

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1605

By: Stiles

6 COMMITTEE SUBSTITUTE

7 An Act relating to marriage and family; amending 43
8 O.S. 2011, Section 110, which relates to orders in
9 dissolution of marriage proceedings; prohibiting
10 certain discovery; providing exception; creating the
11 Post-Divorce Protection Act; specifying procedure for
12 certain post-decree motions; providing for
13 applications for contempt; authorizing court to award
14 certain fees; authorizing certain discovery requests;
15 specifying injunction shall be restored after ruling;
16 providing for codification; and providing an
17 effective date.

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

19 SECTION 1. AMENDATORY 43 O.S. 2011, Section 110, is
20 amended to read as follows:

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

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

12 b. restraining the parties from:

13 (1) intentionally or knowingly damaging or destroying
14 the tangible property of the parties, or of
15 either of them, specifically including, but not
16 limited to, any electronically stored materials,
17 electronic communications, social network data,
18 financial records, and any document that
19 represents or embodies anything of value,

20 (2) making any withdrawal for any purpose from any
21 retirement, profit-sharing, pension, death, or
22 other employee benefit plan or employee savings
23 plan or from any individual retirement account or
24 Keogh account,

1 (3) withdrawing or borrowing in any manner all or any
2 part of the cash surrender value of any life
3 insurance policies on either party or their
4 children,

5 (4) changing or in any manner altering the
6 beneficiary designation on any life insurance
7 policies on the life of either party or any of
8 their children,

9 (5) canceling, altering, or in any manner affecting
10 any casualty, automobile, or health insurance
11 policies insuring the parties' property or
12 persons,

13 (6) opening or diverting mail addressed to the other
14 party, and

15 (7) signing or endorsing the other party's name on
16 any negotiable instrument, check, or draft, such
17 as tax refunds, insurance payments, and
18 dividends, or attempting to negotiate any
19 negotiable instruments payable to either party
20 without the personal signature of the other
21 party,

22 c. requiring the parties to maintain all presently
23 existing health, property, life and other insurance
24 which the individual is presently carrying on any

1 member of this family unit, and to cooperate as
2 necessary in the filing and processing of claims. Any
3 employer-provided health insurance currently in
4 existence shall remain in full force and effect for
5 all family members,

6 d. enjoining both parties from molesting or disturbing
7 the peace of the other party or of the children to the
8 marriage,

9 e. restraining both parties from disrupting or
10 withdrawing their children from an educational
11 facility and programs where the children historically
12 have been enrolled, or day care,

13 f. restraining both parties from hiding or secreting
14 their children from the other party,

15 g. restraining both parties from removing the minor
16 children of the parties, if any, beyond the
17 jurisdiction of the State of Oklahoma, acting directly
18 or in concert with others, except for vacations of two
19 (2) weeks or less duration, without the prior written
20 consent of the other party, which shall not be
21 unreasonably withheld, and

22 h. requiring, unless otherwise agreed upon by the parties
23 in writing, the delivery by each party to the other
24 within thirty (30) days from the earlier of either the

1 date of service of the summons or the filing of an
2 initial pleading by the respondent, the following
3 documents:

4 (1) the federal and state income tax returns of each
5 party for the past two (2) years and any
6 nonpublic, limited partnership and privately held
7 corporate returns for any entity in which either
8 party has an interest, together with all
9 supporting documentation for the tax returns,
10 including but not limited to W-2 forms, 1099
11 forms, K-1 forms, Schedule C and Schedule E. If
12 a return is not completed at the time of
13 disclosure, the parties shall provide the
14 documents necessary to prepare the tax return of
15 the party, to include W-2 forms, 1099 forms, K-1
16 forms, copies of extension requests and estimated
17 tax payments,

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

20 (3) statements for the past six (6) months for all
21 bank accounts held in the name of either party
22 individually or jointly, or in the name of
23 another person for the benefit of either party,
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1 or held by either party for the benefit of the
2 minor child or children of the parties,

3 (4) documentation regarding the cost and nature of
4 available health insurance coverage for the
5 benefit of either party or the minor child or
6 children of the parties,

7 (5) documentation regarding the cost and nature of
8 employment or educationally related child care
9 expenses incurred for the benefit of the minor
10 child or children of the parties, and

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

14 2. If either party is not in possession of a document required
15 pursuant to subparagraph h of paragraph 1 of this subsection or has
16 not been able to obtain the document in a timely fashion, the party
17 shall state in verified writing, under the penalty of perjury, the
18 specific document which is not available, the reasons the document
19 is not available, and what efforts have been made to obtain the
20 document. As more information becomes available, there is a
21 continuing duty to supplement the disclosures.

22 3. Nothing in this subsection shall prohibit a party from
23 conducting further discovery pursuant to the Oklahoma Discovery
24 Code.

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

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

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

- 17 a. the automatic temporary injunction is waived by the
18 parties. Both parties must indicate on the automatic
19 temporary injunction notice in the space provided that
20 the parties have both agreed to waive the automatic
21 temporary injunction. Each party must sign his or her
22 own name on the notice in the space provided, or
23 b. a party, no later than three (3) days after service on
24 the party, files an objection to the injunction and

1 requests a hearing. Provided, the automatic temporary
2 injunction shall remain in effect until the hearing
3 and a judge orders the injunction removed.

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

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

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

19 (1) there is exhibited by a respondent or by the
20 petitioner to the peace officer a copy of the
21 petition or summons, with an attached Temporary
22 Injunction Notice, duly filed and issued pursuant
23 to this section, together with a certified copy
24 of the affidavit of service of process or a

1 certified copy of the waiver and acceptance of
2 service, and

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

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

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

13 1. A temporary order:

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

21 All applications for temporary orders shall set forth the
22 factual basis for the application and shall be verified by the party
23 seeking relief. The application and a notice of hearing shall be
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1 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
4 (5) days' notice of hearing is given to the other party.

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

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

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

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

7 D. 1. Upon granting a decree of dissolution of marriage,
8 annulment of a marriage, or legal separation, the court may require
9 either party to pay such reasonable expenses of the other as may be
10 just and proper under the circumstances.

11 2. Upon the filing of the decree of dissolution of marriage,
12 there shall be an automatic protective injunction prohibiting
13 discovery requests by operation of law. No party shall initiate any
14 type of discovery, including, but not limited to, interrogatories,
15 requests for admissions, requests for production of documents,
16 subpoenas, subpoenas duces tecum or notice of depositions.
17 Provided, however, the automatic protective injunction shall not
18 apply to the enforcement of judgments, the determination of child
19 support or alimony. The protective injunction may be lifted by the
20 court pursuant to the requirements of Section 2 of this act.

21 E. The court may in its discretion make additional orders
22 relative to the expenses of any such subsequent actions, including
23 but not limited to writs of habeas corpus, brought by the parties or
24 their attorneys, for the enforcement or modification of any

1 interlocutory or final orders in the dissolution of marriage action
2 made for the benefit of either party or their respective attorneys.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 110A of Title 43, unless there
5 is created a duplication in numbering, reads as follows:

6 A. This section shall be known and may be cited as the "Post-
7 Divorce Protection Act".

8 B. All post-decree motions to modify orders or applications for
9 contempt shall be pled with specificity as to the elements and facts
10 for the motion.

11 C. Upon the filing of a post-decree motion, the court shall
12 hold a preliminary hearing to determine if it is factually and
13 legally possible for the movant to prevail or if the motion is
14 frivolous. The preliminary hearing shall be quasi-evidentiary, in
15 that the court may hear testimony and receive evidence that is
16 available to the parties. However, the court shall not be required
17 to hear all of the evidence available.

18 D. For applications for contempt, the preliminary hearing shall
19 be conducted at the arraignment.

20 E. If the court determines that:

21 1. The movant cannot prevail;

22 2. The motion was filed frivolously; or

23 3. The motion was filed for an improper purpose,

24 the court shall award to the respondent a reasonable attorney fee.

1 F. If the court determines that it is factually and legally
2 possible for the movant to prevail, the court shall set a hearing on
3 the merits of the motion. The court shall then order that the
4 automatic protective injunction prohibiting discovery as provided in
5 paragraph 2 of subsection D of Section 110 of Title 43 of the
6 Oklahoma Statutes shall be lifted and the parties may pursue
7 discovery for the purposes of the hearing.

8 G. After the hearing and ruling upon the motion, the automatic
9 protective injunction shall be reinstated prohibiting discovery.

10 SECTION 3. This act shall become effective November 1, 2012.

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