

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1120
Judiciary

(Delegate Dumais)

Family Law - Automatic Injunction

This bill requires, on the filing of an original pleading for divorce, custody, child support, alimony, or contempt, or a pleading for modification of custody, child support, or alimony, for an automatic order to be issued and entered and served with the summons on the responding party. An automatic order is binding on the pleading party immediately on the filing and is binding on the responding party immediately on service of the automatic order and summons. The bill sets forth provisions that must be included in an automatic order.

The bill has prospective application only.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Judiciary to handle additional hearings. Revenues are not affected.

Local Effect: Potential minimal increase in circuit court expenditures to handle additional hearings. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: An automatic order remains in full force and effect during the pendency of the action, unless terminated, modified, or amended by further court order, or on agreement of the parties executed in writing or placed on the record. On a request for a hearing and for good cause shown, the court must schedule a hearing on a request to terminate, modify, or amend an automatic order.

Unless the court has ordered otherwise in a protective order entered before the filing of the action, an automatic order prohibits each party from (1) relocating, or causing the relocation of, the residence of any minor child of the parties, as specified; (2) concealing the whereabouts of a minor child of the parties from the other party; and (3) unilaterally withdrawing any minor child of the parties from school or childcare, as specified.

An automatic order prohibits each party from taking specified actions regarding tax deferred funds, stocks, or other assets held in specified retirement or pension accounts. An order also prohibits a party from applying for or requesting the advance payment or liquidation of retirement benefits or annuity payments. A party who is already in pay status under any pension or retirement plan or account may continue to receive those payments.

An automatic order also prohibits each party from transferring, encumbering, pledging, assigning, removing, withdrawing, or in any way disposing of any property individually or jointly held by the parties. An order must prohibit each party from incurring (1) any marital debts, including borrowing against any credit line secured by real property titled in the parties' individual or joint names or encumbering any assets titled in the parties' individual or joint names or (2) unsecured or nonmarital debt in the parties' joint names, including credit card debt, cash advances against credit cards, or unsecured lines of credit. However, a party may take actions described in this paragraph: (1) as required for necessary, customary, or usual living expenses; (2) in the ordinary and usual course of business; (3) for payment of reasonable and necessary attorney's fees and costs in connection with the action; (4) by written agreement of the parties; or (5) as ordered by the court.

Subject to the authority of the court under §§ 11-111 and 12-102 of the Family Law Article, an order must also prohibit each party from causing the other party or a minor child of the parties to be removed from any existing health insurance coverage, as specified, without the consent of the other party, unless the party provides reasonably comparable alternative insurance coverage. An order must require each party to maintain existing health insurance coverage or reasonably comparable alternative insurance coverage.

An order must also require each party to maintain existing automobile, homeowners, or renters insurance policies and prohibit each party from unilaterally interrupting or terminating any essential utility service to the other party's residence.

On request for a hearing and for good cause shown, the court must conduct an expedited hearing, by telephone conference if appropriate, to determine the reasonableness of a proposed relocation of the residence of a minor child and to issue any other appropriate order.

Current Law: There are no statutory provisions addressing an automatic order in family law actions.

Pursuant to Family Law Article § 11-111, the court may, either after a divorce is granted or *pendente lite*, allocate between the parties any additional costs of providing hospital, medical, or surgical benefits under a group contract or require continuation or reinstatement of such benefits. A court may, either after a divorce or *pendente lite*, allocate between the parties any expenses incurred for continuation of hospital, medical, or surgical benefits made available under a group contract in accordance with federal law. Pursuant to § 12-102 of the Family Law Article, the court may include in any support order a provision requiring either parent to include the child in the parent's health insurance coverage if (1) the parent can obtain health insurance coverage through an employer or any form of group health insurance coverage and (2) the child can be included in that health insurance coverage at a reasonable cost to the parent.

State/Local Fiscal Effect: General fund expenditures increase, potentially significantly, to the extent that a large number of additional hearings are requested pursuant to the bill's provisions. Although the issuance of an automatic injunction may reduce the likelihood of parties engaging in actions that often result in parties attempting to file requests for emergency relief, the bill's provisions still potentially increase the overall number of hearings related to family law matters. The Judiciary advises that in fiscal 2014, there were 72,956 domestic relations case filings. Such filings would be subject to the automatic order under the bill's provisions. If a hearing to terminate, modify, or amend an automatic order is requested on a showing of good cause in even 10% of cases, the circuit courts have to hold almost 7,300 additional hearings annually. While some additional hearings can be accommodated with existing resources, to the extent that a large number of hearings are requested, additional resources may be necessary to appropriately facilitate caseloads. While it is too speculative to assume without actual experience under the bill that additional judgeships or magistrates must be created solely for the purposes of this bill, the Department of Legislative Services notes that the Judiciary is increasingly relying on the use of retired judges to supplement current judicial resources throughout the State. The proposed fiscal 2017 State budget includes approximately \$4,925,000 in funding for retired judges. Using the fiscal 2017 estimate and *for illustrative purposes only*, for every 1% increase in the use of retired judges to handle additional hearings throughout the State, general fund expenditures increase by approximately \$49,250 annually.

Although judicial salaries are paid by the State, the counties provide some support staff, supplies, and equipment for circuit court judges, as well as capital and operating expenses for courtrooms and office facilities used by the circuit court judges and their staff. Local expenditures may increase minimally in certain jurisdictions to the extent that a large number of additional hearings are requested.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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