

1 **SENATE FLOOR VERSION**

2 February 24, 2011

3 As Amended

4 SENATE BILL NO. 815

By: Anderson of the Senate

and

Stiles of the House

6
7
8 **[dissolution of marriage - temporary injunctions -
9 effective date]**

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

- 22 a. restraining the parties from transferring,
23 encumbering, concealing, or in any way disposing of,
24 without the written consent of the other party or an

1 order of the court, any marital property, except in
2 the usual course of business, for the purpose of
3 retaining an attorney for the case or for the
4 necessities of life and requiring each party to notify
5 the other party of any proposed extraordinary
6 expenditures and to account to the court for all
7 extraordinary expenditures made after the injunction
8 is in effect,

9 b. restraining the parties from:

- 10 (1) intentionally or knowingly damaging or destroying
11 the tangible property of the parties, or of
12 either of them, including, but not limited to,
13 any document that represents or embodies anything
14 of value, including but not limited to, any
15 electronically stored documents whether
16 representative of debts, assets or communications
17 between the parties and any minor children,
- 18 (2) making any withdrawal for any purpose from any
19 retirement, profit-sharing, pension, death, or
20 other employee benefit plan or employee savings
21 plan or from any individual retirement account or
22 Keogh account,
- 23 (3) withdrawing or borrowing in any manner all or any
24 part of the cash surrender value of any life

1 insurance policies on either party or their
2 children,

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

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

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

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

20 c. requiring the parties to maintain all presently
21 existing health, property, life and other insurance
22 which the individual is presently carrying on any
23 member of this family unit, and to cooperate as
24 necessary in the filing and processing of claims. Any

1 employer-provided health insurance currently in
2 existence shall remain in full force and effect for
3 all family members,

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

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

11 f. restraining both parties from hiding or secreting
12 their children from the other party, ~~and~~

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

20 h. requiring both parties, unless otherwise agreed upon
21 in writing, to deliver to the other party within
22 twenty (20) days from either the date of service of
23 the summons or the filing of an initial pleading by

1 respondent, whichever occurs first, the following
2 documents:

- 3 (1) the parties' federal and state income tax returns
4 and schedules for the past three (3) years and
5 any non-public, limited partnership and privately
6 held corporate returns for any entity in which
7 either party has an interest together with all
8 supporting documentation for the tax returns,
9 including but not limited to W-2s, 1099s, K-1s,
10 Schedules C and Schedules E. If a return is not
11 completed at the time of disclosure, provide the
12 documents necessary to prepare the return
13 including W-2s, 1099s, K-1s, copies of extension
14 requests and estimated tax payments;
- 15 (2) six (6) months of the most recent pay stubs from
16 each employer for whom the party was employed;
- 17 (3) statements for the past twelve (12) months for
18 all bank accounts held in the name of either
19 party individually or jointly, or in the name of
20 another person for the benefit of either party,
21 or held by either party for the benefit of the
22 parties' minor child or children;
- 23 (4) documentation regarding the cost and nature of
24 available health insurance coverage for the

1 benefit of either party or the parties' minor
2 child or children;

3 (5) documentation regarding the cost and nature of
4 employment or educationally related child care
5 expenses incurred for the benefit of the parties'
6 minor child or children;

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

10 In the event that either party does not have any of the
11 documents required pursuant to this section or is unable to obtain
12 them in a timely fashion, he or she shall state in verified writing,
13 under the penalty of perjury, the specific documents which are not
14 available, the reasons the documents are not available, and what
15 efforts have been made to obtain the documents. As more information
16 becomes available, there is a continuing duty to supplement these
17 disclosures.

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

22 b. The automatic temporary injunction notice shall
23 contain a provision which will allow the parties to
24 waive the automatic temporary injunction. In

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

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

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

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

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

5 6. 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.
24

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.

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

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

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

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

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

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

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-15-11 - DO
13 PASS, As Amended and Coauthored.

14
15
16
17
18
19
20
21
22
23
24