

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1605

By: Stiles

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5
6 AS INTRODUCED

7 An Act relating to marriage and family; amending 43
8 O.S. 2001, Section 110, as last amended by Section 1,
9 Chapter 234, O.S.L. 2010 (43 O.S. Supp. 2010, Section
10 110), which relates to automatic temporary
11 injunctions in divorce proceedings; requiring the
12 production of certain documents; requiring
13 explanation for failure to produce certain
14 information; specifying penalty; specifying that duty
15 to produce is continuing duty; and providing an
16 effective date.

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

18 SECTION 1. AMENDATORY 43 O.S. 2001, Section 110, as last
19 amended by Section 1, Chapter 234, O.S.L. 2010 (43 O.S. Supp. 2010,
20 Section 110), is 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

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

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

14 b. restraining the parties from:

15 (1) intentionally or knowingly damaging or destroying
16 the tangible property of the parties, or of
17 either of them, including, but not limited to,
18 any document that represents or embodies anything
19 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, ~~and~~

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,

22 h. requiring, unless otherwise agreed upon by the parties
23 in writing, the delivery by each party to the other
24 within twenty (20) 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 three (3) 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, 1099
16 forms, K-1 forms, copies of extension requests
17 and estimated tax payments,

18 (2) six (6) months of the most recent pay stubs from
19 each employer for whom the party worked,

20 (3) statements for the past twelve (12) months for
21 all bank accounts held in the name of either
22 party individually or jointly, or in the name of
23 another person for the benefit of either party,

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, and

14 i. restraining both parties from creating, terminating or
15 in any manner altering estate planning documents
16 regarding the estate of either party or their
17 children.

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

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

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

16 ~~3-~~ 4. The automatic temporary injunction shall become an order
17 of the court upon fulfillment of the requirements of paragraph 1 of
18 this subsection unless and until:

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

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

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

9 ~~5.~~ 6. Nothing in this subsection shall preclude either party
10 from applying to the court for further temporary orders, pursuant to
11 this section, an expanded automatic temporary injunction, or
12 modification or revocation thereto.

13 ~~6.~~ 7. a. With regard to an automatic temporary injunction, when
14 a petition for dissolution of marriage, annulment of a
15 marriage, or a legal separation is filed and served, a
16 peace officer shall use every reasonable means to
17 enforce the injunction which enjoins both parties from
18 molesting or disturbing the peace of the other party
19 or the children of the marriage against a petitioner
20 or respondent, whenever:

21 (1) there is exhibited by a respondent or by the
22 petitioner to the peace officer a copy of the
23 petition or summons, with an attached Temporary
24 Injunction Notice, duly filed and issued pursuant

1 to this section, together with a certified copy
2 of the affidavit of service of process or a
3 certified copy of the waiver and acceptance of
4 service, and

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

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

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

15 1. A temporary order:

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

23 All applications for temporary orders shall set forth the
24 factual basis for the application and shall be verified by the party

1 seeking relief. The application and a notice of hearing shall be
2 served on the other party in any manner provided for in the Rules of
3 Civil Procedure.

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

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

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

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

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

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

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

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

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20 53-1-6158 SDR 01/06/11

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