

SENATE BILL No. 18

By Committee on Judiciary

1-15

SB18-Balloon-Counties

Prepared By: Jason Thompson,
Office of Revisor of Statutes
January 24, 2013

1 AN ACT concerning civil procedure; relating to restraining orders;
2 amending K.S.A. 60-903 and repealing the existing section.
3

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 60-903 is hereby amended to read as follows: 60-
6 903. ~~(a) No notice or bond required. A restraining order may issue without~~
7 ~~notice or bond, except as provided in subsection (b) of K.S.A. 60-904, and~~
8 ~~amendments thereto, but if it appears to the judge that a restraining order~~
9 ~~may result in damage to the party restrained, a bond to secure payment of~~
10 ~~any damages sustained may be required. An application for a restraining~~
11 ~~order shall also be considered as an application for a temporary injunction~~
12 ~~and either party may give notice of hearing thereon. The order shall remain~~
13 ~~in force until the hearing on the application for a temporary injunction.~~

14 *(a) Temporary restraining order; issuing without notice. Except as*
15 *provided in subsection (b) of K.S.A. 60-904, and amendments thereto, the*
16 *court may issue a temporary restraining order without notice or bond to*
17 *the adverse party or its attorney only if:*

18 *(1) Specific facts in an affidavit or a verified complaint clearly show*
19 *that immediate and irreparable injury, loss or damage will result to the*
20 *movant before the adverse party can be heard in opposition;*

21 *(2) the movant's attorney certifies in writing any efforts made to give*
22 *notice and the reasons why it should not be required; and*

23 *(3) notice of the issuance of a temporary restraining order is*
24 *provided to the attorney general of the state of Kansas if the adverse party*
25 *is the state of Kansas or an agency, officer or employee thereof;*

26 *(b) Contents; expiration. Every temporary restraining order issued*
27 *without notice must state the date and hour it was issued, describe the*
28 *injury and state why it is irreparable, state why the order was issued*
29 *without notice and be promptly filed in the clerk's office and entered in the*
30 *record. The order expires at the time after entry, not to exceed 14 days,*
31 *that the court sets, unless before that time the court, for good cause,*
32 *extends it for a like period or the adverse party consents to a longer*
33 *extension. The reasons for an extension must be entered in the record.*

34 *(c) Expediting the preliminary injunction hearing. If the temporary*
35 *restraining order is issued without notice, the motion for a preliminary*
36 *injunction must be set for hearing at the earliest possible time, taking*

or to the appropriate city clerk or county clerk if
the adverse party is a city or county or an agency,
officer or employee thereof

1 *precedence over all other matters except hearings on older matters of the*
2 *same character. At the hearing, the party who obtained the order must*
3 *proceed with the motion, and if the party does not, the court must dissolve*
4 *the order.*

5 *(d) Service. Where a temporary restraining order is issued without*
6 *notice, it shall be served upon each party restrained in the manner*
7 *prescribed for personal service of a summons.*

8 *(e) Motion to Dissolve. On two days' notice to the party who obtained*
9 *the temporary restraining order without notice, or on shorter notice set by*
10 *the court, the adverse party may appear and move to dissolve or modify*
11 *the order. The court must then hear and decide the motion as promptly as*
12 *justice requires.*

13 *(f) Security. The court may issue a preliminary injunction or a*
14 *temporary restraining order only if the movant gives security in an amount*
15 *that the court considers proper to pay the costs and damages sustained by*
16 *any party found to have been wrongfully enjoined or restrained. The state*
17 *of Kansas or an agency, officer or employee thereof, is not required to give*
18 *security.* ←

, any city or county,

19 Sec. 2. K.S.A. 60-903 is hereby repealed.

20 Sec. 3. This act shall take effect and be in force from and after its
21 publication in the statute book.

Alternative:
For any city or county or an agency, officer or
employee thereof, at the discretion of the judge, the
security required by this subsection may be
waived.

60-905. Temporary injunction; notice, hearing and bond. (a) *Notice and hearing.* No temporary injunction shall be granted until after reasonable notice to the party to be enjoined and an opportunity to be heard.

(b) *Bond.* Unless otherwise provided by statute or this section, no temporary injunction shall operate unless the party obtaining the same shall give an undertaking with one or more sufficient sureties in an amount fixed and approved by the judge of the court, securing to the party injured the damages such injured party may sustain including attorney fees if it be finally determined that the injunction should not have been granted. Neither the state nor any of its agencies shall be required to give an undertaking with one or more sufficient sureties in order to be granted a temporary injunction. For any other party, at the discretion of the judge, the undertaking required by this subsection may be waived.

Alternative - Rewrite sub (b) as follows:

(b) *Security.* Unless otherwise provided by statute or this section, the court may issue a temporary injunction only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined. The state of Kansas, any city or county, or an agency, officer or employee thereof is not required to give security.