

HJR002S01 compared with HJR002

~~text~~ shows text that was in HJR002 but was deleted in HJR002S01.

text shows text that was not in HJR002 but was inserted into HJR002S01.

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Representative Brady Brammer proposes the following substitute bill:

JOINT RESOLUTION AMENDING RULES OF CIVIL PROCEDURE ON INJUNCTIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: ~~Brady Brammer~~

Senate Sponsor: _____

LONG TITLE

General Description:

This joint resolution amends the Utah Rules of Civil Procedure, Rule 65A, regarding injunctions.

Highlighted Provisions:

This resolution:

- ▶ amends the Utah Rules of Civil Procedure, Rule 65A, regarding injunctions.

Special Clauses:

This resolution provides a special effective date.

This bill provides revisor instructions.

Utah Rules of Civil Procedure Affected:

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AMENDS:

Rule 65A, Utah Rules of Civil Procedure

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:

Section 1. **Rule 65A**, Utah Rules of Civil Procedure is amended to read:

Rule 65A. Injunctions.

(a) Preliminary injunctions.

(a) (1) **Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(a) (2) **Consolidation of hearing.** Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary restraining orders.

(b) (1) **Notice.** No temporary restraining order shall be granted without notice to the adverse party or that party's attorney unless (A) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (B) the applicant or the applicant's attorney certifies to the court in writing as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required.

(b) (2) **Form of order.** Every temporary restraining order shall be endorsed with the date and hour of issuance and shall be filed forthwith in the clerk's office and entered of record. The order shall define the injury and state why it is irreparable. The order shall expire by its

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terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

(b) (3) **Priority of hearing.** If a temporary restraining order is granted, the motion for a preliminary injunction shall be scheduled for hearing at the earliest possible time and takes precedence over all other civil matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the temporary restraining order shall have the burden to show entitlement to a preliminary injunction; if the party does not do so, the court shall dissolve the temporary restraining order.

(b) (4) **Dissolution or modification.** On 48 hours' notice to the party who obtained the temporary restraining order without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification. In that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

(c) **Security.**

(c) (1) **Requirement.** The court shall condition issuance of the order or injunction on the giving of security by the applicant, in such sum and form as the court deems proper, unless it appears that none of the parties will incur or suffer costs, attorney fees or damage as the result of any wrongful order or injunction, or unless there exists some other substantial reason for dispensing with the requirement of security. No such security shall be required of the United States, the State of Utah, or of an officer, agency, or subdivision of either; nor shall it be required when it is prohibited by law.

(c) (2) **Amount not a limitation.** The amount of security shall not establish or limit the amount of costs, including reasonable attorney fees incurred in connection with the restraining order or preliminary injunction, or damages that may be awarded to a party who is found to have been wrongfully restrained or enjoined.

(c) (3) **Jurisdiction over surety.** A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an

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independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) **Form and scope.** Every restraining order and order granting an injunction shall set forth the reasons for its issuance. It shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. It shall be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice, in person or through counsel, or otherwise, of the order. If a restraining order is granted without notice to the party restrained, it shall state the reasons justifying the court's decision to proceed without notice.

(e) **Grounds.** A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

(e) (1) there is a substantial likelihood that the applicant will prevail on the merits of the underlying claim;

(e) [~~(1) The~~] (2) the applicant will suffer irreparable harm unless the order or injunction issues;

(e) [~~(2) The~~] (3) the threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined; and

(e) [~~(3) The~~] (4) the order or injunction, if issued, would not be adverse to the public interest[~~, and~~].

~~[(e) (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.]~~

(f) ~~{Retroactive application}~~ Motion for reconsideration. ~~{All}~~

(f) (1) If a court granted a restraining ~~{orders and}~~ order or preliminary ~~{injunctions~~ injunction on the ground that the case presented serious issues on the merits which should be the subject of further litigation, a party restrained by the order or injunction on the effective date of this resolution ~~{must meet}~~ may move the court to reconsider whether the order or injunction should remain in effect.

(f) (2) A motion for reconsideration under this paragraph (f) may be filed at any time

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before the final determination of the case.

(f) (3) Upon a motion for reconsideration, the court must determine whether the issuance of the restraining order or preliminary injunction meets the requirements ~~of~~ in paragraph (e) regardless of the ~~date~~ requirements for the issuance of the order or injunction on the day on which the order or injunction was issued.

(f) (4) If the court determines that the issuance of the restraining order or preliminary injunction does not meet the requirements of paragraph (e), the court must terminate the order or injunction.

~~[(f)] (g) Domestic relations cases.~~ Nothing in this rule shall be construed to limit the equitable powers of the courts in domestic relations cases.

~~{ (h) Severability clause. The provisions of this rule are severable. If a provision of this rule or the application of a provision of this rule to any person or circumstance is held invalid by a court, the invalid provision or application does not affect the validity of the remaining provisions of this rule.~~

~~‡~~ Section 2. **Effective date.**

~~{This}~~ As provided in Utah Constitution Article VIII, Section 4, this resolution takes effect upon ~~{approval by a constitutional}~~ a two-thirds vote of all members elected to each house.

Section 3. **Revisor instructions.**

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, delete the phrase "the effective date of this resolution" where the phrase appears in paragraph (f) of this resolution and replace the phrase with the actual date on which the resolution takes effect.