

THE HOUSE OF REPRESENTATIVES  
Wednesday, February 17, 2010

House Bill No. 2826

HOUSE BILL NO. 2826 - By: PETERS of the House.

An Act relating to marriage; providing for creation of certain pro se forms; amending 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), which relates to automatic temporary injunction provisions; prohibiting the use of ex parte orders to remove certain children from domestic violence shelters; providing for codification; and providing an effective date.

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

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

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

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

10           Section 110. A. 1. Except as otherwise provided by this subsection, upon the filing  
11 of a petition for dissolution of marriage, annulment of a marriage or legal separation by  
12 the petitioner and upon personal service of the petition and summons on the respondent,

1 or upon waiver and acceptance of service by the respondent, an automatic temporary  
2 injunction shall be in effect against both parties pursuant to the provisions of this  
3 section:

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

12 b. restraining the parties from:

13 (1) intentionally or knowingly damaging or destroying the tangible  
14 property of the parties, or of either of them, including, but not  
15 limited to, any document that represents or embodies anything  
16 of value,

17 (2) making any withdrawal for any purpose from any retirement,  
18 profit-sharing, pension, death, or other employee benefit plan or  
19 employee savings plan or from any individual retirement  
20 account or Keogh account,

- 1 (3) withdrawing or borrowing in any manner all or any part of the  
2 cash surrender value of any life insurance policies on either  
3 party or their children,  
4 (4) changing or in any manner altering the beneficiary designation  
5 on any life insurance policies on the life of either party or any of  
6 their children,  
7 (5) canceling, altering, or in any manner affecting any casualty,  
8 automobile, or health insurance policies insuring the parties'  
9 property or persons,  
10 (6) opening or diverting mail addressed to the other party, and  
11 (7) signing or endorsing the other party's name on any negotiable  
12 instrument, check, or draft, such as tax refunds, insurance  
13 payments, and dividends, or attempting to negotiate any  
14 negotiable instruments payable to either party without the  
15 personal signature of the other party,  
16 c. requiring the parties to maintain all presently existing health,  
17 property, life and other insurance which the individual is presently  
18 carrying on any member of this family unit, and to cooperate as  
19 necessary in the filing and processing of claims. Any employer-  
20 provided health insurance currently in existence shall remain in full  
21 force and effect for all family members,

- 1 d. enjoining both parties from molesting or disturbing the peace of the  
2 other party or of the children to the marriage,
- 3 e. restraining both parties from disrupting or withdrawing their children  
4 from an educational facility and programs where the children  
5 historically have been enrolled, or day care,
- 6 f. restraining both parties from hiding or secreting their children from  
7 the other party, and
- 8 g. restraining both parties from removing the minor children of the  
9 parties, if any, beyond the jurisdiction of the State of Oklahoma, acting  
10 directly or in concert with others, except for vacations of two (2) weeks  
11 or less duration, without the prior written consent of the other party,  
12 which shall not be unreasonably withheld.
- 13 2. a. The provisions of the automatic temporary injunction shall be printed  
14 as an attachment to the summons and the petition and entitled  
15 “Automatic Temporary Injunction Notice”.
- 16 b. The automatic temporary injunction notice shall contain a provision  
17 which will allow the parties to waive the automatic temporary  
18 injunction. In addition, the provision must state that unless both  
19 parties have agreed and have signed their names in the space  
20 provided, that the automatic temporary injunction will be effective.  
21 Along with the waiver provision, the notice shall contain a check box  
22 and space available for the signatures of the parties.

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

- 3           a.       the automatic temporary injunction is waived by the parties. Both  
4                   parties must indicate on the automatic temporary injunction notice in  
5                   the space provided that the parties have both agreed to waive the  
6                   automatic temporary injunction. Each party must sign his or her own  
7                   name on the notice in the space provided, or  
8           b.       a party, no later than three (3) days after service on the party, files an  
9                   objection to the injunction and requests a hearing. Provided, the  
10                  automatic temporary injunction shall remain in effect until the hearing  
11                  and a judge orders the injunction removed.

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

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

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

1 (1) there is exhibited by a respondent or by the petitioner to the  
2 peace officer a copy of the petition or summons, with an attached  
3 Temporary Injunction Notice, duly filed and issued pursuant to  
4 this section, together with a certified copy of the affidavit of  
5 service of process or a certified copy of the waiver and  
6 acceptance of service, and

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

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

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

14 1. A temporary order:

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

21 All applications for temporary orders shall set forth the factual basis for the  
22 application and shall be verified by the party seeking relief. The application and a notice

1 of hearing shall be served on the other party in any manner provided for in the Rules of  
2 Civil Procedure.

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

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

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

17 C. Any temporary orders and the automatic temporary injunction, or specific terms  
18 thereof, may be vacated or modified prior to or in conjunction with a final decree on a  
19 showing by either party of facts necessary for vacation or modification. Temporary  
20 orders and the automatic temporary injunction terminate when the final judgment on all  
21 issues, except attorney fees and costs, is rendered or when the action is dismissed. The  
22 court may reserve jurisdiction to rule on an application for a contempt citation for a

1 violation of a temporary order or the automatic temporary injunction which is filed any  
2 time prior to the time the temporary order or injunction terminates.

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

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

11 SECTION 3. This act shall become effective November 1, 2010.

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-16-10 - DO PASS.