

**2013 DRAFTING REQUEST**

**Bill**

Received: 1/12/2013 Received By: tkuczens  
Wanted: As time permits Same as LRB:  
For: Glenn Grothman (608) 266-7513 By/Representing: Rachel VerVelde  
May Contact: Drafter: tkuczens  
Subject: Courts - garn/injunct Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Sen.Grothman@legis.wisconsin.gov  
Carbon copy (CC) to: tracy.kuczenski@legis.wisconsin.gov

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Automatic stay of certain court orders

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tkuczens 4/9/2013	evinz 4/9/2013	jmurphy 4/9/2013	_____			
/1				_____	sbasford 4/9/2013	lparisi 4/15/2013	

FE Sent For:

*Wohl*

<END>

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1/2	tkuczens	1 rev 4/9/13	Jan 4/9	self			

FE Sent For:

<END>

## Kuczenski, Tracy

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**From:** Hurley, Peggy  
**Sent:** Thursday, January 10, 2013 3:30 PM  
**To:** Kuczenski, Tracy (Tracy.Kuczenski@legis.wisconsin.gov)  
**Subject:** FW: Injunction Reform

Hi Tracy,

This just came in. At first blush, it appears pretty similar to the other draft(s) you've done on automatic stays on injunctions. Do you want to take this one, too?  
If you want me to draft it, I can; just let me know.

Peggy

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**From:** VerVelde, Rachel  
**Sent:** Thursday, January 10, 2013 3:27 PM  
**To:** Hurley, Peggy  
**Subject:** Injunction Reform

Hi Peggy,

Attached is the language I discussed with you on the phone. Let me know if you have any questions.

Thanks,

*Rachel A. VerVelde*

Office of Senator Glenn Grothman  
[Rachel.VerVelde@legis.wi.gov](mailto:Rachel.VerVelde@legis.wi.gov)  
O: 608-266-7513



Injunction  
Reform.pdf

Section 813.025 of the statutes is amended as follows

813.025

(3) Automatic Stay of Certain Orders; Expedited Appeal

(a) If a circuit court enters an injunction, restraining order or any other final or interlocutory order suspending or restraining the enforcement of any statute of the state, said injunction, restraining order or other final or interlocutory order shall be immediately appealable as matter of right.

(b) Any injunction, restraining order or other final or interlocutory order that is immediately appealable under subparagraph (b) of this section shall be automatically stayed upon filing of a notice of expedited appeal under this section. Notice of expedited appeal must be filed no later than ten days after entry of the order that is subject to expedited appeal. If a notice of expedited appeal is filed before the expiration of the ten day period, then the automatic stay shall be extended until disposition of the appeal, subject only to the provisions of subparagraph (d) of this section.

(c) All appeals of an that order that has been automatically stayed pursuant to subparagraph (b) of this section shall be resolved by the Court of Appeals within 120 days of filing of the notice of expedited appeal. The Court of Appeals shall, within ten days of the filing of said notice, enter such orders as are necessary and proper to the resolution of the appeal within the time specified by this section including, without limitation orders directing the preparation and filing of the record on appeal, and the submission of briefs, appendices and other materials by the parties.

(d) Upon application of any party and a determination by the Court that there will be grave and irreparable harm to the public unless the injunction, restraining order or other final or interlocutory order remains in effect, the Court of Appeal may or modify lift the automatic stay under subparagraph (b) pending disposition of the expedited appeal.

(e) Nothing in this section shall require a party to seek an expedited appeal under this section and nothing in this section shall modify or otherwise affect the rights of any party to appeal from an order otherwise subject to this section under section 808.03.

(f) Nothing in this section shall prevent the Supreme Court from taking jurisdiction of an appeal under section 808.05. The provisions of this section shall apply to such appeals.

Added to  
drafting file  
05-01-2013

## Kuczenski, Tracy

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**From:** Kuczenski, Tracy  
**Sent:** Tuesday, April 09, 2013 2:41 PM  
**To:** Schacht, Nathan  
**Cc:** VerVelde, Rachel  
**Subject:** RE: LRB 0926/1 companion for senate

The LRB number will be LRB-1131/1. I should have it to you this afternoon.

Tracy

Tracy K. Kuczenski  
*Legislative Attorney*  
Wisconsin Legislative Reference Bureau  
[tracy.kuczenski@legis.wisconsin.gov](mailto:tracy.kuczenski@legis.wisconsin.gov)  
(608) 266-9867

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**From:** Schacht, Nathan  
**Sent:** Tuesday, April 09, 2013 2:24 PM  
**To:** Kuczenski, Tracy  
**Cc:** VerVelde, Rachel  
**Subject:** LRB 0926/1 companion for senate  
**Importance:** High

Tracy,

Can you please make a Senate companion for Sen. Grothman's office? Rachel VerVelde is the contact over there. If you could get me the LRB # as soon as possible it would be appreciated.

Thank you,  
Nate

**Nathan Schacht**  
Office of State Representative David Craig  
83rd Assembly District  
P: (608) 266-3363  
E: [nathan.schacht@legis.wi.gov](mailto:nathan.schacht@legis.wi.gov)

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State of Wisconsin  
2013 - 2014 LEGISLATURE



113V1

LRB-0026/1

TKK:eev:jm

stays RMNR

2013 BILL

4/9/13 Today  
No change

regen

1 AN ACT *to renumber and amend* 806.08 (3) and 808.05; *to amend* 806.08 (1),  
2 808.07 (2) (a) (intro.), 808.07 (2) (a) 1., 808.07 (2) (a) 2., 809.12 and 813.025  
3 (title); and *to create* 806.08 (3) (b), 808.05 (1m) (d), 808.05 (2m) and 813.025  
4 (3) of the statutes; **relating to:** injunctions suspending or restraining the  
5 enforcement or execution statewide of a statute of this state.

***Analysis by the Legislative Reference Bureau***

Generally, under current law, an interlocutory or final judgment issued by a court in an action for an injunction may not be stayed after the entry of the judgment or during the pendency of an appeal. This bill makes an injunction, restraining order, or other order that, upon entry, suspends or restrains the enforcement of any state statute (order) immediately appealable to an appellate court or to the Wisconsin Supreme Court. If a petition for interlocutory review is filed within ten days after the entry of the order, the order is stayed until one of the following occurs:

1. The appellate court or the Supreme Court grants the petition for interlocutory review and subsequently orders that the automatic stay be lifted.
2. The appellate court or the Supreme Court denies the petition for interlocutory review and simultaneously orders that the automatic stay be lifted.
3. Entry of a final and unappealable order disposing of the entire case.

**BILL**

The bill permits the appellate court or the Supreme Court to enter such orders as are necessary to the resolution of the petition.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 806.08 (1) of the statutes is amended to read:

2           806.08 (1) Unless otherwise ordered by the court, and except as provided in s.  
3 813.025 (3), an interlocutory or final judgment in an action for an injunction or in a  
4 receivership action shall not be stayed during the period after its entry and until an  
5 appeal is taken or during the pendency of an appeal. Subsection (3) governs the  
6 suspending, modifying, restoring, or granting of an injunction during the pendency  
7 of an appeal.

8           **SECTION 2.** 806.08 (3) of the statutes is renumbered 806.08 (3) (a) and amended  
9 to read:

10           806.08 (3) (a) When an appeal is taken from an interlocutory or final judgment  
11 or appealable order granting, dissolving, or denying an injunction, the court in its  
12 discretion may, except as provided in par. (b) and s. 813.025 (3), suspend, modify,  
13 restore, or grant an injunction during the pendency of the appeal upon such terms  
14 as to bond or otherwise as it considers proper for the security of the rights of the  
15 adverse party.

16           **SECTION 3.** 806.08 (3) (b) of the statutes is created to read:

17           806.08 (3) (b) The court may not during the pendency of an appeal restore an  
18 injunction stayed as required under s. 813.025 (3) (b).

19           **SECTION 4.** 808.05 of the statutes is renumbered 808.05 (1m), and 808.05 (1m)  
20 (intro.), (a) and (b), as renumbered, are amended to read:



**BILL**

1           808.05 (1m) (intro.) The supreme court may take jurisdiction of an appeal or  
2 any other proceeding pending in the court of appeals if any of the following apply:

3           (a) It grants direct review upon a petition to bypass filed by a party;

4           (b) It grants direct review upon certification from the court of appeals prior to  
5 the court of appeals hearing and deciding the matter; ~~or~~.

6           **SECTION 5.** 808.05 (1m) (d) of the statutes is created to read:

7           808.05 (1m) (d) It grants direct review upon an expedited petition for  
8 interlocutory review filed as permitted under s. 813.025 (3) (b).

9           **SECTION 6.** 808.05 (2m) of the statutes is created to read:

10           808.05 (2m) The supreme court may take jurisdiction of a proceeding pending  
11 in a circuit court if it grants direct review upon an expedited petition for interlocutory  
12 review filed as permitted under s. 813.025 (3) (b).

13           **SECTION 7.** 808.07 (2) (a) (intro.) of the statutes is amended to read:

14           808.07 (2) (a) (intro.) During the pendency of an appeal, a trial court or an  
15 appellate court may do any of the following:

16           **SECTION 8.** 808.07 (2) (a) 1. of the statutes is amended to read:

17           808.07 (2) (a) 1. Stay execution or enforcement of a judgment or order;

18           **SECTION 9.** 808.07 (2) (a) 2. of the statutes is amended to read:

19           808.07 (2) (a) 2. ~~Suspend~~ Except as provided in s. 806.08 (3) (b) and s. 813.025  
20 (3) (b), suspend, modify, restore, or grant an injunction; or.

21           **SECTION 10.** 809.12 of the statutes is amended to read:

22           **809.12 Rule (Motion for relief pending appeal).** ~~A~~ Except as provided in  
23 s. 813.025 (3) (b), a person seeking relief under s. 808.07 shall file a motion in the trial  
24 court unless it is impractical to seek relief in the trial court. A motion in the court  
25 must show why it was impractical to seek relief in the trial court or, if a motion had

**BILL**

1 been filed in the trial court, the reasons given by the trial court for its action. A person  
2 aggrieved by an order of the trial court granting the relief requested may file a motion  
3 for relief from the order with the court. A judge of the court may issue an ex parte  
4 order granting temporary relief pending a ruling by the court on a motion filed  
5 pursuant to this rule. A motion filed in the court under this section must be filed in  
6 accordance with s. 809.14.

7 **SECTION 11.** 813.025 (title) of the statutes is amended to read:

8 **813.025 (title) Ex parte restraining orders; right of review of certain**  
9 **orders.**

10 **SECTION 12.** 813.025 (3) of the statutes is created to read:

11 813.025 (3) (a) If a circuit court or a court of appeals under ch. 752 enters an  
12 injunction, restraining order, or any other final or interlocutory order suspending or  
13 restraining the enforcement of any statute of this state, the injunction, restraining  
14 order, or other final or interlocutory order is immediately appealable as a matter of  
15 right.

16 (b) Any injunction, restraining order, or other final or interlocutory order that  
17 is appealable under par. (a) shall be automatically stayed upon the filing under this  
18 paragraph of an expedited petition for interlocutory review with the supreme court  
19 or an expedited petition for interlocutory review with an appellate court under ch.  
20 752. A petition for interlocutory review filed no later than 10 days after entry of the  
21 order described under par. (a) is an expedited petition for interlocutory review under  
22 this paragraph. If an expedited petition for interlocutory review is filed, the  
23 automatic stay under this paragraph remains in effect until one of the following  
24 occurs:

**BILL**

1           1. The supreme court or the appellate court with which the expedited petition  
2 for interlocutory review is filed grants the petition for interlocutory review and  
3 subsequently orders that the automatic stay be lifted.

4           2. The supreme court or the appellate court with which the expedited petition  
5 for interlocutory review is filed denies the petition for interlocutory review and  
6 simultaneously orders that the automatic stay be lifted.

7           3. Entry of a final and unappealable order disposing of the entire case.

8           (c) The supreme court or the appellate court may enter such orders as are  
9 necessary and proper to the resolution of the petition under par. (b), including orders  
10 directing the preparation and filing of the record and the submission of briefs,  
11 appendices, and other materials by the parties.

12           (d) Nothing in this subsection shall require a party to seek an expedited  
13 petition for interlocutory review under this subsection and nothing in this subsection  
14 shall modify or otherwise affect the rights of any party to appeal from, or seek  
15 supreme court review of, an order otherwise subject to this section under chs. 808 and  
16 809.

17           **SECTION 13. Initial applicability.**

18           (1) This act first applies to an injunction, restraining order, or other final or  
19 interlocutory order issued by a circuit court or by an appellate court under chapter  
20 752 of the statutes on the effective date of this subsection.

21

(END)

**Parisi, Lori**

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**From:** Sen.Grothman  
**Sent:** Monday, April 15, 2013 9:48 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1131/1 Topic: Automatic stay of certain court orders

Please Jacket LRB -1131/1 for the SENATE.