

CHAPTER 39

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 10-1097

BY REPRESENTATIVE(S) Benefield, Court, Ryden, Pace, Gardner B., Labuda, Miklosi, Schafer S., Solano, Todd, Vigil;
also SENATOR(S) Morse, Hudak, Newell, Boyd, Steadman, Tochtrop, Williams.

AN ACT**CONCERNING TEMPORARY INJUNCTIONS IN PROCEEDINGS INVOLVING MINOR CHILDREN.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 19-4-105.5 (5), Colorado Revised Statutes, is amended, and the said 19-4-105.5 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

19-4-105.5. Commencement of proceedings - summons - automatic, temporary injunction - enforcement. (5) A summons issued upon commencement of a proceeding under this article shall contain the following advisements AND NOTICE:

(a) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), C.R.S.; ~~and~~

(b) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date; AND

(c) (I) THAT, EXCEPT IN PROCEEDINGS INITIATED PURSUANT TO SECTION 19-1-117 OR IN PROCEEDINGS INITIATED BY A DELEGATE CHILD SUPPORT ENFORCEMENT UNIT, AS DEFINED IN SECTION 26-13-102.5 (1), C.R.S., PURSUANT TO ARTICLE 13 OR 13.5 OF TITLE 26, C.R.S., OR ARTICLE 5 OF TITLE 14, C.R.S., UPON PERSONAL SERVICE OF THE PETITION AND SUMMONS ON A RESPONDENT OR UPON WAIVER AND ACCEPTANCE OF SERVICE BY A RESPONDENT, A TEMPORARY INJUNCTION SHALL BE IN EFFECT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

AGAINST BOTH PARTIES:

(A) ENJOINING EACH PARTY FROM MOLESTING OR DISTURBING THE PEACE OF THE OTHER PARTY;

(B) RESTRAINING EACH PARTY FROM REMOVING A MINOR CHILD WHO IS THE SUBJECT OF A PROCEEDING UNDER THIS ARTICLE FROM THE STATE WITHOUT THE CONSENT OF ALL OTHER PARTIES OR AN ORDER OF THE COURT MODIFYING THE INJUNCTION; AND

(C) RESTRAINING EACH PARTY, WITHOUT AT LEAST FOURTEEN DAYS' ADVANCE NOTIFICATION AND THE WRITTEN CONSENT OF ALL OTHER PARTIES OR AN ORDER OF THE COURT MODIFYING THE INJUNCTION, FROM CANCELLING, MODIFYING, TERMINATING, OR ALLOWING TO LAPSE FOR NONPAYMENT OF PREMIUMS, A POLICY OF HEALTH INSURANCE OR LIFE INSURANCE THAT PROVIDES COVERAGE TO A MINOR CHILD WHO IS THE SUBJECT OF THE PROCEEDING OR THAT NAMES THE MINOR CHILD AS A BENEFICIARY OF A POLICY.

(II) THE TEMPORARY INJUNCTION SHALL BE IN EFFECT UPON PERSONAL SERVICE OF THE PETITION AND SUMMONS ON A RESPONDENT OR UPON WAIVER AND ACCEPTANCE OF SERVICE BY A RESPONDENT AND SHALL REMAIN IN EFFECT FOR ONE HUNDRED TWENTY DAYS AFTER ITS EFFECTIVE DATE UNLESS ALL PARTIES CONSENT TO A MODIFICATION OF THE TEMPORARY INJUNCTION. THE COURT MAY, UPON THE MOTION OF A PARTY OR UPON ITS OWN MOTION, MODIFY THE LENGTH OF TIME THE TEMPORARY INJUNCTION IS IN EFFECT TO A SHORTER OR LONGER PERIOD OF TIME AS THE COURT DEEMS APPROPRIATE.

(6) THE PROVISIONS OF THE TEMPORARY INJUNCTION DESCRIBED IN SUBSECTION (5) OF THIS SECTION SHALL BE PRINTED ON THE SUMMONS AND THE PETITION. A PARTY MAY APPLY TO THE COURT FOR FURTHER TEMPORARY ORDERS, AN EXPANDED TEMPORARY INJUNCTION, OR MODIFICATION OR REVOCATION OF THE TEMPORARY INJUNCTION.

(7) FOR PURPOSES OF ENFORCING THE AUTOMATIC TEMPORARY INJUNCTION DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (5) OF THIS SECTION, IF A RESPONDENT SHOWS A DULY AUTHORIZED PEACE OFFICER, AS DESCRIBED IN SECTION 16-2.5-101, C.R.S., A COPY OF THE PETITION AND SUMMONS FILED AND ISSUED PURSUANT TO THIS SECTION, OR IF A PETITIONER SHOWS THE PEACE OFFICER A COPY OF THE PETITION AND SUMMONS 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 THE PEACE OFFICER HAS CAUSE TO BELIEVE THAT A VIOLATION OF THE PART OF THE AUTOMATIC TEMPORARY INJUNCTION THAT ENJOINS A PARTY FROM MOLESTING OR DISTURBING THE PEACE OF THE OTHER PARTY HAS OCCURRED, THE PEACE OFFICER SHALL USE EVERY REASONABLE MEANS TO ENFORCE THAT PART OF THE INJUNCTION AGAINST THE PETITIONER OR RESPONDENT, AS APPLICABLE. A PEACE OFFICER SHALL NOT BE HELD CIVILLY OR CRIMINALLY LIABLE FOR HIS OR HER ACTIONS PURSUANT TO THIS SUBSECTION (7) IF THE PEACE OFFICER ACTS IN GOOD FAITH AND WITHOUT MALICE.

SECTION 2. 14-10-123, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

14-10-123. Commencement of proceedings concerning allocation of parental responsibilities - jurisdiction - automatic, temporary injunction - enforcement.

(3) (a) UPON THE FILING OF A PETITION CONCERNING THE ALLOCATION OF PARENTAL RESPONSIBILITIES PURSUANT TO THIS SECTION AND UPON PERSONAL SERVICE OF THE PETITION AND SUMMONS ON A RESPONDENT OR UPON WAIVER AND ACCEPTANCE OF SERVICE BY A RESPONDENT, A TEMPORARY INJUNCTION SHALL BE IN EFFECT AGAINST BOTH PARTIES:

(I) ENJOINING EACH PARTY FROM MOLESTING OR DISTURBING THE PEACE OF THE OTHER PARTY;

(II) RESTRAINING EACH PARTY FROM REMOVING A MINOR CHILD WHO IS THE SUBJECT OF THE PROCEEDING FROM THE STATE WITHOUT THE CONSENT OF ALL OTHER PARTIES OR AN ORDER OF THE COURT MODIFYING THE INJUNCTION; AND

(III) RESTRAINING EACH PARTY, WITHOUT AT LEAST FOURTEEN DAYS' ADVANCE NOTIFICATION AND THE WRITTEN CONSENT OF ALL OTHER PARTIES OR AN ORDER OF THE COURT MODIFYING THE INJUNCTION, FROM CANCELLING, MODIFYING, TERMINATING, OR ALLOWING TO LAPSE FOR NONPAYMENT OF PREMIUMS, A POLICY OF HEALTH INSURANCE OR LIFE INSURANCE THAT PROVIDES COVERAGE TO A MINOR CHILD WHO IS THE SUBJECT OF THE PROCEEDING OR THAT NAMES THE MINOR CHILD AS A BENEFICIARY OF A POLICY.

(b) THE PROVISIONS OF THE TEMPORARY INJUNCTION SHALL BE PRINTED UPON THE SUMMONS AND THE PETITION. THE TEMPORARY INJUNCTION SHALL BE IN EFFECT UPON PERSONAL SERVICE OF THE PETITION AND SUMMONS ON A RESPONDENT OR UPON WAIVER AND ACCEPTANCE OF SERVICE BY A RESPONDENT AND SHALL REMAIN IN EFFECT AGAINST EACH PARTY UNTIL THE COURT ENTERS THE FINAL DECREE, DISMISSES THE PETITION, OR ENTERS A FURTHER ORDER MODIFYING THE INJUNCTION. A PARTY MAY APPLY TO THE COURT FOR FURTHER TEMPORARY ORDERS PURSUANT TO SECTION 14-10-125, AN EXPANDED TEMPORARY INJUNCTION, OR MODIFICATION OR REVOCATION OF THE TEMPORARY INJUNCTION.

(c) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (3), THE TEMPORARY INJUNCTION DESCRIBED IN THIS SUBSECTION (3) SHALL NOT APPLY TO A PROCEEDING CONCERNING THE ALLOCATION OF PARENTAL RESPONSIBILITIES COMMENCED PURSUANT TO PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION OR TO A PROCEEDING CONCERNING THE ALLOCATION OF PARENTAL RESPONSIBILITIES COMMENCED BY A PARENT THAT IS GOVERNED BY THE AUTOMATIC, TEMPORARY INJUNCTION PURSUANT TO SECTION 14-10-107 (4) (b).

(d) FOR PURPOSES OF ENFORCING THE AUTOMATIC TEMPORARY INJUNCTION THAT BECOMES EFFECTIVE IN ACCORDANCE WITH THIS SUBSECTION (3), IF THE RESPONDENT SHOWS A DULY AUTHORIZED PEACE OFFICER, AS DESCRIBED IN SECTION 16-2.5-101, C.R.S., A COPY OF THE PETITION AND SUMMONS FILED AND ISSUED PURSUANT TO THIS SECTION, OR IF THE PETITIONER SHOWS THE PEACE OFFICER A COPY OF THE PETITION AND SUMMONS 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 THE PEACE OFFICER HAS CAUSE TO BELIEVE THAT A VIOLATION OF THE PART OF THE AUTOMATIC TEMPORARY INJUNCTION THAT ENJOINS A PARTY FROM MOLESTING OR DISTURBING

THE PEACE OF THE OTHER PARTY HAS OCCURRED, THE PEACE OFFICER SHALL USE EVERY REASONABLE MEANS TO ENFORCE THAT PART OF THE INJUNCTION AGAINST THE PETITIONER OR RESPONDENT, AS APPLICABLE. A PEACE OFFICER SHALL NOT BE HELD CIVILLY OR CRIMINALLY LIABLE FOR HIS OR HER ACTIONS PURSUANT TO THIS SUBSECTION (3) IF THE PEACE OFFICER ACTS IN GOOD FAITH AND WITHOUT MALICE.

SECTION 3. Act subject to petition - specified effective date - applicability.

(1) This act shall take effect August 15, 2010; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to petitions filed on or after the applicable effective date of this act.

Approved: March 25, 2010