

1 **JOINT RESOLUTION AMENDING RULES OF CIVIL**
2 **PROCEDURE ON INJUNCTIONS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brady Brammer**

6 Senate Sponsor: Daniel McCay

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This resolution:

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

15 **Special Clauses:**

16 This resolution provides a special effective date.

17 **Utah Rules of Civil Procedure Affected:**

18 AMENDS:

19 **Rule 65A**, Utah Rules of Civil Procedure

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

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

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

27 **Rule 65A. Injunctions.**

28 (a) **Preliminary injunctions.**

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

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

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

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

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

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

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

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

64 (c) **Security.**

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

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

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

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

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

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

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

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

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

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

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

105 (f) (1) A party enjoined or restrained by a restraining order or a preliminary injunction
106 on February 14, 2023, may move the court to reconsider whether the order or injunction should
107 remain in effect if the order or injunction:

108 (A) is in writing;

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

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

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

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

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

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

123 Section 2. **Effective date.**

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