HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1605 By: Stiles

COMMITTEE SUBSTITUTE

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

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

SECTION 1. AMENDATORY 43 O.S. 2011, 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 marriage, annulment of a marriage or legal separation by the petitioner and upon personal service of the petition and summons on the respondent, or upon waiver and acceptance of service by the

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respondent, an automatic temporary injunction shall be in effect against both parties pursuant to the provisions of this section:

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

b. restraining the parties from:

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

(2) making any withdrawal for any purpose from any retirement, profit-sharing, pension, death, or

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other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account,

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

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

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

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

(7) signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instruments payable to either party

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without the personal signature of the other party,

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

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

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

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

g. restraining both parties from removing the minor children of the parties, if any, beyond the jurisdiction of the State of Oklahoma, acting directly or in concert with others, except for vacations of two

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(2) weeks or less duration, without the prior written consent of the other party, which shall not be unreasonably withheld, and

h. requiring, unless otherwise agreed upon by the parties in writing, the delivery by each party to the other within thirty (30) days from the earlier of either the date of service of the summons or the filing of an initial pleading by the respondent, the following documents:

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

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

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

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

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

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

2. If either party is not in possession of a document required pursuant to subparagraph h of paragraph 1 of this subsection or has not been able to obtain the document in a timely fashion, the party shall state in verified writing, under the penalty of perjury, the

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specific document which is not available, the reasons the document is not available, and what efforts have been made to obtain the document. As more information becomes available, there is a continuing duty to supplement the disclosures.

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

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

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

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

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

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

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

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

8. a. With regard to an automatic temporary injunction, when a petition for dissolution of marriage, annulment of a marriage, or a legal separation is filed and served, a peace officer shall use every reasonable means to enforce the injunction which enjoins both parties from

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molesting or disturbing the peace of the other party or the children of the marriage against a petitioner or respondent, whenever:

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

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

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

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

1. A temporary order:

a. regarding child custody, support or visitation,

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b. regarding spousal maintenance,

c. regarding payment of debt,

d. regarding possession of property,

e. regarding attorney fees, and

f. providing other injunctive relief proper in the circumstances.

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

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

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

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

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

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

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

2. Upon the filing of the decree of dissolution of marriage, there shall be an automatic protective injunction prohibiting discovery requests by operation of law. No party shall initiate any

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type of discovery, including, but not limited to, interrogatories, requests for admissions, requests for production of documents, subpoenas, subpoenas duces tecum or notice of depositions. Provided, however, the automatic protective injunction shall not apply to the enforcement of judgments, the determination of child support or alimony. The protective injunction may be lifted by the court pursuant to the requirements of Section 2 of this act.

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

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

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

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

C. Upon the filing of a post-decree motion, the court shall hold a preliminary hearing to determine if it is factually and

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legally possible for the movant to prevail or if the motion is frivolous. The preliminary hearing shall be quasi-evidentiary, in that the court may hear testimony and receive evidence that is available to the parties. However, the court shall not be required to hear all of the evidence available.

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

E. If the court determines that:

1. The movant cannot prevail;

2. The motion was filed frivolously; or

3. The motion was filed for an improper purpose,

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

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

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

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

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COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/28/2012 - DO PASS, As Amended and Coauthored.

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