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March 1, 2011

SENATE BILL NO. 528

By: Russell of the Senate

and

Banz of the House

An Act relating to division of marital property; creating the Military Retainer Pay Protection Act; providing short title; amending 43 O.S. 2001, Section 134, as amended by Section 11, Chapter 407, O.S.L. 2008 (43 O.S. Supp. 2010, Section 134), which relates to payments pertaining to support and division of property; specifying certain pay shall be considered separate property; providing discretion to state court to determine classification of certain pay; prohibiting court from taking certain actions; providing for termination of certain payments upon proof of certain cohabitation or remarriage; requiring certain briefings; providing for noncodification; and providing an effective date.

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 as the "Military Retainer Pay Protection Act".

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

1 Section 134. A. In any divorce decree which provides for
2 periodic alimony payments, the court shall plainly state, at the
3 time of entering the original decree, the dollar amount of all or a
4 portion of each payment which is designated as support and the
5 dollar amount of all or a portion of the payment which is a payment
6 pertaining to a division of property. The court shall specify in
7 the decree that the payments pertaining to a division of property
8 shall continue until completed. Payments pertaining to a division
9 of property are irrevocable and not subject to subsequent
10 modification by the court making the award, except as provided in
11 subsection G of this section. An order for the payment of money
12 pursuant to a divorce decree, whether designated as support or
13 designated as pertaining to a division of property shall not be a
14 lien against the real property of the person ordered to make such
15 payments unless the court order specifically provides for a lien on
16 real property. An arrearage in payments of support reduced to a
17 judgment may be a lien against the real property of the person
18 ordered to make such payments.

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

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

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

1 actions. The court that entered the divorce decree shall have
2 jurisdiction over the modification application.

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

13 E. 1. Pursuant to the federal Uniformed Services Former
14 Spouses' 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 as follows: if the duration of the
18 marriage coincided with less than ten (10) years of the military
19 service, the court shall consider the retirement or retainer pay the
20 property solely of the member. If the duration of the marriage
21 coincided with ten (10) or more years of the military service, the
22 court may treat the retirement or retainer pay as marital or
23 separate property. If a state court determines that the disposable
24 retired or retainer pay ~~of a military member~~ is marital property,

1 the court shall award an amount consistent with the rank, pay grade,
2 and time of service of the member at the ~~time of separation~~ end of
3 the marriage.

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

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

9 1. Consider any federal disability benefits awarded to a
10 veteran for service-connected disabilities pursuant to 38 U.S.C.
11 Chapter 11;

12 2. Indemnify the veteran's spouse or former spouse for any
13 prejudgment or postjudgment waiver or reduction in military
14 retirement or retainer pay related to the receipt of disability
15 benefits; or

16 3. Award any other income or property of the veteran to the
17 veteran's spouse or former spouse for any prejudgment or
18 postjudgment waiver or reduction in military retirement or retainer
19 pay related to receipt of disability benefits.

20 G. 1. The court shall provide in the divorce decree that
21 payments of disposable retired pay to the former spouse shall
22 terminate upon:

23 a. the voluntary cohabitation, as defined in subsection C
24 of this section, with a member of the opposite sex, or

1 b. remarriage of the former spouse.

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

6 H. The Adjutant General shall ensure that all Oklahoma National
7 Guard personnel are briefed annually on the possible division of
8 military retirement or retainer pay in a divorce action. In
9 addition, the Adjutant General shall ensure that all Oklahoma
10 National Guard personnel are briefed on the possible division of
11 military retirement or retainer pay in a divorce action upon
12 reenlistment.

13 I. The provisions of ~~subsection~~ subsections D and G of this
14 section shall have retrospective and prospective application with
15 regards to modifications for the purpose of obtaining support or
16 termination of payments pertaining to a division of property on
17 divorce decrees which become final after June 26, 1981. ~~There shall~~
18 ~~be a two year statute of limitations, beginning on the date of the~~
19 ~~final divorce decree, for a party to apply for division of~~
20 ~~disposable retired or retainer pay.~~

21 G. J. The provisions of subsections C and D of this section
22 shall have retrospective and prospective application with regards to
23 modifications of the provisions of a final judgment or order for
24 alimony as support, or of a divorce decree pertaining to the payment

1 of alimony as support, regardless of the date that the order,
2 judgment, or decree was entered.

3 SECTION 3. This act shall become effective November 1, 2011.

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

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