

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1277

By: Dunlap

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5
6 AS INTRODUCED

7 An Act relating to marriage; creating the Fairness in
8 Fault Act; amending 43 O.S. 2011, Section 101, as
9 amended by Section 1, Chapter 428, O.S.L. 2014,
10 107.2, as last amended by Section 1, Chapter 385,
11 O.S.L. 2015, 110 and 121, as last amended by Section
12 1, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2016,
13 Sections 101, 107.2 and 121), which relate to
14 dissolution of marriage; restricting the use of
15 incompatibility as a ground for divorce; eliminating
16 educational program requirement in certain divorces;
17 removing description, cost and certificate
18 requirements of educational program; requiring
19 parties to pay their own expenses in certain cases;
20 providing exception; requiring unequal division of
21 marital property if certain conditions are met;
22 providing for noncodification; and providing an
23 effective date.
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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 and may be cited as the "Fairness in
Fault Act".

1 SECTION 2. AMENDATORY 43 O.S. 2011, Section 101, as
2 amended by Section 1, Chapter 428, O.S.L. 2014 (43 O.S. Supp. 2016,
3 Section 101), is amended to read as follows:

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

6 First. Abandonment for one (1) year.

7 Second. Adultery.

8 Third. Impotency.

9 Fourth. When the wife at the time of her marriage was pregnant
10 by another than her husband.

11 Fifth. Extreme cruelty.

12 Sixth. Fraudulent contract.

13 Seventh. Incompatibility. Provided, however, ~~where the~~
14 ~~interest of a child under eighteen (18) years of age is involved,~~
15 ~~the adult parties shall attend an educational program concerning the~~
16 ~~impact of divorce on children as provided in subsection B of Section~~
17 ~~107.2 of this title~~ that the court shall not grant a divorce on the
18 ground of incompatibility if:

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

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

21 3. Either party files a written objection to the granting of a
22 divorce.

23 Eighth. Habitual drunkenness.

24 Ninth. Gross neglect of duty.

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

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

7 Twelfth. Insanity for a period of five (5) years, the insane
8 person having been an inmate of a state institution for the insane
9 in the State of Oklahoma, or inmate of a state institution for the
10 insane in some other state for such period, or of a private
11 sanitarium, and affected with a type of insanity with a poor
12 prognosis for recovery; provided, that no divorce shall be granted
13 because of insanity until after a thorough examination of such
14 insane person by three physicians, one of whom shall be a
15 superintendent of the hospital or sanitarium for the insane in which
16 the insane defendant is confined, and the other two to be appointed
17 by the court before whom the action is pending, and any two of such
18 physicians shall agree that such insane person, at the time the
19 petition in the divorce action is filed, has a poor prognosis for
20 recovery; provided, further, however, that no divorce shall be
21 granted on this ground to any person whose husband or wife is an
22 inmate of a state institution in any other than the State of
23 Oklahoma, unless the person applying for such divorce shall have
24 been a resident of the State of Oklahoma for at least five (5) years

1 prior to the commencement of an action; and provided further, that a
2 decree granted on this ground shall not relieve the successful party
3 from contributing to the support and maintenance of the defendant.
4 The court shall appoint a guardian ad litem to represent the insane
5 defendant, which appointment shall be made at least ten (10) days
6 before any decree is entered.

7 SECTION 3. AMENDATORY 43 O.S. 2011, Section 107.2, as
8 last amended by Section 1, Chapter 385, O.S.L. 2015 (43 O.S. Supp.
9 2016, Section 107.2), is amended to read as follows:

10 Section 107.2 A. ~~Except as provided in subsection B of this~~
11 ~~section, in~~ In all actions for divorce, separate maintenance,
12 guardianship, paternity, custody or visitation, including
13 modifications or enforcements of a prior court order, where the
14 interest of a child under eighteen (18) years of age is involved,
15 the court may require all adult parties to attend an educational
16 program concerning, as appropriate, the impact of separate parenting
17 and coparenting on children, the implications for visitation and
18 conflict management, development of children, separate financial
19 responsibility for children and such other instruction as deemed
20 necessary by the court. The program shall be educational in nature
21 and not designed for individual therapy.

22 B. ~~In actions for divorce based upon incompatibility filed on~~
23 ~~or after November 1, 2014, where the interest of a child under~~
24 ~~eighteen (18) years of age is involved, the adult parties shall~~

1 ~~attend, either separately or together, an educational program~~
2 ~~concerning the impact of divorce on children. The program shall~~
3 ~~include the following components:~~

4 ~~1. Short-term and longitudinal effects of divorce on child~~
5 ~~well-being;~~

6 ~~2. Reconciliation as an optional outcome;~~

7 ~~3. Effects of family violence;~~

8 ~~4. Potential child behaviors and emotional states during and~~
9 ~~after divorce including information on how to respond to the child's~~
10 ~~needs;~~

11 ~~5. Communication strategies to reduce conflict and facilitate~~
12 ~~cooperative coparenting; and~~

13 ~~6. Area resources, including but not limited to nonprofit~~
14 ~~organizations or religious entities available to address issues of~~
15 ~~substance abuse or other addictions, family violence, behavioral~~
16 ~~health, individual and couples counseling, and financial planning.~~

17 ~~Program attendees shall be required to pay a fee of not less~~
18 ~~than Ten Dollars (\$10.00) and not more than Sixty Dollars (\$60.00)~~
19 ~~to the program provider to offset the costs of the program. The fee~~
20 ~~may be waived by the court if an attendee uses a qualified program~~
21 ~~that is provided free of charge. Nothing in this paragraph shall~~
22 ~~prohibit a third party from paying the fee to the program provider~~
23 ~~for an attendee. A certificate of completion shall be issued upon~~
24 ~~satisfying the attendance and fee requirements of the program, and~~

1 ~~the certificate of completion shall be filed with the court. The~~
2 ~~program provider shall carry general liability insurance and~~
3 ~~maintain an accurate accounting of all business transactions and~~
4 ~~funds received in relation to the program. The program shall be~~
5 ~~completed prior to the temporary order or within forty-five (45)~~
6 ~~days of receiving a temporary order. However, and in all events, a~~
7 ~~final disposition of child custody shall not be granted until the~~
8 ~~parties complete the program required by this subsection. The court~~
9 ~~may waive attendance of the program for good cause shown which shall~~
10 ~~include, but not be limited to, where domestic violence, stalking or~~
11 ~~harassment as defined by paragraph 2 of subsection I of Section 109~~
12 ~~of this title occurred during the marriage.~~

13 ~~C.~~ Each judicial district may adopt its own local rules
14 governing the ~~programs~~ program.

15 ~~D.~~ C. The Administrative Office of the Courts may enter into a
16 memorandum of understanding with a state entity or other
17 organization in order to compile data including but not limited to
18 the number of actions for divorce that were dismissed after
19 participating in the program, the number of programs that were
20 completed and the number of program participants for each fiscal
21 year. The report shall include data collected from each judicial
22 district. The report shall be published on the Administrative
23 Office of the Courts website and distributed to the Governor,
24 Speaker of the House of Representatives, Minority Leader of the

1 House of Representatives, President Pro Tempore of the Senate and
2 Minority Leader of the Senate.

3 SECTION 4. AMENDATORY 43 O.S. 2011, Section 110, is
4 amended to read as follows:

5 Section 110. A. 1. Except as otherwise provided by this
6 subsection, upon the filing of a petition for dissolution of
7 marriage, annulment of a marriage or legal separation by the
8 petitioner and upon personal service of the petition and summons on
9 the respondent, or upon waiver and acceptance of service by the
10 respondent, an automatic temporary injunction shall be in effect
11 against both parties pursuant to the provisions of this section:

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

23 b. restraining the parties from:
24

- 1 (1) intentionally or knowingly damaging or destroying
2 the tangible property of the parties, or of
3 either of them, specifically including, but not
4 limited to, any electronically stored materials,
5 electronic communications, social network data,
6 financial records, and any document that
7 represents or embodies anything of value,
- 8 (2) making any withdrawal for any purpose from any
9 retirement, profit-sharing, pension, death, or
10 other employee benefit plan or employee savings
11 plan or from any individual retirement account or
12 Keogh account,
- 13 (3) withdrawing or borrowing in any manner all or any
14 part of the cash surrender value of any life
15 insurance policies on either party or their
16 children,
- 17 (4) changing or in any manner altering the
18 beneficiary designation on any life insurance
19 policies on the life of either party or any of
20 their children,
- 21 (5) canceling, altering, or in any manner affecting
22 any casualty, automobile, or health insurance
23 policies insuring the parties' property or
24 persons,

1 (6) opening or diverting mail addressed to the other
2 party, and

3 (7) signing or endorsing the other party's name on
4 any negotiable instrument, check, or draft, such
5 as tax refunds, insurance payments, and
6 dividends, or attempting to negotiate any
7 negotiable instruments payable to either party
8 without the personal signature of the other
9 party,

10 c. requiring the parties to maintain all presently
11 existing health, property, life and other insurance
12 which the individual is presently carrying on any
13 member of this family unit, and to cooperate as
14 necessary in the filing and processing of claims. Any
15 employer-provided health insurance currently in
16 existence shall remain in full force and effect for
17 all family members,

18 d. enjoining both parties from molesting or disturbing
19 the peace of the other party or of the children to the
20 marriage,

21 e. restraining both parties from disrupting or
22 withdrawing their children from an educational
23 facility and programs where the children historically
24 have been enrolled, or day care,

- 1 f. restraining both parties from hiding or secreting
2 their children from the other party,
- 3 g. restraining both parties from removing the minor
4 children of the parties, if any, beyond the
5 jurisdiction of the State of Oklahoma, acting directly
6 or in concert with others, except for vacations of two
7 (2) weeks or less duration, without the prior written
8 consent of the other party, which shall not be
9 unreasonably withheld, and
- 10 h. requiring, unless otherwise agreed upon by the parties
11 in writing, the delivery by each party to the other
12 within thirty (30) days from the earlier of either the
13 date of service of the summons or the filing of an
14 initial pleading by the respondent, the following
15 documents:
- 16 (1) the federal and state income tax returns of each
17 party for the past two (2) years and any
18 nonpublic, limited partnership and privately held
19 corporate returns for any entity in which either
20 party has an interest, together with all
21 supporting documentation for the tax returns,
22 including but not limited to W-2 forms, 1099
23 forms, K-1 forms, Schedule C and Schedule E. If
24 a return is not completed at the time of

1 disclosure, the parties shall provide the
2 documents necessary to prepare the tax return of
3 the party, to include W-2 forms, 1099 forms, K-1
4 forms, copies of extension requests and estimated
5 tax payments,

6 (2) two (2) months of the most recent pay stubs from
7 each employer for whom the party worked,

8 (3) statements for the past six (6) months for all
9 bank accounts held in the name of either party
10 individually or jointly, or in the name of
11 another person for the benefit of either party,
12 or held by either party for the benefit of the
13 minor child or children of the parties,

14 (4) documentation regarding the cost and nature of
15 available health insurance coverage for the
16 benefit of either party or the minor child or
17 children of the parties,

18 (5) documentation regarding the cost and nature of
19 employment or educationally related child care
20 expenses incurred for the benefit of the minor
21 child or children of the parties, and

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

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

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

12 4. a. The provisions of the automatic temporary injunction
13 shall be printed as an attachment to the summons and
14 the petition and entitled "Automatic Temporary
15 Injunction Notice".

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

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

4 a. the automatic temporary injunction is waived by the
5 parties. Both parties must indicate on the automatic
6 temporary injunction notice in the space provided that
7 the parties have both agreed to waive the automatic
8 temporary injunction. Each party must sign his or her
9 own name on the notice in the space provided, or

10 b. a party, no later than three (3) days after service on
11 the party, files an objection to the injunction and
12 requests a hearing. Provided, the automatic temporary
13 injunction shall remain in effect until the hearing
14 and a judge orders the injunction removed.

15 6. The automatic temporary injunction shall be dissolved upon
16 the granting of the dissolution of marriage, final order of legal
17 separation or other final order.

18 7. Nothing in this subsection shall preclude either party from
19 applying to the court for further temporary orders, pursuant to this
20 section, an expanded automatic temporary injunction, or modification
21 or revocation thereto.

22 8. a. With regard to an automatic temporary injunction, when
23 a petition for dissolution of marriage, annulment of a
24 marriage, or a legal separation is filed and served, a

1 peace officer shall use every reasonable means to
2 enforce the injunction which enjoins both parties from
3 molesting or disturbing the peace of the other party
4 or the children of the marriage against a petitioner
5 or respondent, whenever:

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

14 (2) the peace officer has cause to believe that a
15 violation of the automatic temporary injunction
16 has occurred.

17 b. A peace officer shall not be held civilly or
18 criminally liable for his or her action pursuant to
19 this paragraph if his or her action is in good faith
20 and without malice.

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

24 1. A temporary order:

- 1 a. regarding child custody, support or visitation,
- 2 b. regarding spousal maintenance,
- 3 c. regarding payment of debt,
- 4 d. regarding possession of property,
- 5 e. regarding attorney fees, and
- 6 f. providing other injunctive relief proper in the
- 7 circumstances.

8 All applications for temporary orders shall set forth the
9 factual basis for the application and shall be verified by the party
10 seeking relief. The application and a notice of hearing shall be
11 served on the other party in any manner provided for in the Rules of
12 Civil Procedure.

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

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

17 2. A temporary restraining order. If the court finds on the
18 basis of a verified application and testimony of witnesses that
19 irreparable harm will result to the moving party, or a child of a
20 party if no order is issued before the adverse party or attorney for
21 the adverse party can be heard in opposition, the court may issue a
22 temporary restraining order which shall become immediately effective
23 and enforceable without requiring notice and opportunity to be heard
24 to the other party. Provided, for the purposes of this section, no

1 minor child or children temporarily residing in a licensed,
2 certified domestic violence shelter in the state shall be removed by
3 an ex parte order. If a temporary restraining order is issued
4 pursuant to this paragraph, the motion for a temporary order shall
5 be set within ten (10) days.

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

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

23 E. Upon granting a decree of dissolution of marriage, annulment
24 of a marriage, or legal separation, where the court finds by a

1 preponderance of the evidence that one spouse caused the
2 dissolution, annulment, or separation by committing at least one of
3 the grounds for divorce as listed in Section 101 of this title, the
4 court shall order that party to pay the other party's expenses,
5 including attorney fees.

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

12 SECTION 5. AMENDATORY 43 O.S. 2011, Section 121, as last
13 amended by Section 1, Chapter 334, O.S.L. 2012 (43 O.S. Supp. 2016,
14 Section 121), is amended to read as follows:

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

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

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

21 B. The court shall enter its decree confirming in each spouse
22 the property owned by him or her before marriage and the undisposed-
23 of property acquired after marriage by him or her in his or her own
24 right. Either spouse may be allowed such alimony out of real and

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

23 C. A servicemember's portion of Special Monthly Compensation
24 (SMC) awarded by or from the United States Department of Veterans

1 Affairs for service-connected loss or loss of use of specific organs
2 or extremities shall be separate property, not divisible as a
3 marital asset nor as community property. For purposes of
4 identifying SMC, it is the sole responsibility of the servicemember
5 to prove with competent evidence what amount of his or her
6 disability compensation is SMC.

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

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

1 findings of such determination to be included in the decree or final
2 order and shall award an amount consistent with the rank, pay grade,
3 and time of service of the member at the date of the filing of the
4 petition, unless the court finds a more equitable date due to the
5 economic separation of the parties.

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

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

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

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

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SECTION 6. This act shall become effective November 1, 2017.

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