

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 815

6 By: Anderson of the Senate

7 and

8 Stiles of the House

9 COMMITTEE SUBSTITUTE

10 An Act relating to marriage and family; amending 43
11 O.S. 2001, Section 110, as last amended by Section 1,
12 Chapter 234, O.S.L. 2010 (43 O.S. Supp. 2010, Section
13 110), which relates to automatic temporary
14 injunctions in divorce proceedings; prohibiting
15 parties from destroying or damaging certain
16 electronically stored materials; requiring the
17 production of certain documents; requiring
18 explanation for failure to produce certain
19 information; specifying penalty; specifying that duty
20 to produce is continuing duty; and providing an
21 effective date.

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

23 SECTION 1. AMENDATORY 43 O.S. 2001, Section 110, as last
24 amended by Section 1, Chapter 234, O.S.L. 2010 (43 O.S. Supp. 2010,
Section 110), is amended to read as follows:

Section 110. A. 1. Except as otherwise provided by this
subsection, upon the filing of a petition for dissolution of

1 marriage, annulment of a marriage or legal separation by the
2 petitioner and upon personal service of the petition and summons on
3 the respondent, or upon waiver and acceptance of service by the
4 respondent, an automatic temporary injunction shall be in effect
5 against both parties pursuant to the provisions of this section:

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

17 b. restraining the parties from:
18 (1) intentionally or knowingly damaging or destroying
19 the tangible property of the parties, or of
20 either of them, specifically including, but not
21 limited to, any electronically stored materials,
22 electronic communications, social network data,
23 financial records, and any document that
24 represents or embodies anything 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 h. requiring, unless otherwise agreed upon by the parties
4 in writing, the delivery by each party to the other
5 within thirty (30) days from the earlier of either the
6 date of service of the summons or the filing of an
7 initial pleading by the respondent, the following
8 documents:

- 9 (1) the federal and state income tax returns of each
10 party for the past two (2) years and any
11 nonpublic, limited partnership and privately held
12 corporate returns for any entity in which either
13 party has an interest, together with all
14 supporting documentation for the tax returns,
15 including but not limited to W-2 forms, 1099
16 forms, K-1 forms, Schedule C and Schedule E. If
17 a return is not completed at the time of
18 disclosure, the parties shall provide the
19 documents necessary to prepare the tax return of
20 the party, to include W-2 forms, 1099 forms, 1099
21 forms, K-1 forms, copies of extension requests
22 and estimated tax payments,
- 23 (2) two (2) months of the most recent pay stubs from
24 each employer for whom the party worked,

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

7 (4) documentation regarding the cost and nature of
8 available health insurance coverage for the
9 benefit of either party or the minor child or
10 children of the parties,

11 (5) documentation regarding the cost and nature of
12 employment or educationally related child care
13 expenses incurred for the benefit of the minor
14 child or children of the parties, and

15 (6) documentation regarding all debts in the name of
16 either party individually or jointly, showing the
17 most recent balance due and payment terms, and

18 i. restraining both parties from creating, terminating or
19 in any manner altering estate planning documents
20 regarding the estate of either party or their
21 children.

22 2. If either party is not in possession of a document required
23 pursuant to subparagraph h of subsection A of this section or has
24 not been able to obtain the document in a timely fashion, the party

1 shall state in verified writing, under the penalty of perjury, the
2 specific document which is not available, the reasons the document
3 is not available, and what efforts have been made to obtain the
4 document. As more information becomes available, there is a
5 continuing duty to supplement the disclosures.

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

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

19 ~~3-~~ 4. The automatic temporary injunction shall become an order
20 of the court upon fulfillment of the requirements of paragraph 1 of
21 this subsection unless and until:

22 a. the automatic temporary injunction is waived by the
23 parties. Both parties must indicate on the automatic
24 temporary injunction notice in the space provided that

1 the parties have both agreed to waive the automatic
2 temporary injunction. Each party must sign his or her
3 own name on the notice in the space provided, or

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

9 ~~4.~~ 5. The automatic temporary injunction shall be dissolved
10 upon the granting of the dissolution of marriage, final order of
11 legal separation or other final order.

12 ~~5.~~ 6. Nothing in this subsection shall preclude either party
13 from applying to the court for further temporary orders, pursuant to
14 this section, an expanded automatic temporary injunction, or
15 modification or revocation thereto.

16 ~~6.~~ 7. a. With regard to an automatic temporary injunction, when
17 a petition for dissolution of marriage, annulment of a
18 marriage, or a legal separation is filed and served, a
19 peace officer shall use every reasonable means to
20 enforce the injunction which enjoins both parties from
21 molesting or disturbing the peace of the other party
22 or the children of the marriage against a petitioner
23 or respondent, whenever:
24

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

9 (2) the peace officer has cause to believe that a
10 violation of the automatic temporary injunction
11 has occurred.

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

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

19 1. A temporary order:

- 20 a. regarding child custody, support or visitation,
- 21 b. regarding spousal maintenance,
- 22 c. regarding payment of debt,
- 23 d. regarding possession of property,
- 24 e. regarding attorney fees, and

1 f. providing other injunctive relief proper in the
2 circumstances.

3 All applications for temporary orders shall set forth the
4 factual basis for the application and shall be verified by the party
5 seeking relief. The application and a notice of hearing shall be
6 served on the other party in any manner provided for in the Rules of
7 Civil Procedure.

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

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

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

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

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

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

22 SECTION 2. This act shall become effective November 1, 2011.

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