

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 ENGROSSED SENATE
5 BILL NO. 653

By: Newhouse of the Senate

and

McDugle of the House

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9 An Act relating to dissolution of marriage; amending
10 43 O.S. 2011, Section 134, as last amended by Section
11 2, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2016,
12 Section 134), which relates to support and property
13 payments; excluding certain compensation from
14 consideration in property division; 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 134, as last
18 amended by Section 2, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2016,
19 Section 134), is amended to read as follows:

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

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

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 K. Notwithstanding any other provision of this section, a court
14 shall not consider disability compensation received by a party from
15 the United States Department of Veterans Affairs for service-related
16 injuries for any purpose. Additionally, the court shall not offset
17 any disability income with other assets of the military member.

18 SECTION 2. This act shall become effective November 1, 2017.
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20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL AND
21 ENVIRONMENTAL, dated 03/28/2017 - DO PASS.
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