

1 ENGROSSED HOUSE
2 BILL NO. 2826

By: Peters of the House

and

Anderson of the Senate

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7 An Act relating to marriage; providing for creation
8 of certain pro se forms; amending 43 O.S. 2001,
9 Section 110, as last amended by Section 3, Chapter
10 302, O.S.L. 2003 (43 O.S. Supp. 2009, Section 110),
11 which relates to automatic temporary injunction
12 provisions; prohibiting the use of ex parte orders to
13 remove certain children from domestic violence
14 shelters; providing for codification; and providing
15 an effective date.

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

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 104.2 of Title 43, unless there
19 is created a duplication in numbering, reads as follows:

20 The presiding judge or chief judge of each district court shall
21 adopt forms suitable for use by pro se persons seeking the
22 dissolution of a marriage or determination of paternity, custody or
23 visitation.

24 SECTION 2. AMENDATORY 43 O.S. 2001, Section 110, as last
amended by Section 3, Chapter 302, O.S.L. 2003 (43 O.S. Supp. 2009,
Section 110), is amended to read as follows:

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

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

19 b. restraining the parties from:

20 (1) intentionally or knowingly damaging or destroying
21 the tangible property of the parties, or of
22 either of them, including, but not limited to,
23 any document that represents or embodies anything
24 of value,

- 1 (2) making any withdrawal for any purpose from any
2 retirement, profit-sharing, pension, death, or
3 other employee benefit plan or employee savings
4 plan or from any individual retirement account or
5 Keogh account,
- 6 (3) withdrawing or borrowing in any manner all or any
7 part of the cash surrender value of any life
8 insurance policies on either party or their
9 children,
- 10 (4) changing or in any manner altering the
11 beneficiary designation on any life insurance
12 policies on the life of either party or any of
13 their children,
- 14 (5) canceling, altering, or in any manner affecting
15 any casualty, automobile, or health insurance
16 policies insuring the parties' property or
17 persons,
- 18 (6) opening or diverting mail addressed to the other
19 party, and
- 20 (7) signing or endorsing the other party's name on
21 any negotiable instrument, check, or draft, such
22 as tax refunds, insurance payments, and
23 dividends, or attempting to negotiate any
24 negotiable instruments payable to either party

1 without the personal signature of the other
2 party,

- 3 c. requiring the parties to maintain all presently
4 existing health, property, life and other insurance
5 which the individual is presently carrying on any
6 member of this family unit, and to cooperate as
7 necessary in the filing and processing of claims. Any
8 employer-provided health insurance currently in
9 existence shall remain in full force and effect for
10 all family members,
- 11 d. enjoining both parties from molesting or disturbing
12 the peace of the other party or of the children to the
13 marriage,
- 14 e. restraining both parties from disrupting or
15 withdrawing their children from an educational
16 facility and programs where the children historically
17 have been enrolled, or day care,
- 18 f. restraining both parties from hiding or secreting
19 their children from the other party, and
- 20 g. restraining both parties from removing the minor
21 children of the parties, if any, beyond the
22 jurisdiction of the State of Oklahoma, acting directly
23 or in concert with others, except for vacations of two
24 (2) weeks or less duration, without the prior written

1 consent of the other party, which shall not be
2 unreasonably withheld.

3 2. a. The provisions of the automatic temporary injunction
4 shall be printed as an attachment to the summons and
5 the petition and entitled "Automatic Temporary
6 Injunction Notice".

7 b. The automatic temporary injunction notice shall
8 contain a provision which will allow the parties to
9 waive the automatic temporary injunction. In
10 addition, the provision must state that unless both
11 parties have agreed and have signed their names in the
12 space provided, that the automatic temporary
13 injunction will be effective. Along with the waiver
14 provision, the notice shall contain a check box and
15 space available for the signatures of the parties.

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

19 a. the automatic temporary injunction is waived by the
20 parties. Both parties must indicate on the automatic
21 temporary injunction notice in the space provided that
22 the parties have both agreed to waive the automatic
23 temporary injunction. Each party must sign his or her
24 own name on the notice in the space provided, or

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

6 4. The automatic temporary injunction shall be dissolved upon
7 the granting of the dissolution of marriage, final order of legal
8 separation or other final order.

9 5. Nothing in this subsection shall preclude either party from
10 applying to the court for further temporary orders, pursuant to this
11 section, an expanded automatic temporary injunction, or modification
12 or revocation thereto.

13 6. a. With regard to an automatic temporary injunction, when
14 a petition for dissolution of marriage, annulment of a
15 marriage, or a legal separation is filed and served, a
16 peace officer shall use every reasonable means to
17 enforce the injunction which enjoins both parties from
18 molesting or disturbing the peace of the other party
19 or the children of the marriage against a petitioner
20 or respondent, whenever:

21 (1) there is exhibited by a respondent or by the
22 petitioner to the peace officer a copy of the
23 petition or summons, with an attached Temporary
24 Injunction Notice, duly filed and issued pursuant

1 to this section, together with a certified copy
2 of the affidavit of service of process or a
3 certified copy of the waiver and acceptance of
4 service, and

5 (2) the peace officer has cause to believe that a
6 violation of the automatic temporary injunction
7 has occurred.

8 b. A peace officer shall not be held civilly or
9 criminally liable for his or her action pursuant to
10 this paragraph if his or her action is in good faith
11 and without malice.

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

15 1. A temporary order:

- 16 a. regarding child custody, support or visitation,
- 17 b. regarding spousal maintenance,
- 18 c. regarding payment of debt,
- 19 d. regarding possession of property,
- 20 e. regarding attorney fees, and
- 21 f. providing other injunctive relief proper in the
22 circumstances.

23 All applications for temporary orders shall set forth the
24 factual basis for the application and shall be verified by the party

1 seeking relief. The application and a notice of hearing shall be
2 served on the other party in any manner provided for in the Rules of
3 Civil Procedure.

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

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

8 2. A temporary restraining order. If the court finds on the
9 basis of a verified application and testimony of witnesses that
10 irreparable harm will result to the moving party, or a child of a
11 party if no order is issued before the adverse party or attorney for
12 the adverse party can be heard in opposition, the court may issue a
13 temporary restraining order which shall become immediately effective
14 and enforceable without requiring notice and opportunity to be heard
15 to the other party. Provided, for the purposes of this section, no
16 minor child or children temporarily residing in a licensed,
17 certified domestic violence shelter in the state shall be removed by
18 an ex parte order. If a temporary restraining order is issued
19 pursuant to this paragraph, the motion for a temporary order shall
20 be set within ten (10) days.

21 C. Any temporary orders and the automatic temporary injunction,
22 or specific terms thereof, may be vacated or modified prior to or in
23 conjunction with a final decree on a showing by either party of
24 facts necessary for vacation or modification. Temporary orders and

1 the automatic temporary injunction terminate when the final judgment
2 on all issues, except attorney fees and costs, is rendered or when
3 the action is dismissed. The court may reserve jurisdiction to rule
4 on an application for a contempt citation for a violation of a
5 temporary order or the automatic temporary injunction which is filed
6 any time prior to the time the temporary order or injunction
7 terminates.

8 D. Upon granting a decree of dissolution of marriage, annulment
9 of a marriage, or legal separation, the court may require either
10 party to pay such reasonable expenses of the other as may be just
11 and proper under the circumstances.

12 E. The court may in its discretion make additional orders
13 relative to the expenses of any such subsequent actions, including
14 but not limited to writs of habeas corpus, brought by the parties or
15 their attorneys, for the enforcement or modification of any
16 interlocutory or final orders in the dissolution of marriage action
17 made for the benefit of either party or their respective attorneys.

18 SECTION 3. This act shall become effective November 1, 2010.
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1 Passed the House of Representatives the 22nd day of February,
2 2010.

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5 Presiding Officer of the House of
6 Representatives

7 Passed the Senate the ____ day of _____, 2010.

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10 Presiding Officer of the Senate

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