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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2013-14

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on...

Government Operations and State Licensing (AC-GOSL) (Repealed 10-17-13)

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (December 2014)

Assembly

Record of Committee Proceedings

Committee on Government Operations and State Licensing

Assembly Bill 161

Relating to: injunctions suspending or restraining the enforcement or execution statewide of a statute of this state.

By Representatives Craig, A. Ott, August, Ballweg, Brooks, Honadel, Hutton, Jacque, Kapenga, Kestell, Kleefisch, Knodl, Kooyenga, Kramer, Kuglitsch, LeMahieu, Murphy, Nass, Pridemore, Sanfelippo, Schraa, Spiros, Steineke, Stone, Stroebel, Suder, Thiesfeldt, Tittl, Weatherston and Endsley; cosponsored by Senators Grothman, Vukmir, Ellis, Kedzie, Darling and Leibham.

April 19, 02013
Licensing

Referred to Committee on Government Operations and State

May 01, 2013

Public Hearing Held

Present: (11) Representative August; Representatives Craig, Knodl, Kooyenga, Hutton, Nass, Neylon, Hulsey, Sinicki, Ringhand and Kessler.

Absent: (0) None.

Excused: (0) None.

Appearances For

- Dave Craig - Representative - 83rd Assembly District
- Glenn Grothman - Senator - 20th Senate District
- James Buchen - WMC

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Andrew Cook - WI Civil Justice Council

Registrations Against

- Andrea Kaminski - League of Women Voters of WI
- Lena Taylor - Senator - 4th Senate District

Registrations for Information Only

- None.

May 08, 2013

Executive Session Held

Present: (11) Representative August; Representatives Craig, Knodl, Kooyenga, Hutton, Nass, Neylon, Hulsey, Sinicki, Ringhand and Kessler.

Absent: (0) None.

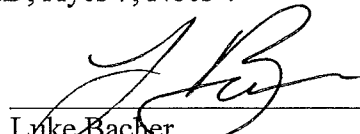
Excused: (0) None.

Moved by Representative Nass, seconded by Representative Craig that **Assembly Bill 161** be recommended for passage.

Ayes: (7) Representative August; Representatives Craig, Knodl, Kooyenga, Hutton, Nass and Neylon.

Noes: (4) Representatives Hulsey, Sinicki, Ringhand and Kessler.

PASSAGE RECOMMENDED, Ayes 7, Noes 4



Luke Bacher
Committee Clerk

Vote Record

Committee on Government Operations and State Licensing

Date: 05/08/13

Moved by: NASS

Seconded by: CRAIG

AB 161

SB

Clearinghouse Rule

AJR

SJR

Appointment

AR

SR

Other

A/S Amdt

A/S Amdt to A/S Amdt

A/S Sub Amdt

A/S Amdt to A/S Sub Amdt

A/S Amdt

A/S Amdt to A/S Amdt to A/S Sub Amdt

Be recommended for:

- Passage Adoption Confirmation Concurrence Indefinite Postponement Introduction Rejection Tabling Nonconcurrency

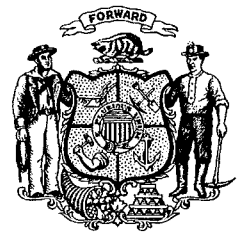
Table with 5 columns: Committee Member, Aye, No, Absent, Not Voting. Rows include Representative Tyler August, Chair, Representative David Craig, Vice Chair, Representative Stephen Nass, Representative Daniel Knodl, Representative Dale Kooyenga, Representative Rob Hutton, Representative Adam Neylon, Representative Brett Hulsey, Representative Christine Sinicki, Representative Frederick Kessler, Representative Janis Ringhand, and Totals: 7 4.

Motion Carried

Motion Failed



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE DAVE CRAIG

FROM: Anne Sappenfield, Senior Staff Attorney

RE: 2013 Assembly Bill 161, Relating to Injunctions Suspending or Restraining the Enforcement or Execution Statewide of a Statute of This State

DATE: April 24, 2013

This memorandum describes 2013 Assembly Bill 161, relating to injunctions suspending or restraining the enforcement or execution of a statute of this state. Assembly Bill 161 was introduced by you and others; cosponsored by Senator Grothman and others on April 19, 2013, and has been referred to the Assembly Committee on Government Operations and State Licensing.

Under the bill, an injunction, restraining order, or any other final or interlocutory order¹ issued by a circuit court or the Court of Appeals that suspends or restrains the enforcement of any Wisconsin statute is stayed if a petition is filed with the Wisconsin Supreme Court or the Court of Appeals within 10 days. This stay may be lifted only as provided in the bill.

CURRENT LAW

Under current law, a final judgment or a final order of the circuit court may be appealed as a matter of right to the Court of Appeals, unless otherwise expressly provided by law. [s. 808.03 (1), Stats.] The Supreme Court of Wisconsin may take jurisdiction of an appeal or any other proceeding pending in the Court of Appeals if the Supreme Court does one of the following:

- Grants direct review upon a petition to bypass filed by a party.
- Grants direct review upon certification from the Court of Appeals prior to the Court of Appeals hearing and deciding the matter.

¹ An interlocutory order is an order that relates to some intermediate matter in the case or any order than a final order. [*Black's Law Dictionary*, 1130 (8th ed. 2004).]

- On its own motion, decides to review the matter directly

[s. 808.05, Stats.]

A judgment is the determination of a legal action. It may be final or interlocutory. [s. 806.01 (1) (a), Stats.] A judgment in an action for an injunction² may not be stayed³ during the period after its entry and until an appeal is taken or during the pendency of an appeal, unless the court orders otherwise. When an appeal is taken from a judgment or an appealable order granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon the terms as it considers proper for the security of the rights of the adverse party. [s. 806.08 (1) and (3), Stats.]

Current law further provides that an appeal does not stay the execution or enforcement of the judgment or order appealed from except as otherwise provided in law. This section specifies that, during the pendency of an appeal, a circuit court or an appellate court may do any of the following:

- Stay execution or enforcement of a judgment or order.
- Suspend, modify, restore, or grant an injunction.
- Make any order appropriate to preserve the existing state of affairs or the effectiveness of the judgment subsequently to be entered.

[s. 808.07 (1) and (2), Stats.]

Under current law, circuit courts also have the discretion to issue temporary injunctions under certain circumstances. Specifically, current law provides that a temporary injunction may be granted to restrain an act: (a) when it appears from a party's pleading that the party is entitled to judgment and any part of the judgment consists of restraining some act, and the commission or continuance of that act would injure the party; or (b) when it appears during the litigation that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done, in violation of the rights of another party and tending to render the judgment ineffectual. [s. 813.02 (1) (a), Stats.]

THE BILL

Under the bill, if a circuit court or the Court of Appeals enters an injunction, restraining order, or any other final or interlocutory order suspending or restraining the enforcement of any statute of this state, the injunction, restraining order, or other final or interlocutory order is immediately appealable as a matter of right.

² An injunction is a court order commanding or preventing an action. [*Black's Law Dictionary*, 800 (8th ed. 2004).]

³ To stay a proceeding or a judgment means to postpone or halt it. [*Id.* at 1453.]

The bill provides that any injunction, restraining order, or other final or interlocutory order that is appealable under this provision must be automatically stayed upon the filing of an expedited petition for interlocutory review with the Supreme Court or with the Court of Appeals. The bill permits the Supreme Court to take jurisdiction of the proceeding if it grants direct review upon an expedited petition for interlocutory review of an action pending in the Court of Appeals. In addition, the Supreme Court, under the bill, may take jurisdiction of a proceeding pending in a circuit court if it grants direct review of such a petition. A petition for interlocutory review filed no later than 10 days after the entry of the order suspending or restraining the enforcement of a state statute is an expedited petition for interlocutory review under this provision.

If an expedited petition for interlocutory review is filed, the automatic stay remains in effect until one of the following occurs:

- The Supreme Court or the appellate court with which the expedited petition for interlocutory review is filed grants the petition for interlocutory review and subsequently orders that the automatic stay be lifted.
- The Supreme Court or the appellate court with which the expedited petition for interlocutory review is filed denies the petition for interlocutory review and simultaneously orders that the automatic stay be lifted.
- Entry of a final and unappealable order disposing of the entire case.

The bill provides that a court may not otherwise modify or restore an injunction that is stayed as required in the bill during the pendency of an appeal.

The Supreme Court or the appellate court is permitted, under the bill, to enter such orders as are necessary and proper to the resolution of the petition for interlocutory review, including orders directing the preparation and filing of the record and the submission of briefs, appendices, and other materials by the parties.

The bill specifies that the newly created provisions do not require a party to seek an expedited petition for interlocutory review as provided in the bill and do not modify or otherwise affect the rights of any party to appeal from, or seek Supreme Court review of, an order otherwise subject to these provisions under the general statutes governing appellate review.

The bill would first apply to an injunction, restraining order, or other final or interlocutory order issued by a circuit court or by an appellate court on the effective date of the legislation.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:ksm

What is the difference between LRB 0926/1 and the current process?

- Current process for preliminary injunction (LRB 0926/1 primarily impact).
 - A harmed party challenges a state law and seeks immediate relief with the circuit court. The circuit court judge could then decide the harmed party has a reasonable chance of winning their case and grants a preliminary injunction, thus stopping enforcement of the law while the case is being heard by the circuit court. Under the current process, the injunction would remain in place with state law not being enforced until the judge issues a final decision (which could last many months or even more than a year).
- LRB 0926/1
 - As a matter of right the preliminary injunction would be appealable to either the Supreme Court or appellate court. If filed within 10 days, a stay would be put on the injunction while the higher court reviews the injunction. The higher court would then lift the stay or leave it in place, depending on whether they agree with the circuit court. This would not impact the hearing of the case on its merits, but allow for a higher court to review the preliminary injunction while the law remains in place.
- The Difference
 - Preliminary injunction is appealable immediately rather than after circuit court issues final ruling.
- Current process for permanent injunction.
 - A circuit court puts a permanent injunction on state statute based on the merits of the case. Currently the state would file an appeal with the appeals court or ask for the case to be heard directly by the Supreme Court. Generally the injunction would be in place during the pendency of the appeal.
- LRB 0926/1
 - Allows for an automatic stay if the state appeals the permanent injunction within 10 days. Higher court would then decide if injunction should remain in effect during the pendency of the appeal.
- The Difference
 - Currently permanent injunctions generally remain in place until a higher court rules on an injunction. This bill would put an automatic stay in place if appealed within 10 days, with the higher court having the ability to put the injunction back on at any time.

Doesn't this tilt the balance of power in government (violate separation of powers)?

- No, the court has recognized that the legislature and court have both "shared powers" and "core powers". This bill would fall under "shared powers" as it simply impacts the administration of the judicial process, not the review of the merits of any issue. Current laws exist that sets up the court's administrative process, this is no different.

Doesn't this prevent a harmed party from seeking a remedy?

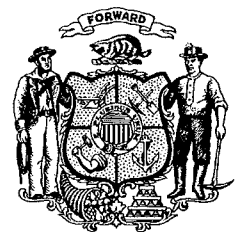
- No, the court can still strike down unconstitutional law. This bill simply allows the state to have an injunction reviewed by a higher court in an expedited manner while ensuring due process for both parties.

Is this just a response to Act 10/Voter ID?

- No, this bill would only impact an injunction placed on statute after it is passed. This bill is meant to address the broader issue of legal uncertainty of state statute, not a specific issue.

Facts:

- Wisconsin has 249 Circuit Court judges elected by individual counties (several smaller counties share judges).
- The appellate court is made up of 16 judges representing 4 districts in the state.
- The Supreme Court is made up of 7 justices representing the entire state.



April 25, 2013

To the Honorable

Tyler August!

I am pleased to see that the Assembly Government Operations and State Licensing Committee will be reviewing some of the onerous regulations that make it difficult for massage professionals to make a living in their fields.

I urge you to review, modify and to repeal the regulations that currently govern licensed massage therapists.

I am 58 years-old and I have been a licensed massage therapist in the State of Wisconsin for 14 years. I love my profession and I believe I help people live healthier lives as a result of my work. However, it is a self-earning profession. We charge per client, on average \$60 per hour; half or more goes to cover business expenses. The licensing and related costs, particularly those that rose from AB 588 and resulted in 2009 Wisconsin Act 355 make it more and more difficult for professional massage therapists to make a living.

The vast majority of massage therapists work independently, —when we want vacation time, we close our business and are not paid during our leave; if we take a sick day, we are not paid; if we want to retire someday, we scrimp and save for it; and, if we want health insurance, we pay for that, too, out of our living expenses. We also buy all of our own supplies and products. Any mandatory expenses like those required under Act 255, come right out of our pockets and it is devastating to our livelihoods.

Under Act 355, the following annual requirements are costly for massage therapists:

- Bi-Annual State License: \$82
- Annual insurance costs: \$235
- Annual continuing educations costs: \$1,000 (includes cost of the seminar, hotel, gas, meals and books)
- Bi-Annual CPR/AED: \$100

I believe a more sensible approach is for massage therapists to be licensed in the county where they work. Once trained, continuing education should be a choice, not a requirement. Insurance and CPR/AED training should also be

left to the discretion of the massage therapist. Only a decade ago, massage therapists paid a \$50 annual license fee to the city where we worked. Today, we would gladly pay annually \$100 to county only and have no other *financial* requirements. We serve local people and should be regulated by local government.

Please repeal these oppressive requirements so that massage therapists can make a living and continue to do the important work that we do.

If you would like more information or would like to speak to me directly, please don't hesitate to contact me at 262-818-1188, or by email at luba_angel@att.net.

Sincerely,

Luba Angel
5224 38th Ave.
Kenosha WI 53144
262-818-1188

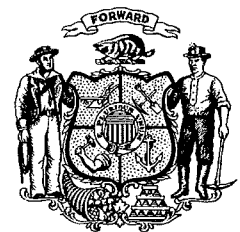
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7436-22nd ave.
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262-515-0246

L.M.T 20 yrs. IN W.I.

James Defazio *James Defazio* L.M.T 2010 IN WI NCBTMB 2001
3821 19th AV
Kenosha, WI 53140
262-914-9140



WISCONSIN STATE LEGISLATURE





DAVID CRAIG

STATE REPRESENTATIVE

Assembly Committee on Government Operations and State Licensing

Public Hearing, May 1, 2013

Assembly Bill 161 Testimony

Representative David Craig, 83rd Assembly District

Chairman August and Members of the Committee:

We authored this legislation to address the legal uncertainty Wisconsin residents and businesses are subject to as a result of injunctions on state statutes – injunctions ordered by judges only elected by a fraction of our state’s population.

Increasingly, questions have been raised as to:

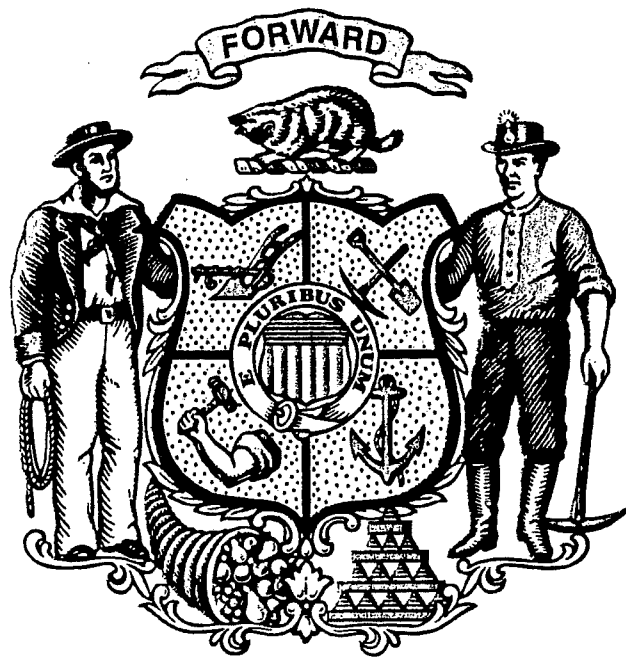
a) whether individual circuit court judges’ rulings impact the state as a whole in regards to the implementation of state law; and

b) whether a ruling from a judge - elected by a small portion of the state - should prevent the statewide implementation of legislation passed by the duly elected statewide legislature, and signed by our Governor, having also been elected statewide, without allowing for an expedited review by a higher court.

Under this bill, if a circuit court or court of appeals places an injunction, restraining order, or other order that, upon entry, suspends or restrains the implementation of any state statute, it would be immediately appealable to a higher court. If such an appeal is made to a higher court within 10 days of entry of the lower court’s order, the lower court’s order will be immediately stayed pending an order by a higher court or a final and unappealable order disposing of the entire case. It is important to note that nothing in this legislation would prevent any court from entering an order that suspends or restrains the implementation of a state statute, or prevents a higher court from removing the stay should the higher court determine the lower courts order was reached appropriately.

This legislation would facilitate a fair and more efficient judicial system by ensuring that one judge cannot unilaterally prevent the implementation of state law without the possibility of an expedited review by a higher court. This legislation would also ensure that Wisconsin residents and businesses have a greater degree of certainty as to whether a law is or is not in effect during the disposition of a legal challenge. Lastly, this bill reaffirms that the three branches of our government remain separate, but equal, by only altering the process for the administration of injunctions, not interfering with the core function of the judiciary.

Thank you for your time and I am happy to any questions you may have.



May 1, 2013

To: Members of the Assembly Committee on Government Operations and State Licensing
From: Senator Glenn Grothman
Re: Assembly Bill 161

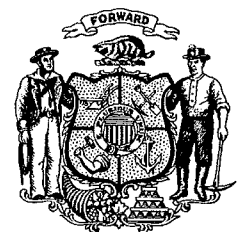
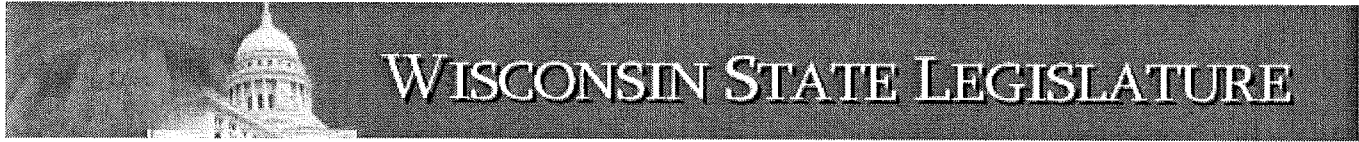
Assembly Bill 161 is legislation to clarify and expedite the process of review by a higher court of injunctions on state statute. This legislation allows a preliminary injunction to be immediately appealable to either the Supreme Court or an appellate court.

Under current law, individuals can challenge a state law and seek to immediately block that law in circuit court. If the circuit court judge decides the party has a reasonable chance of winning their case they grant a preliminary injunction. By taking this action, the circuit court judge stops the enforcement of the law while the circuit court hears the case. An injunction remains in place until there is a final decision, this can last many months or over a year.

The current process causes unnecessary uncertainty for job creators and residents of Wisconsin. Many citizens have expressed that they are confused by the status of laws when an injunction is placed on these laws.

When the State Legislature passes a law and the Governor signs it this reflects representation from around the state. The idea that a new law can be put on hold by an activist judge that may represent less than one half of one percent of the state's population is offensive and is changed in this important piece of legislation. This bill ensures that a law that applies to the entire state will be decided by a court presiding over a larger portion of the population of the state.

Please support this legislation to make preliminary injunctions immediately appealable to a higher court rather than after the circuit court issues the final ruling. This will help clarify the status of duly passed laws and make residents of Wisconsin certain that they are accurately being represented.





WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR GLENN GROTHMAN AND REPRESENTATIVE DAVE CRAIG

FROM: Anne Sappenfield, Senior Staff Attorney

RE: Effect of 2013 Senate Bill 154, and its Companion Bill, 2013 Assembly Bill 161, on Enforcement of Statutes

DATE: May 7, 2013

This memorandum responds to your question relating to the effect of 2013 Senate Bill 154, and its companion bill, 2013 Assembly Bill 161 (hereinafter, "the bill"), on enforcement of statutes. Under the bill, an injunction, restraining order, or any other final or interlocutory order¹ issued by a circuit court or the Court of Appeals that suspends or restrains the enforcement of any Wisconsin statute is stayed if a petition is filed with the Wisconsin Supreme Court or the Court of Appeals within 10 days.

At the public hearing on the bill in the Assembly Committee on Government Operations and Licensure on May 1, 2013, committee members raised concerns that the bill would apply to an order requiring a party to comply with a statute or an order made under the authority of a statute, such as a no-contact order made under the statute permitting domestic abuse restraining orders and injunctions. You have asked whether the bill applies to these types of orders. Although the scope of the bill would be subject to judicial interpretation, it appears that the bill does not apply to such an order because "enforcement of a statute" is a phrase that is typically used to mean putting a statute into effect.²

¹ An interlocutory order is an order that relates to some intermediate matter in the case or any order other than a final order. [*Black's Law Dictionary*, 1130 (8th ed. 2004).]

² Under a legal dictionary definition, "enforcement" means "the act of putting something such as a law into effect; the execution of a law; the carrying out of a mandate or command." [*Black's Law Dictionary*, 528 (8th ed. 2004).]

Based on a preliminary review of relevant case law, it appears that a litigant seeking to restrain or suspend the enforcement of a statute is typically seeking an injunction or other equitable relief based on an allegation that the statute or statutory provision is invalid on the grounds that the statute is unconstitutional or is preempted under federal law, for example. In such actions, if the court finds that the statute is invalid, one possible remedy is to enjoin or prohibit the enforcement of a statute.³ In contrast, a party seeking to have a statute enforced against another party is seeking application or implementation of the statute. In these actions, the court would not order an injunction restraining the enforcement of the statute but would make an order using the authority provided to the court by the statute. Based on these reasons, it is likely that a court would read the language of the bill to apply to an order relating to putting a statute into effect instead of orders made to implement the statute.

The plain language of the bill furthers this argument. Because the bill applies to enforcement **of** a statute versus **under** a statute or **of an activity under** the statute, the plain reading of the sentence suggests that the bill applies to putting a statute into effect and not to orders made under the authority provided in the statute.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:ksm

³ For example, in the opinion holding Wisconsin's partial-birth abortion statute unconstitutional, based upon the holding of the U.S. Supreme Court, the Seventh Circuit of the U.S. Court of Appeals held, "...plaintiffs are entitled to injunctions forbidding the defendants from enforcing those...statutes that criminalize the performance of partial-birth abortions." [*Hope Clinic v. Ryan*, 249 F.3d 603, 604-605 (2001).]