

1 STATE OF OKLAHOMA

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

3 SENATE BILL 815

By: Anderson

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5  
6 AS INTRODUCED

7 An Act relating to procedures for dissolution of  
8 marriage; amending 43 O.S. 2001, Section 110, as last  
9 amended by Section 1, Chapter 234, O.S.L. 2010 (43  
10 O.S. Supp. 2010, Section 110), which relates to  
11 automatic temporary injunctions; adding certain  
12 requirements for temporary injunctions in certain  
13 cases; and providing an effective date.

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

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

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

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

12 b. restraining the parties from:

13 (1) intentionally or knowingly damaging or destroying  
14 the tangible property of the parties, or of  
15 either of them, including, but not limited to,  
16 any document that represents or embodies anything  
17 of value, including but not limited to, any  
18 electronically stored documents whether  
19 representative of debts, assets or communications  
20 between the parties and any minor children,

21 (2) making any withdrawal for any purpose from any  
22 retirement, profit-sharing, pension, death, or  
23 other employee benefit plan or employee savings  
24

1 plan or from any individual retirement account or  
2 Keogh account,

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

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

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

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

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

24

1           (8) creating, terminating or in any manner altering  
2           estate planning documents regarding the estate of  
3           either party or their children,

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

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

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

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

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

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

4 h. requiring both parties, unless otherwise agreed upon  
5 in writing, to deliver to the other party within  
6 twenty (20) days from either the date of service of  
7 the summons or the filing of an initial pleading by  
8 respondent, whichever occurs first, the following  
9 documents:

10 (1) the parties' federal and state income tax returns  
11 and schedules for the past three (3) years and  
12 any non-public, limited partnership and privately  
13 held corporate returns for any entity in which  
14 either party has an interest together with all  
15 supporting documentation for the tax returns,  
16 including but not limited to W-2s, 1099s, K-1s,  
17 Schedules C and Schedules E. If a return is not  
18 completed at the time of disclosure, provide the  
19 documents necessary to prepare the return  
20 including W-2s, 1099s, K-1s, copies of extension  
21 requests and estimated tax payments;

22 (2) six (6) months of the most recent pay stubs from  
23 each employer for whom the party was employed;  
24

1           (3) statements for the past twelve (12) months for  
2           all bank accounts held in the name of either  
3           party 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           parties' minor child or children;

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

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

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;

18           In the event that either party does not have any of the  
19           documents required pursuant to this section or is unable to obtain  
20           them in a timely fashion, he or she shall state in verified writing,  
21           under the penalty of perjury, the specific documents which are not  
22           available, the reasons the documents are not available, and what  
23           efforts have been made to obtain the documents. As more information  
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1 becomes available, there is a continuing duty to supplement these  
2 disclosures.

3 2. 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. The automatic temporary injunction shall become an order of  
17 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.    The automatic temporary injunction shall be dissolved upon  
7           the granting of the dissolution of marriage, final order of legal  
8           separation or other final order.

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

13           6.    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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