

Senator Daniel McCay 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: Daniel McCay

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:

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



26 all members of both houses of the Legislature:

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

28 **Rule 65A. Injunctions.**

29 (a) **Preliminary injunctions.**

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

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

39 (b) **Temporary restraining orders.**

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

47 (b) (2) **Form of order.** Every temporary restraining order shall be endorsed with the
48 date and hour of issuance and shall be filed forthwith in the clerk's office and entered of record.
49 The order shall define the injury and state why it is irreparable. The order shall expire by its
50 terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the
51 time so fixed the order, for good cause shown, is extended for a like period or unless the party
52 against whom the order is directed consents that it may be extended for a longer period. The
53 reasons for the extension shall be entered of record.

54 (b) (3) **Priority of hearing.** If a temporary restraining order is granted, the motion for a
55 preliminary injunction shall be scheduled for hearing at the earliest possible time and takes
56 precedence over all other civil matters except older matters of the same character. When the

57 motion comes on for hearing, the party who obtained the temporary restraining order shall have
58 the burden to show entitlement to a preliminary injunction; if the party does not do so, the court
59 shall dissolve the temporary restraining order.

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

65 (c) **Security.**

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

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

77 (c) (3) **Jurisdiction over surety.** A surety upon a bond or undertaking under this rule
78 submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent
79 upon whom any papers affecting the surety's liability on the bond or undertaking may be
80 served. The surety's liability may be enforced on motion without the necessity of an
81 independent action. The motion and such notice of the motion as the court prescribes may be
82 served on the clerk of the court who shall forthwith mail copies to the persons giving the
83 security if their addresses are known.

84 (d) **Form and scope.** Every restraining order and order granting an injunction shall set
85 forth the reasons for its issuance. It shall be specific in terms and shall describe in reasonable
86 detail, and not by reference to the complaint or other document, the act or acts sought to be
87 restrained. It shall be binding only upon the parties to the action, their officers, agents, servants,

88 employees, and attorneys, and upon those persons in active concert or participation with them
89 who receive notice, in person or through counsel, or otherwise, of the order. If a restraining
90 order is granted without notice to the party restrained, it shall state the reasons justifying the
91 court's decision to proceed without notice.

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

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

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

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

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

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

105 **(f) Motion for reconsideration.**

106 (f) (1) A party enjoined or restrained by a restraining order or a preliminary injunction
107 on the effective date of this resolution may move the court to reconsider whether the order or
108 injunction should remain in effect if the order or injunction:

109 (A) is in writing;

110 (B) is restraining or enjoining the enforcement of a law; and

111 (C) explicitly states that the court granted the order or injunction on the ground that the
112 case presented serious issues on the merits which should be the subject of further litigation.

113 (f) (2) A motion for reconsideration under this paragraph (f) may be filed at any time
114 before the final determination of the case.

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

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

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

124 Section 2. **Effective date.**

125 As provided in Utah Constitution Article VIII, Section 4, this resolution takes effect
126 upon a two-thirds vote of all members elected to each house.

127 Section 3. **Revisor instructions.**

128 The Legislature intends that the Office of Legislative Research and General Counsel, in
129 enrolling this resolution, delete the phrase "the effective date of this resolution" where the
130 phrase appears in paragraph (f) of Rule 65 of the Utah Rules of Civil Procedure in this
131 resolution and replace the phrase with the actual date on which the resolution takes effect.