlistment.

5 I. The provisions of ~~subsection~~ subsections D and G of this
6 section shall have retrospective and prospective application with
7 regards to modifications for the purpose of obtaining support or
8 termination of payments pertaining to a division of property on
9 divorce decrees which become final after June 26, 1981. ~~There shall~~
10 ~~be a two year statute of limitations, beginning on the date of the~~
11 ~~final divorce decree, for a party to apply for division of~~
12 ~~disposable retired or retainer pay.~~

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

19 SECTION 3. This act shall become effective November 1, 2011.
20
21
22
23
24

1 Passed the Senate the 15th day of March, 2011.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2011.

7
8 _____
9 Presiding Officer of the House
10 of Representatives