

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 815

By: Anderson of the Senate

and

Stiles of the House

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10 COMMITTEE SUBSTITUTE

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

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

24 SECTION 1. AMENDATORY 43 O.S. 2001, Section 110, as last
amended by Section 1, Chapter 234, O.S.L. 2010 (43 O.S. Supp. 2010,
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, specifically including, but not
23 limited to, any electronically stored materials,

1 electronic communications, social network data,
2 financial records, and any document that
3 represents or embodies anything of value,

4 (2) making any withdrawal for any purpose from any
5 retirement, profit-sharing, pension, death, or
6 other employee benefit plan or employee savings
7 plan or from any individual retirement account or
8 Keogh account,

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

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

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

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

1 (7) signing or endorsing the other party's name on
2 any negotiable instrument, check, or draft, such
3 as tax refunds, insurance payments, and
4 dividends, or attempting to negotiate any
5 negotiable instruments payable to either party
6 without the personal signature of the other
7 party,

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

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

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

- 1 f. restraining both parties from hiding or secreting
2 their children from the other party, ~~and~~
- 3 g. restraining both parties from removing the minor
4 children of the parties, if any, beyond the
5 jurisdiction of the State of Oklahoma, acting directly
6 or in concert with others, except for vacations of two
7 (2) weeks or less duration, without the prior written
8 consent of the other party, which shall not be
9 unreasonably withheld,
- 10 h. requiring, unless otherwise agreed upon by the parties
11 in writing, the delivery by each party to the other
12 within thirty (30) days from the earlier of either the
13 date of service of the summons or the filing of an
14 initial pleading by the respondent, the following
15 documents:
- 16 (1) the federal and state income tax returns of each
17 party for the past two (2) years and any
18 nonpublic, limited partnership and privately held
19 corporate returns for any entity in which either
20 party has an interest, together with all
21 supporting documentation for the tax returns,
22 including but not limited to W-2 forms, 1099
23 forms, K-1 forms, Schedule C and Schedule E. If

1 a return is not completed at the time of
2 disclosure, the parties shall provide the
3 documents necessary to prepare the tax return of
4 the party, to include W-2 forms, 1099 forms, 1099
5 forms, K-1 forms, copies of extension requests
6 and estimated tax payments,

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

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

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

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

1 (6) documentation regarding all debts in the name of
2 either party individually or jointly, showing the
3 most recent balance due and payment terms, and
4 i. restraining both parties from creating, terminating or
5 in any manner altering estate planning documents
6 regarding the estate of either party or their
7 children.

8 2. If either party is not in possession of a document required
9 pursuant to subparagraph h of subsection A of this section or has
10 not been able to obtain the document in a timely fashion, the party
11 shall state in verified writing, under the penalty of perjury, the
12 specific document which is not available, the reasons the document
13 is not available, and what efforts have been made to obtain the
14 document. As more information becomes available, there is a
15 continuing duty to supplement the disclosures.

16 ~~2-~~ 3. a. The provisions of the automatic temporary injunction
17 shall be printed as an attachment to the summons and
18 the petition and entitled "Automatic Temporary
19 Injunction Notice".

20 b. The automatic temporary injunction notice shall
21 contain a provision which will allow the parties to
22 waive the automatic temporary injunction. In
23 addition, the provision must state that unless both

1 parties have agreed and have signed their names in the
2 space provided, that the automatic temporary
3 injunction will be effective. Along with the waiver
4 provision, the notice shall contain a check box and
5 space available for the signatures of the parties.

6 ~~3.~~ 4. The automatic temporary injunction shall become an order
7 of the court upon fulfillment of the requirements of paragraph 1 of
8 this subsection unless and until:

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

20 ~~4.~~ 5. The automatic temporary injunction shall be dissolved
21 upon the granting of the dissolution of marriage, final order of
22 legal separation or other final order.

1 ~~5-~~ 6. Nothing in this subsection shall preclude either party
2 from applying to the court for further temporary orders, pursuant to
3 this section, an expanded automatic temporary injunction, or
4 modification or revocation thereto.

5 ~~6-~~ 7. a. With regard to an automatic temporary injunction, when
6 a petition for dissolution of marriage, annulment of a
7 marriage, or a legal separation is filed and served, a
8 peace officer shall use every reasonable means to
9 enforce the injunction which enjoins both parties from
10 molesting or disturbing the peace of the other party
11 or the children of the marriage against a petitioner
12 or respondent, whenever:

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

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

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

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

8 1. A temporary order:

- 9 a. regarding child custody, support or visitation,
- 10 b. regarding spousal maintenance,
- 11 c. regarding payment of debt,
- 12 d. regarding possession of property,
- 13 e. regarding attorney fees, and
- 14 f. providing other injunctive relief proper in the
15 circumstances.

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

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

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

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

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

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

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

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

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

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16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-29-2011 - DO
17 PASS, As Amended.

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