



2013 ASSEMBLY BILL 161

April 19, 2013 – Introduced 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. Referred to Committee on Government Operations and State Licensing.

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.

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

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:

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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;

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;

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

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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:

