



stays
RM/R
d-note
insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1/24 / 13
TODAY

regen

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

Insert analysis

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

Insert 1-6

6 SECTION 1. 806.08 (1) of the statutes is renumbered 806.08 (1) (a) and amended
7 to read:
8 806.08 (1) (a) Unless otherwise ordered by the court, and except as provided
9 in par. (b), an interlocutory or final judgment in an action for an injunction or in a

1 receivership action shall not be stayed during the period after its entry and until an
2 appeal is taken or during the pendency of an appeal. Subsection (3) governs the
3 suspending, modifying, restoring, or granting of an injunction during the pendency
4 of an appeal.

5 SECTION 2. 806.08 (1) (b) of the statutes is created to read:

6 806.08 (1) (b) The court shall immediately order a 45-day stay of an
7 interlocutory or final judgment that modifies, restores, or grants an injunction that
8 will, in turn, have the effect of suspending or restraining the enforcement or
9 execution statewide of a statute of this state.

A temporary stay ordered under this paragraph shall become permanent if not suspended or lifted by a court of appeals

10 under ch. 752. A party aggrieved by an order under this paragraph may not appeal
11 the order.

→ within 45 days after entry of the order

12 SECTION 3. 806.08 (3) of the statutes is renumbered 806.08 (3) (a) and amended
13 to read:
14

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

20 SECTION 4. 806.08 (3) (b) of the statutes is created to read:

21 806.08 (3) (b) 1. The court may not during the pendency of an appeal restore
22 an injunction stayed as required under sub. (1) (b).

23 2. If the court modifies or grants an injunction as permitted under par. (a) that
24 will have the effect of suspending or restraining the enforcement or execution
25 statewide of a statute of this state, the court shall immediately order a 45-day stay

1 of the interlocutory judgment modifying or granting that injunction. A temporary
 2 stay ordered under this subdivision shall become permanent if not suspended or
 3 lifted by a court of appeals under ch. 752. A party aggrieved by an order under this
 4 subdivision may ~~not~~ appeal the order. ✓

5 **SECTION 5.** 806.08 (5) of the statutes is renumbered 806.08 (5) (a) and amended
 6 to read: *e 5 within 45 days after entry of the order*

7 806.08 (5) (a) This section does not limit any power of an appellate court or of
 8 a judge or justice thereof to stay proceedings during the pendency of an appeal or,
 9 subject to par. (b), to suspend, modify, restore, or grant an injunction during the
 10 pendency of an appeal or to make any order appropriate to preserve the existing state
 11 of affairs or the effectiveness of the judgment subsequently to be entered.

12 **SECTION 6.** 806.08 (5) (b) of the statutes is created to read:

13 806.08 (5) (b) 1. An appellate court under ch. 752 may not during the pendency
 14 of an appeal restore an injunction that has been stayed as required under sub. (1) (b)
 15 or (3) (b).

16 2. If an appellate court under ch. 752 modifies or grants an injunction, as
 17 permitted under par. (a), that will have the effect of suspending or restraining the
 18 enforcement or execution statewide of a statute of this state, the appellate court shall
 19 immediately order a 45-day stay of the interlocutory judgment modifying or
 20 granting that injunction. A temporary stay ordered under this subdivision shall
 21 become permanent if not suspended or lifted by the supreme court. A party aggrieved
 22 by an order under this subdivision may ~~not~~ appeal the order. ✓
e 5 within 45 days after issuance of the order

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

24 808.07 (2) (a) (intro.) During the pendency of an appeal, a trial court or an
 25 appellate court may do any of the following:

INSERT ANALYSIS

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 requires a circuit court judge and a court of appeals to immediately stay, for a period of 45 days, an interlocutory or final judgment that modifies, restores, or grants an injunction having the effect of enjoining the implementation or enforcement of a state law. A temporary stay imposed under the bill by the circuit court becomes permanent if not suspended or lifted by a court of appeals. A temporary stay imposed under the bill by a court of appeals becomes permanent if not suspended or lifted by the Wisconsin Supreme Court. The bill permits an aggrieved party to appeal a stay imposed under the bill by a circuit court or a court of appeals within 45 days after the stay is entered. The bill requires the stay to remain in effect during the pendency of the appeal.

Generally, under current law, a judgment or order appealed to a court of appeals must be heard in the court of appeals district within which the district court that entered the judgment or order is located. This bill requires the chief judge of the court of appeals to select at random the court of appeals district within which an appeal of a stay issued under this bill is to be heard.

INSERT 1-6

1 **SECTION 1.** 752.21 (1) of the statutes is amended to read:
2 752.21 (1) Except as provided in sub. subs. (2) and (3), a judgment or order
3 appealed to the court of appeals shall be heard in the court of appeals district which
4 contains the court from which the judgment or order is appealed.

History: 1977 c. 187; 2011 a. 61.

5 **SECTION 2.** 752.21 (3) of the statutes is created to read:
6 752.21 (3) An order appealed under s. 806.08 (1) (b) or (3) (b) 2. shall be heard
7 in a court of appeals district selected at random by the chief judge of the court of
8 appeals.

INSERT 3-23

9 **SECTION 3.** 808.04 (2m) of the statutes is created to read:
10 808.04 (2m) An appeal under s. 806.08 (1) (b), (3) (b) 2., or (5) (b) 2. shall be
11 initiated within 45 days after entry of judgment or order appealed from.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0926/P1dn

TKK:eev:rs

January 18, 2013

date

1dn
Stays

I have prepared this draft as an introducible draft.

Representative Craig:

On December 19, 2012, I spoke with Amy Lewis regarding the instructions for this bill. Per Amy's instructions, this bill requires a circuit court judge to immediately stay, for a period of 45 days, an interlocutory or final judgment that modifies, restores, or grants an injunction having the effect of enjoining the implementation or enforcement of a state law. A temporary stay imposed under the bill by the circuit court becomes permanent if not suspended or lifted by a court of appeals. Amy explained that a court of appeals could lift a 45-day stay imposed by a circuit court, but at that time the court of appeals would be required to immediately order another 45-day stay of the injunction. Amy also explained that a court of appeals that would be eligible to lift the temporary stay would be required to be randomly selected. Because I have questions surrounding the appeal of the 45-day stay, this draft does not include this last provision. Finally, a 45-day stay imposed in the court of appeals becomes permanent if not suspended or lifted by the Wisconsin Supreme Court.

As Amy instructed, the bill does not provide for an automatic appeal of a stay imposed under the bill. Amy also instructed me to prohibit a party aggrieved by the order from appealing the stay of the injunction.

The bill does not interfere with either a district court's or a court of appeals' ability to grant an injunction, nor does the bill modify the standards a court must consider prior to granting an injunction. Note that, under current law, an injunction may only be issued if a court has made specific findings, including that a party has no adequate remedy at law and will suffer irreparable harm in the absence of the injunction. See, e.g., *Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520 (1977).

The drafting instructions do raise several procedural impediments to due process for aggrieved parties and certain constitutional issues involving the separation of powers between the legislative and judicial branches.

1. **Procedural impediments:** In the absence of either an automatic appeal of the stay or the right of the aggrieved party to initiate an appeal of the stay, no court of appeals would be able to hear an appeal of the stay by the aggrieved party. A court of appeals has no inherent power to, on its own initiative, pursue a case in order to consider an matter raised in the case; a party must initiate an appeal. See, for example, s. 808.03 (2) (b), stats., (which permits an appeal of a non-final judgment that would protect the

As I noted in my previous drafter's notes

petitioner from substantial or irreparable injury). See also s. 808.04, stats., governing the timing initiating an appeal, and s. 808.075, stats., governing permitted court actions pending appeal. But see s. 809.70, stats., (permitting "a person . . . [to] request the supreme court to take jurisdiction of an original action by filing a petition which may be supported by a memorandum."). Without an appeal to the court of appeals, any temporary stay imposed under this bill by a circuit court would become a permanent stay.

Current law s. 808.05 (3), stats., does permit the Supreme Court to take jurisdiction of an appeal on its own motion. However, for the Supreme Court to take this action, the matter must first be appealed (brought to the court of appeals): "The supreme court may take jurisdiction of an appeal or any other proceeding pending in the court of appeals if . . . [i]t, on its own motion, decides to review the matter directly."

2. Constitutional Concerns: This bill may be subject to a constitutional challenge as in violation of the separation of powers provisions of the Wisconsin Constitution. (As you are aware, article IV, section 1, of the Wisconsin Constitution vests the legislative powers in the senate and assembly. Article VII, sections 2, 5, and 8, vest the judicial powers of the state in a unified court system and grants circuit courts and the courts of appeals original and appellate jurisdiction, respectively.

Under the separation of powers doctrine, the constitution confers on each branch of government certain powers upon which the other branches may not intrude. See, e.g., *State v. Holmes*, 106 Wis. 2d 31, 42 (1981); *Thoe v. Chicago M. & St. P. R. Co.*, 181 Wis. 456, 465 (1923) (involving an attempt by the legislature to legislate what constitutes legally sufficient evidence). Although the separation of powers doctrine does not always require a strict, absolute division of powers, in areas of shared power, one branch may not exercise power in a manner that will unduly burden or substantially interfere with another branch's essential role and powers. See *Demmith v. Wisconsin Judicial Conference*, 480 N.W.2d 502, 508, 166 Wis. 2d 649, 663 (1992).

Further, the Supreme Court has held that "the setting and enforcement of time periods for judges to decide cases lies within an area of authority exclusively reposed in the judicial branch of government." *In Matter of Complaint Against Grady*, 118 Wis. 2d 762, 783, 348 N.W.2d 559 (1984) (finding the statute at issue to be an unconstitutional intrusion by the legislature into the exclusively judicial area of judicial decision-making); but see *Grady*, 118 Wis. 2d at 792-93 (Justice Abrahamson, concurring) (finding that the statute governing the timing of judicial decision-making at issue in the case is not unconstitutional as a violation of the doctrine of separation of powers because it does not thwart the court's power or unduly burden the judicial branch).

This bill withdraws from the circuit and appellate courts the ability to enforce certain judgments (temporary and permanent injunctions), that may in some cases be the only form of remedy available to the party seeking the injunction (restraining the enforcement of a law that may cause irreparable harm if enforced). In so doing, this bill effectively deprives these courts of judicial decision-making authority. In addition, the bill requires the temporary stay of an injunction to become a permanent stay unless the stay is suspended or lifted within 45 days; this requirement effectively imposes a

6
time period on judicial decision-making in contravention of *Grady*. A court considering the constitutionality of this bill may determine that this bill substantially interferes with the judicial branch's essential role and powers.

keep (Please let me know if you have any questions or wish to make any changes to the draft.)

Tracy K. Kuczenski
Legislative Attorney
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0926/1dn

TKK:eev:jf

January 24, 2013

Representative Craig:

I have prepared this draft as an introducible draft.

As I noted in my previous drafter's note, this bill may be subject to a constitutional challenge as in violation of the separation of powers provisions of the Wisconsin Constitution. Article IV, section 1, of the Wisconsin Constitution vests the legislative powers in the senate and assembly. Article VII, sections 2, 5, and 8, vest the judicial powers of the state in a unified court system and grants circuit courts and the courts of appeals original and appellate jurisdiction, respectively.

Under the separation of powers doctrine, the constitution confers on each branch of government certain powers upon which the other branches may not intrude. *See, e.g., State v. Holmes*, 106 Wis. 2d 31, 42 (1981); *Thoe v. Chicago M. & St. P. R. Co.*, 181 Wis. 456, 465 (1923) (involving an attempt by the legislature to legislate what constitutes legally sufficient evidence). Although the separation of powers doctrine does not always require a strict, absolute division of powers, in areas of shared power, one branch may not exercise power in a manner that will unduly burden or substantially interfere with another branch's essential role and powers. *See Demmuth v. Wisconsin Judicial Conference*, 480 N.W.2d 502, 508, 166 Wis. 2d 649, 663 (1992).

This bill withdraws from the circuit and appellate courts the ability to enforce certain judgments (temporary and permanent injunctions), that may in some cases be the only form of remedy available to the party seeking the injunction (restraining the enforcement of a law that may cause irreparable harm if enforced). In so doing, this bill effectively deprives these courts of judicial decision-making authority. A court considering the constitutionality of this bill may determine that this bill substantially interferes with the judicial branch's essential role and powers.

Please let me know if you have any questions or wish to make any changes to the draft.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

Kuczenski, Tracy

From: Lewis, Amy
Sent: Thursday, February 14, 2013 2:35 PM
To: Kuczenski, Tracy
Subject: FW: judicial reform language

Importance: High

Tracy,

Please update the language of Rep. Craig's P-draft, LRB 0926/P2 to a P3 with the following language, per our conversation. Please let me know if you have any questions.

Thanks!

~Amy

Amy Lewis

Office of Rep. David Craig
83rd Assembly District
amy.lewis@legis.wisconsin.gov
608-266-3363

NOTE: Emails sent to and from this account may be subject to open records requests and should not be considered private.

Continued with Amy: eliminate the current language in the draft and substitute the new language.

From: Schacht, Nathan
Sent: Thursday, February 14, 2013 2:27 PM
To: Lewis, Amy
Subject: judicial reform language

Section 813.025 of the statutes is amended as follows

1030

813.025

(3) Certain Orders; Right of Review

(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 may be immediately appealable as a matter of right to the Wisconsin Supreme Court.

(b) Any injunction, restraining order or other final or interlocutory order that is appealed under subparagraph (a) of this section shall be automatically temporarily stayed upon the filing of an expedited petition for review with the Supreme Court of Wisconsin under this section. The expedited petition for review must be filed no later than ten days after entry of the order that is subject to subparagraph (a). If an expedited petition for review is filed before the expiration of the ten day period, the automatic stay shall become permanent until disposition of the appeal, subject only to the provisions of subparagraph (d) of this section.

(c) The Supreme Court may enter such orders as are necessary and proper to the resolution of the appeal 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 Supreme 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 Supreme Court may lift the automatic stay under subparagraph (b) pending disposition of the appeal.

(e) Nothing in this section shall require a party to seek an expedited petition for review under this section and nothing in this section shall modify or otherwise affect the rights of any party to appeal from, or seek Supreme Court review of, an order otherwise subject to this section under chapters 808 and 809.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0926/P2 P3

TKK:eev:rs

stays insert d-note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV xref

2/14/13 Today NOW

Regen

1 **AN ACT to renumber and amend** 806.08 (1), 806.08 (3) and 806.08 (5); **to amend**
 2 752.21 (1), 808.07 (2) (a) (intro.), 808.07 (2) (a) 1. and 808.07 (2) (a) 2.; and **to**
 3 **create** 752.21 (3), 806.08 (1) (b), 806.08 (3) (b), 806.08 (5) (b) and 808.04 (2m)
 4 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 requires a circuit court judge and a court of appeals to immediately stay, for a period of 45 days, an interlocutory or final judgment that modifies, restores, or grants an injunction having the effect of enjoining the implementation or enforcement of a state law. A temporary stay imposed under the bill by the circuit court becomes permanent if not suspended or lifted by a court of appeals. A temporary stay imposed under the bill by a court of appeals becomes permanent if not suspended or lifted by the Wisconsin Supreme Court. The bill permits an aggrieved party to appeal a stay imposed under the bill by a circuit court or a court of appeals within 45 days after the stay is entered. The bill requires the stay to remain in effect during the pendency of the appeal.

Generally, under current law, a judgment or order appealed to a court of appeals must be heard in the court of appeals district within which the district court that entered the judgment or order is located. This bill requires the chief judge of the court

Insert analysis

6 of appeals to select at random the court of appeals district within which an appeal of a stay issued under this bill is to be heard.

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

Insert 2-1

1 SECTION 1. 752.21 (1) of the statutes is amended to read:

2 752.21 (1) Except as provided in ~~sub.~~ subs. (2) and (3), a judgment or order
3 appealed to the court of appeals shall be heard in the court of appeals district which
4 contains the court from which the judgment or order is appealed.

5 SECTION 2. 752.21 (3) of the statutes is created to read:

6 752.21 (3) An order appealed under s. 806.08 (1) (b) or (3) (b) 2. shall be heard
7 in a court of appeals district selected at random by the chief judge of the court of
8 appeals.

9 SECTION 3. 806.08 (1) of the statutes is renumbered 806.08 (1) (a) and amended
10 to read:

11 806.08 (1) (a) Unless otherwise ordered by the court, and except as provided
12 in par. (b), an interlocutory or final judgment in an action for an injunction or in a
13 receivership action shall not be stayed during the period after its entry and until an
14 appeal is taken or during the pendency of an appeal. Subsection (3) governs the
15 suspending, modifying, restoring, or granting of an injunction during the pendency
16 of an appeal.

17 SECTION 4. 806.08 (1) (b) of the statutes is created to read:

18 806.08 (1) (b) The court shall immediately order a 45-day stay of an
19 interlocutory or final judgment that modifies, restores, or grants an injunction that
20 will, in turn, have the effect of suspending or restraining the enforcement or
21 execution statewide of a statute of this state. A party aggrieved by an order under

1 this paragraph may, within 45 days after entry of the order, appeal the order. A
2 temporary stay ordered under this paragraph shall become permanent if not
3 suspended or lifted by a court of appeals under ch. 752.

4 **SECTION 5.** 806.08 (3) of the statutes is renumbered 806.08 (3) (a) and amended
5 to read:

6 806.08 (3) (a) When an appeal is taken from an interlocutory or final judgment
7 or appealable order granting, dissolving, or denying an injunction, the court in its
8 discretion may, except as provided in par. (b), suspend, modify, restore, or grant an
9 injunction during the pendency of the appeal upon such terms as to bond or otherwise
10 as it considers proper for the security of the rights of the adverse party.

11 **SECTION 6.** 806.08 (3) (b) of the statutes is created to read:

12 806.08 (3) (b) 1. The court may not during the pendency of an appeal restore
13 an injunction stayed as required under sub. (1) (b).

14 2. If the court modifies or grants an injunction as permitted under par. (a) that
15 will have the effect of suspending or restraining the enforcement or execution
16 statewide of a statute of this state, the court shall immediately order a 45-day stay
17 of the interlocutory judgment modifying or granting that injunction. A party
18 aggrieved by an order under this subdivision may, within 45 days after entry of the
19 order, appeal the order. A temporary stay ordered under this subdivision shall
20 become permanent if not suspended or lifted by a court of appeals under ch. 752.

21 **SECTION 7.** 806.08 (5) of the statutes is renumbered 806.08 (5) (a) and amended
22 to read:

23 806.08 (5) (a) This section does not limit any power of an appellate court or of
24 a judge or justice thereof to stay proceedings during the pendency of an appeal or,
25 subject to par. (b), to suspend, modify, restore, or grant an injunction during the

1 pendency of an appeal or to make any order appropriate to preserve the existing state
2 of affairs or the effectiveness of the judgment subsequently to be entered.

3 **SECTION 8.** 806.08 (5) (b) of the statutes is created to read:

4 806.08 (5) (b) 1. An appellate court under ch. 752 may not during the pendency
5 of an appeal restore an injunction that has been stayed as required under sub. (1) (b)
6 or (3) (b).

7 2. If an appellate court under ch. 752 modifies or grants an injunction, as
8 permitted under par. (a), that will have the effect of suspending or restraining the
9 enforcement or execution statewide of a statute of this state, the appellate court shall
10 immediately order a 45-day stay of the interlocutory judgment modifying or
11 granting that injunction. A party aggrieved by an order under this subdivision may,
12 within 45 days after issuance of the order, appeal the order. A temporary stay
13 ordered under this subdivision shall become permanent if not suspended or lifted by
14 the supreme court.

15 **SECTION 9.** 808.04 (2m) of the statutes is created to read:

16 808.04 (2m) An appeal under s. 806.08 (1) (b), (3) (b) 2., or (5) (b) 2. shall be
17 initiated within 45 days after entry of judgment or order appealed from.

18 **SECTION 10.** 808.07 (2) (a) (intro.) of the statutes is amended to read:

19 808.07 (2) (a) (intro.) During the pendency of an appeal, a trial court or an
20 appellate court may do any of the following:

21 **SECTION 11.** 808.07 (2) (a) 1. of the statutes is amended to read:

22 808.07 (2) (a) 1. Stay execution or enforcement of a judgment or order;

23 **SECTION 12.** 808.07 (2) (a) 2. of the statutes is amended to read:

1 808.07 (2) (a) 2. ~~Suspend~~ Except as provided in s. 806.08 (3) (b) 1. and (5) (b)
 2 1., and subject to s. 806.08 (1) (b), (3) (b) 2., and (5) (b) 2., suspend, modify, restore,
 3 or grant an injunction; ~~or.~~

4 **SECTION 13. Initial applicability.**

5 (1) This act first applies to an ^{injunction, restraining order, or other final} interlocutory or final judgment issued by a circuit
 6 court ^{or order} or a court of appeals under chapter 752 of the statutes that grants or modifies
 7 an injunction on the effective date of this act.

8 (END)

sub-section

keep

not

INSERT ANALYSIS

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 the Wisconsin Supreme Court. If such an order is appealed as provided under the bill, the order is stayed until disposition of the appeal. The supreme court may lift the stay upon a finding that there will be grave and irreparable harm to the public. The bill permits the supreme court to enter such orders as are necessary to the resolution of the appeal.

SPS

INSERT 2-1

1 SECTION 1. 813.025 (title) of the statutes is amended to read:

2 813.025 (title) **Ex parte restraining orders; right of review of certain**
3 **orders.**

History: Sup. Ct. Order, 67 Wis. 2d 585, 760 (1975); Stats. 1975 s. 813.025; 1979 c. 111; 1983 a. 204; 2001 a. 61.

4 SECTION 2. 813.025 (3) of the statutes is created to read:

5 813.025 (3) (a) If a circuit court enters an injunction, restraining order, or any
6 other final or interlocutory order suspending or restraining the enforcement of any
7 statute of this state, the injunction, restraining order, or other final or interlocutory
8 order may be immediately appealable as a matter of right to the supreme court.

9 (b) Any injunction, restraining order, or other final or interlocutory order that
10 is appealed under par. (a) shall be automatically temporarily stayed upon the filing
11 of an expedited petition for review with the Supreme Court of Wisconsin under this
12 paragraph. The expedited petition for review must be filed no later than 10 days
13 after entry of the order described under par. (a). If an expedited petition for review
14 is filed before the expiration of the 10 day period, the automatic stay shall become
15 permanent until disposition of the appeal, subject only to the provisions of par. (d).

16 (c) The supreme court may enter such orders as are necessary and proper to the
17 resolution of the appeal under par. (b), including orders directing the preparation

1 and filing of the record on appeal and the submission of briefs, appendices, and other
2 materials by the parties.

3 (d) Upon application of any party and a determination by the supreme court
4 that there will be grave and irreparable harm to the public unless the injunction,
5 restraining order, or other final or interlocutory order described in par. (a) remains
6 in effect, the supreme court may lift the automatic stay under par. (b) pending
7 disposition of the appeal.

8 (e) Nothing in this subsection shall require a party to seek an expedited petition
9 for review under this subsection and nothing in this subsection shall modify or
10 otherwise affect the rights of any party to appeal from, or seek supreme court review
11 of, an order otherwise subject to this section under chs. 808 and 809.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0926/P2dn

TKK:eev:rs

stays

date

Representative Craig:

As instructed, I have expeditiously prepared a bill that substitutes all of the language of the previous draft (LRB-0926/P2) with the language forwarded to me in your e-mail today. I have made only minor, non-substantive modifications to the language you provided. These modifications primarily conform the proposed statutory language to LRB drafting conventions.

* Given the time constraints for preparing this draft, I was unable to ensure that this new, expedited right of review will seamlessly work within the existing statutory framework governing civil procedure and appeals, including the process for initiating an appeal and whether the supreme court has jurisdiction to hear an appeal brought under this new subsection.

Please note that, because this draft requires an automatic stay of an injunction upon an expedited appeal, the bill raises some of the same constitutional concerns that I identified in my previous drafter's note.

Please review the draft to ensure that it accomplishes your intent and let me know if you wish to make any changes to the bill.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0926/P3dn
TKK:eev:rs

February 14, 2013

Representative Craig:

As instructed, I have expeditiously prepared a bill that substitutes all of the language of the previous draft (LRB-0926/P2) with the language forwarded to me in your e-mail today. I have made only minor, non-substantive modifications to the language you provided. These modifications primarily conform the proposed statutory language to LRB drafting conventions.

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Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

Kuczenski, Tracy

From: Schacht, Nathan
Sent: Tuesday, February 19, 2013 2:21 PM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Tracy,

No need to specify who can appeal the injunction. We'll stick with normal rules of appellate procedure on that one.

Thanks.

Nathan Schacht
Office of State Representative David Craig

From: Kuczenski, Tracy
Sent: Tuesday, February 19, 2013 12:32 PM
To: Schacht, Nathan
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Okay. Several additional questions. The first two are posed to clarify the language provided for the /P3 draft; the third question relates to material removed from the /P2 draft:

1. May I specify who may appeal the injunction, restraining order, etc.? If so, must the appellant be a party to the original action, or can the appellant be "any person"?
2. May I specify that the court that entered the injunction must issue the stay if an appeal is made?
3. In the /P2 version, I amended s. 752.21 (1) and created s. 752.21 (3). These sections govern venue in the court of appeals (in what court in the state an appeal may be heard). Those sections were removed from the /P3 draft. Do you want the treatments of those sections returned to the /P4 draft?

Thanks,
Tracy

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

From: Schacht, Nathan
Sent: Tuesday, February 19, 2013 12:23 PM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Definitely, thank you.

Nathan Schacht
Office of State Representative David Craig

Kuczenski, Tracy

From: Schacht, Nathan
Sent: Tuesday, February 19, 2013 1:32 PM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Let me look into question 1.

On question 2, the appeal stay should automatically occur once the appeal is filed. (I think current language addresses that sufficiently)

Question 3, since the appeal is appealable directly to the supreme court, venue selection at the appeals court level should not matter as that court level is bypassed. No need to add that back in.

Nathan Schacht
Office of State Representative David Craig

From: Kuczenski, Tracy
Sent: Tuesday, February 19, 2013 12:32 PM
To: Schacht, Nathan
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Okay. Several additional questions. The first two are posed to clarify the language provided for the /P3 draft; the third question relates to material removed from the /P2 draft:

1. May I specify who may appeal the injunction, restraining order, etc.? If so, must the appellant be a party to the original action, or can the appellant be "any person"?
2. May I specify that the court that entered the injunction must issue the stay if an appeal is made?
3. In the /P2 version, I amended s. 752.21 (1) and created s. 752.21 (3). These sections govern venue in the court of appeals (in what court in the state an appeal may be heard). Those sections were removed from the /P3 draft. Do you want the treatments of those sections returned to the /P4 draft?

Thanks,
Tracy

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

From: Schacht, Nathan
Sent: Tuesday, February 19, 2013 12:23 PM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Definitely, thank you.

Nathan Schacht
Office of State Representative David Craig

From: Kuczenski, Tracy
Sent: Tuesday, February 19, 2013 12:16 PM
To: Schacht, Nathan
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Hi Nate –

I should be able to get this to editing by the end of the day and you should have it first thing tomorrow morning.

Is that timeline acceptable?

Tracy

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

From: Schacht, Nathan
Sent: Tuesday, February 19, 2013 12:14 PM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Tracy,

Thanks for the call. Please keep out supreme court reference in paragraph 1.

Also, please tie this into current law like you referenced. If you could let me know how long you think that would take it would be appreciated.

Thanks for the help,

Nathan Schacht
Office of State Representative David Craig

From: Kuczenski, Tracy
Sent: Tuesday, February 19, 2013 7:47 AM
To: Schacht, Nathan
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Will do.

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

From: Schacht, Nathan
Sent: Monday, February 18, 2013 4:48 PM
To: Kuczenski, Tracy
Subject: FW: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect
Importance: High

Tracy,

Can you make the below changes to P3 and send the updated P-draft back to us as soon as possible?

Thank you for your continued assistance.

813.025 (3) (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 this state, the injunction, restraining order, or other final or interlocutory order is immediately appealable as a matter of right to the supreme court.*

(b) Any injunction, restraining order, or other final or interlocutory order that is appealed under par. (a) shall be automatically temporarily stayed upon the filing of an expedited petition for review with the supreme court under this paragraph. The expedited petition for review must be filed no later than 10 days after entry of the order described under par. (a). If an expedited petition for review is filed before the expiration of the 10-day period, the automatic stay shall become permanent be extended until disposition of the appeal, subject only to the provisions of par. (d) of this section.

Best regards,

Nathan Schacht
Office of State Representative David Craig

From: Rep.Craig
Sent: Friday, February 15, 2013 9:20 AM
To: Schacht, Nathan
Subject: FW: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

From: LRB.Legal
Sent: Thursday, February 14, 2013 5:04 PM
To: Rep.Craig
Subject: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Following is the PDF version of draft LRB -0926/P3 and drafter's note.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0926/P8-^{PH}

TKK:eev:rs

STATUS insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2/19/13

waited
2/20/13 a.m.

legon

1 AN ACT *to amend* 813.025 (title); and *to create* 813.025 (3) of the statutes;
2 relating to: injunctions suspending or restraining the enforcement or
3 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 the Wisconsin Supreme Court. If such an order is appealed as provided under the bill, the order is stayed until disposition of the appeal. The Supreme Court may lift the stay upon a finding that there will be grave and irreparable harm to the public. The bill permits the Supreme Court to enter such orders as are necessary to the resolution of the appeal.

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

Insert 1-4
A, B, C

4 SECTION 1. 813.025 (title) of the statutes is amended to read:
5 813.025 (title) **Ex parte restraining orders; right of review of certain**
6 **orders.**

1 **SECTION 2.** 813.025 (3) of the statutes is created to read:

2 813.025 (3) (a) If a circuit court enters an injunction, restraining order, or any
3 other final or interlocutory order suspending or restraining the enforcement of any
4 statute of this state, the injunction, restraining order, or other final or interlocutory
5 order is immediately appealable as a matter of right ~~to the supreme court.~~

6 (b) Any injunction, restraining order, or other final or interlocutory order that
7 is appealed under par. (a) shall be automatically ~~temporarily~~ stayed upon the filing
8 of an expedited petition for review with the supreme court under this paragraph. The
9 expedited petition for review must be filed no later than 10 days after entry of the
10 order described under par. (a). If an expedited petition for review is filed before the
11 expiration of the 10-day period, the automatic stay shall ~~become permanent~~ until
12 disposition of the appeal, subject only to the provisions of par. (d). *be extended*

13 (c) The supreme court may enter such orders as are necessary and proper to the
14 resolution of the appeal under par. (b), including orders directing the preparation
15 and filing of the record on appeal and the submission of briefs, appendices, and other
16 materials by the parties.

17 (d) Upon application of any party and a determination by the supreme court
18 that there will be grave and irreparable harm to the public unless the injunction,
19 restraining order, or other final or interlocutory order described in par. (a) remains
20 in effect, the supreme court may lift the automatic stay under par. (b) pending
21 disposition of the appeal.

22 (e) Nothing in this subsection shall require a party to seek an expedited petition
23 for review under this subsection and nothing in this subsection shall modify or
24 otherwise affect the rights of any party to appeal from, or seek supreme court review
25 of, an order otherwise subject to this section under chs. 808 and 809.

of appeals to select at random the court of appeals district within which an appeal of a stay issued under this bill is to be heard.

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

SECTION 1. 752.21 (1) of the statutes is amended to read:

752.21 (1) Except as provided in ~~sub.~~ subs. (2) and (3), a judgment or order appealed to the court of appeals shall be heard in the court of appeals district which contains the court from which the judgment or order is appealed.

SECTION 2. 752.21 (3) of the statutes is created to read:

752.21 (3) An order appealed under s. 806.08 (1) (b) or (3) (b) 2. shall be heard in a court of appeals district selected at random by the chief judge of the court of appeals.

SECTION 3. 806.08 (1) of the statutes is renumbered 806.08 (1) (a) and amended to read:

806.08 (1) (a) Unless otherwise ordered by the court, and except as provided in par. (b), 50 8130 025 (3) an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. Subsection (3) governs the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

SECTION 4. 806.08 (1) (b) of the statutes is created to read:

806.08 (1) (b) The court shall immediately order a 45-day stay of an interlocutory or final judgment that modifies, restores, or grants an injunction that will, in turn, have the effect of suspending or restraining the enforcement or execution statewide of a statute of this state. A party aggrieved by an order under

Begin
1-4
A

1-4A continues →

Insert 1-4A p. 2

1 this paragraph may, within 45 days after entry of the order, appeal the order. A
 2 temporary stay ordered under this paragraph shall become permanent if not
 3 suspended or lifted by a court of appeals under ch. 752.

4 **SECTION 5.** 806.08 (3) of the statutes is renumbered 806.08 (3) (a) and amended
 5 to read:

6 806.08 (3) (a) When an appeal is taken from an interlocutory or final judgment
 7 or appealable order granting, dissolving, or denying an injunction, the court in its
 8 discretion may, except as provided in par. (b), ^{and SO 813.025(3)} suspend, modify, restore, or grant an
 9 injunction during the pendency of the appeal upon such terms as to bond or otherwise
 10 as it considers proper for the security of the rights of the adverse party.

11 **SECTION 6.** 806.08 (3) (b) of the statutes is created to read:

12 806.08 (3) (b) ^{except as provided in SO 813.025(3) and 1-4A} (1) The court may not during the pendency of an appeal restore
 13 an injunction stayed as required under sub. (1) (b). ^{SO 813.025(3)}

14 2. If the court modifies or grants an injunction as permitted under par. (a) that
 15 will have the effect of suspending or restraining the enforcement or execution
 16 statewide of a statute of this state, the court shall immediately order a 45-day stay
 17 of the interlocutory judgment modifying or granting that injunction. A party
 18 aggrieved by an order under this subdivision may, within 45 days after entry of the
 19 order, appeal the order. A temporary stay ordered under this subdivision shall
 20 become permanent if not suspended or lifted by a court of appeals under ch. 752.

21 **SECTION 7.** 806.08 (5) of the statutes is renumbered 806.08 (5) (a) and amended
 22 to read:

23 806.08 (5) (a) This section does not limit any power of an appellate court or of
 24 a judge or justice thereof to stay proceedings during the pendency of an appeal or,
 25 subject to par. (b), ^{and SO 813.025(3)} to suspend, modify, restore, or grant an injunction during the

1-4A continues

In case 1-4 Ap 3
In case 1-4 Cr 1

1 pendency of an appeal or to make any order appropriate to preserve the existing state
2 of affairs or the effectiveness of the judgment subsequently to be entered.

3 SECTION 8. 806.08 (5) (b) of the statutes is created to read:

4 806.08 (5) (b) (1). An appellate court under ch. 752 may not during the pendency

5 of an appeal restore an injunction that has been stayed as required under sub. (1) (b)

6 or (3) (b).

so 813.025(3)(b)

7 2. If an appellate court under ch. 752 modifies or grants an injunction, as
8 permitted under par. (a), that will have the effect of suspending or restraining the
9 enforcement or execution statewide of a statute of this state, the appellate court shall
10 immediately order a 45-day stay of the interlocutory judgment modifying or
11 granting that injunction. A party aggrieved by an order under this subdivision may,
12 within 45 days after issuance of the order, appeal the order. A temporary stay
13 ordered under this subdivision shall become permanent if not suspended or lifted by
14 the supreme court.

15 SECTION 9. 808.04 (2m) of the statutes is created to read:

16 808.04 (2m) An appeal under s. 806.08 (1) (b), (3) (b) 2., or (5) (b) 2. shall be
17 initiated within 45 days after entry of judgment or order appealed from.

18 SECTION 10. 808.07 (2) (a) (intro.) of the statutes is amended to read:

19 808.07 (2) (a) (intro.) During the pendency of an appeal, a trial court or an
20 appellate court may do any of the following:

21 SECTION 11. 808.07 (2) (a) 1. of the statutes is amended to read:

22 808.07 (2) (a) 1. Stay execution or enforcement of a judgment or order;

23 SECTION 12. 808.07 (2) (a) 2. of the statutes is amended to read:

End
-4
A
Begin
1-4
C

INSERT 1-4 B

1 SECTION 1. 808.05 (intro.), (1) and (2) of the statutes are amended to read:

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

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

5 (2) It grants direct review upon certification from the court of appeals prior to
6 the court of appeals hearing and deciding the matter; ~~or.~~ ^{← scored period}

7 History: 1977 c. 187.

8 **SECTION 2.** 808.05 (1m) of the statutes is created to read:

9 808.05 (1m) It grants direct review upon an expedited petition filed as
permitted under s. 813.025 (3) (b).

Kuczenski, Tracy

From: Kuczenski, Tracy
Sent: Wednesday, April 03, 2013 3:01 PM
To: Schacht, Nathan
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Hi Nate –

A couple of questions:

1. Would you object if I changed the phrase “expedited petition for review” on p. 4, lines 8 and 9 to “petition for expedited review”? → change to “expedited motion for relief pending appeal”
2. Because you have asked to change “appealed” on p. 4, line 7 to “appealable,” and because the paragraph in which this language occurs refers to an “expedited petition for review” and not an appeal, I would like to change the word “appeal” on p. 4, line 14 to “petition for expedited review.” Do you have any objections to this change?
→ change to motion
3. Because proposed s. 813.025 (3) (b) of the revised draft will permit a court of appeals to lift a stay, I am eliminating the renumbering and amendment of s. 806.08 (5) (Section 4 of the /P4 beginning on p. 2, line 18) and eliminating the entirety of proposed s. 806.08 (5) (b), and not just the inadvertent “and.” Okay? — okay
4. A final order issued by a court of appeals may be appealed to the supreme court. Do you want to explicitly permit (or prohibit) a party who has sought an expedited petition with the *court of appeals* under proposed s. 813.025 (3) (b) to also be able to do the same with the Supreme Court?

Tracy

— permit a person that has chosen Ct. of App. option to pursue motion for relief in S.Ct. too.

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

From: Schacht, Nathan
Sent: Wednesday, April 03, 2013 11:02 AM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect
Importance: High

Tracy,

Please make the following changes to LRB-0926/P4 and send it back as P5. Can you have these changes to me by this Friday at 5pm? Please call with any questions or concerns.

- 1- Add the appeals court as an option. So the petitioner would be able to seek a review under 813.025 (3) to either the Supremes OR the Court of Appeals. Obviously language throughout the draft will need to be changed to reflect this change. My understanding is the 809.12 (motion for relief pending appeal) would be the term for such a request to the court of appeals.
- 2- Page 3, line 3, remove “and” before s. 813.025(3)(b).
- 3- Page 4, line 7, change “appealed” to “appealable”.
- 4- Page 4, lines 11-12 make the below changes -

Kuczenski, Tracy

From: Schacht, Nathan
Sent: Wednesday, April 03, 2013 11:02 AM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Importance: High

Tracy,

Please make the following changes to LRB-0926/P4 and send it back as P5. Can you have these changes to me by this Friday at 5pm? Please call with any questions or concerns.

- ✓ 1- Add the appeals court as an option. So the petitioner would be able to seek a review under 813.025 (3) to either the Supremes OR the Court of Appeals. Obviously language throughout the draft will need to be changed to reflect this change. My understanding is the 809.12 (motion for relief pending appeal) would be the term for such a request to the court of appeals.
- ✓ 2- Page 3, line 3, remove "and" before s. 813.025(3)(b).
- ✓ 3- Page 4, line 7, change "appealed" to "appealable".
- ✓ 4- Page 4, lines 11-12 make the below changes -
 - a. "...expiration of the 10-day period, the automatic stay shall be extended until ^{any of the following occur:} disposition of the appeal, ~~subject only to the provisions of par. (d).~~ the court of appeals or supreme court orders otherwise after having granted the expedited petition for review or motion for relief pending appeal, the court of appeals or supreme court summarily lifts the stay without granting the petition for review or motion for relief pending appeal, or entry of a final and unappealable order disposing of the entire case."
- ✓ 5- Remove all of par (d) from page 4.

Thank you for the continued assistance,
Nate

Nathan Schacht
Office of State Representative David Craig

Ch. 751 s.c.f.
Ch. 752 Ct. App.
am. 809.12

From: Schacht, Nathan
Sent: Tuesday, February 19, 2013 3:44 PM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

I'll take your word on that one. Thanks.

Nathan Schacht
Office of State Representative David Craig

From: Kuczenski, Tracy
Sent: Tuesday, February 19, 2013 3:43 PM
To: Schacht, Nathan
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Okay, sounds good.

I did want to just bring to your attention a drafting convention; your instructions, below, directed me to add "of this section" after the words "par. (d)" at the end of paragraph (b). The addition of "of this section" is not necessary when you are referring to a statutory subunit within a larger statutory sub unit. That is, paragraph (b) and paragraph (d) both fall within sub. (3), so it is understood that the reference to "par. (d)" in paragraph (b) would be the paragraph (d) within sub. (3).

Tracy

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Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867

From: Schacht, Nathan
Sent: Tuesday, February 19, 2013 2:21 PM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Tracy,

No need to specify who can appeal the injunction. We'll stick with normal rules of appellate procedure on that one.

Thanks.

Nathan Schacht
Office of State Representative David Craig

From: Kuczenski, Tracy
Sent: Tuesday, February 19, 2013 12:32 PM
To: Schacht, Nathan
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Okay. Several additional questions. The first two are posed to clarify the language provided for the /P3 draft; the third question relates to material removed from the /P2 draft:

1. May I specify who may appeal the injunction, restraining order, etc.? If so, must the appellant be a party to the original action, or can the appellant be "any person"?
2. May I specify that the court that entered the injunction must issue the stay if an appeal is made?
3. In the /P2 version, I amended s. 752.21 (1) and created s. 752.21 (3). These sections govern venue in the court of appeals (in what court in the state an appeal may be heard). Those sections were removed from the /P3 draft. Do you want the treatments of those sections returned to the /P4 draft?

Thanks,
Tracy

Tracy K. Kuczenski
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Wisconsin Legislative Reference Bureau
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(608) 266-9867



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0926/P4 P5

TKK:eev:jf

Stays insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 4/3/13

wanted by 4:00 PM 4/4/13

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

regen

an appellate court order

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 the Wisconsin Supreme Court. If such an order is appealed as provided under the bill, the order is stayed until disposition of the appeal. The Supreme Court may lift the stay upon a finding that there will be grave and irreparable harm to the public. The bill permits the Supreme Court to enter such orders as are necessary to the resolution of the appeal.

Insert Analysis

appellate court or the

motion

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

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

a motion for relief pending appeal is filed within ten days after the entry of the order

ten

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

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

9 806.08 (3) (a) When an appeal is taken from an interlocutory or final judgment
10 or appealable order granting, dissolving, or denying an injunction, the court in its
11 discretion may, except as provided in par. (b) and s. 813.025 (3), suspend, modify,
12 restore, or grant an injunction during the pendency of the appeal upon such terms
13 as to bond or otherwise as it considers proper for the security of the rights of the
14 adverse party.

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

16 806.08 (3) (b) The court may not during the pendency of an appeal restore an
17 injunction stayed as required under s. 813.025 (3) (b).

18 **SECTION 4.** 806.08 (5) of the statutes is renumbered 806.08 (5) (a) and amended
19 to read:

20 806.08 (5) (a) This section does not limit any power of an appellate court or of
21 a judge or justice thereof to stay proceedings during the pendency of an appeal or,
22 subject to par. (b) and s. 813.025 (3), to suspend, modify, restore, or grant an
23 injunction during the pendency of an appeal or to make any order appropriate to
24 preserve the existing state of affairs or the effectiveness of the judgment
25 subsequently to be entered.

1 SECTION 5. 806.08 (5) (b) of the statutes is created to read:

2 806.08 (5) (b) 1. An appellate court under ch. 752 may not during the pendency
3 of an appeal restore an injunction that has been stayed as required under and s.
4 813.025 (3) (b). *of the statutes*

5 SECTION 6. 808.05 *6 is renumbered 808.05(1m) and 808.05(1m)(intro)* (intro.), (1) and (2) of the statutes are amended to read:

6 **808.05 Bypass.** *B* (intro.) The supreme court may take jurisdiction of an appeal
7 or any other proceeding pending in the court of appeals if any of the following apply:

8 (a) *a* (1) It grants direct review upon a petition to bypass filed by a party;

9 (b) *b* (2) It grants direct review upon certification from the court of appeals prior to
10 the court of appeals hearing and deciding the matter; ~~or~~.

11 SECTION 7. 808.05 *(2m)* (1m) of the statutes is created to read:

12 808.05 (1m) It grants direct review upon an expedited *motion for relief pending appeal* petition filed as
13 permitted under s. 813.025 (3) (b).

14 SECTION 8. 808.07 (2) (a) (intro.) of the statutes is amended to read:

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

17 SECTION 9. 808.07 (2) (a) 1. of the statutes is amended to read:

18 808.07 (2) (a) 1. Stay execution or enforcement of a judgment or order;

19 SECTION 10. 808.07 (2) (a) 2. of the statutes is amended to read:

20 808.07 (2) (a) 2. Suspend Except as provided in s. 806.08 (3) (b) 1. and (5) (b)

21 1. and s. 813.025 (3) (b), and subject to s. 813.025 (3) (d), suspend, modify, restore, or
22 grant an injunction; ~~or~~.

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

24 **813.025 (title) Ex parte restraining orders; right of review of certain**
25 **orders.** *(a) and (b) as renumbered*

Insert 3-11

Insert 3-23

B (2m) The supreme court may take jurisdiction of a proceeding pending in a circuit court if it

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

2 813.025 (3) (a) If a circuit court ^{or a court of appeals under ch 752} enters an injunction, restraining order, or any
3 other final or interlocutory order suspending or restraining the enforcement of any
4 statute of this state, the injunction, restraining order, or other final or interlocutory
5 order is immediately appealable as a matter of right.

Insert 4-6

6 (b) Any injunction, restraining order, or other final or interlocutory order that
7 is appealed under par. (a) shall be automatically stayed upon the filing of an
8 expedited petition for review with the supreme court under this paragraph. The
9 expedited petition for review must be filed no later than 10 days after entry of the
10 order described under par. (a). If an expedited petition for review is filed before the
11 expiration of the 10-day period, the automatic stay shall be extended until
12 disposition of the appeal, subject only to the provisions of par. (d).

13 (c) The supreme court ^{or appellate court} may enter such orders as are necessary and proper to the
14 resolution of the ^{a motion} appeal under par. (b), including orders directing the preparation
15 and filing of the record ^a on appeal and the submission of briefs, appendices, and other
16 materials by the parties.

17 (d) Upon application of any party and a determination by the supreme court
18 that there will be grave and irreparable harm to the public unless the injunction,
19 restraining order, or other final or interlocutory order described in par. (a) remains
20 in effect, the supreme court may lift the automatic stay under par. (b) pending
21 disposition of the appeal.

22 (d) ~~(d)~~ (e) Nothing in this subsection shall require a party to seek an expedited ^{a motion} petition
23 for ^{a relief} review under this subsection and nothing in this subsection shall modify or
24 otherwise affect the rights of any party to appeal from, or seek supreme court review
25 of, an order otherwise subject to this section under chs. 808 and 809.

1 **SECTION 13. Initial applicability.**

2 (1) This act first applies to an injunction, restraining order, or other final or
3 interlocutory order issued by a circuit court on the effective date of this subsection.

4

(END) or by an appellate court under
chapter 752 of the statutes

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0926/P4ins
TKK:eev:jf

INSERT ANALYSIS

one of the following occurs:

1. The appellate court or the Supreme court grants the motion for relief pending appeal and subsequently orders that the automatic stay be lifted.
2. The appellate court or the Supreme court denies the motion for relief pending appeal and simultaneously orders that the automatic stay be lifted.
3. The appellate court or Supreme Court enters a final judgment in the action and orders that the automatic stay be lifted.

the INSERT 3-11

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

2 808.05 (1m) (d) It grants direct review upon an expedited motion for relief
3 pending appeal filed as permitted under s. 813.025 (3) (b).

INSERT 4-6

4 (b) Any injunction, restraining order, or other final or interlocutory order that
5 is appealable under par. (a) shall be automatically stayed upon the filing under this
6 paragraph of an expedited motion for relief pending appeal with the supreme court
7 or an expedited motion for relief pending appeal with an appellate court under ch.
8 752. A motion for relief pending appeal filed no later than 10 days after entry of the
9 order described under par. (a) is an expedited motion for relief under this paragraph.
10 If an expedited motion for relief pending appeal is filed, the automatic stay under this
11 paragraph remains in effect until one of the following occurs:

****NOTE: Do you want to make motions filed under this par. (b) to be filed in
accordance with s. 809.14? (Compare s. 809.12, amended below)

12 1. The supreme court or the appellate court with which the expedited motion
13 for relief pending appeal is filed grants the motion for relief pending appeal and
14 subsequently orders that the automatic stay be lifted.

1 2. The supreme court or the appellate court with which the expedited motion
2 for relief pending appeal is filed denies the motion for relief pending appeal and
3 simultaneously orders that the automatic stay be lifted.

4 3. The supreme court or the appellate court with which the expedited motion
5 for relief pending appeal is filed enters a final judgment in the action and orders that
6 the automatic stay be lifted.

INSERT 3-23

7 **SECTION 2.** 809.12 of the statutes is amended to read:

8 **809.12 Rule (Motion for relief pending appeal).** A Except as provided in
9 s. 813.025 (3) (b), a person seeking relief under s. 808.07 shall file a motion in the trial
10 court unless it is impractical to seek relief in the trial court. A motion in the court
11 must show why it was impractical to seek relief in the trial court or, if a motion had
12 been filed in the trial court, the reasons given by the trial court for its action. A person
13 aggrieved by an order of the trial court granting the relief requested may file a motion
14 for relief from the order with the court. A judge of the court may issue an ex parte
15 order granting temporary relief pending a ruling by the court on a motion filed
16 pursuant to this rule. A motion filed in the court under this section must be filed in
17 accordance with s. 809.14.

Kuczenski, Tracy

From: Schacht, Nathan
Sent: Monday, April 08, 2013 12:24 PM
To: Kuczenski, Tracy
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Importance: High

Tracy,

Changes below (please send over P6). These should be final set of changes but I want to take one last look before we turn it into a /1.

As noted in my call, I'd like to have the new draft no later than 9am tomorrow morning.

Changes to P5

-Change all references to "expedited motion for relief pending appeal" to "expedited petition for interlocutory review". Obviously any reference to the motion should be changed to petition and any language tying into current statute would need to be changed.

-Page 5, line 7-9. Delete all of 3 and replace with-

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

Thank you,
Nate

Nathan Schacht
Office of State Representative David Craig

From: Kuczenski, Tracy
Sent: Wednesday, April 03, 2013 3:01 PM
To: Schacht, Nathan
Subject: RE: Draft review: LRB -0926/P3 Topic: Staying injunctions barring laws having statewide effect

Hi Nate –

A couple of questions:

1. Would you object if I changed the phrase "expedited petition for review" on p. 4, lines 8 and 9 to "petition for expedited review"?
2. Because you have asked to change "appealed" on p. 4, line 7 to "appealable," and because the paragraph in which this language occurs refers to an "expedited petition for review" and not an appeal, I would like to change the word "appeal" on p. 4, line 14 to "petition for expedited review." Do you have any objections to this change?
3. Because proposed s. 813.025 (3) (b) of the revised draft will permit a court of appeals to lift a stay, I am eliminating the renumbering and amendment of s. 806.08 (5) (Section 4 of the /P4 beginning on p. 2, line 18) and eliminating the entirety of proposed s. 806.08 (5) (b), and not just the inadvertent "and." Okay?



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0926/P5

TKK:eev:jf

Stays *mark*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

4/8/13 By 4:00 pm TODAY

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 motion for relief pending appeal 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 motion for relief pending appeal and subsequently orders that the automatic stay be lifted.
2. The appellate court or the Supreme Court denies the motion for relief pending appeal and simultaneously orders that the automatic stay be lifted.
3. The appellate court or the Supreme Court enters a final judgment in the action and orders that the automatic stay be lifted.

3x
petition for interlocutory review

interlocutory

Entry of a final and unappealable order disposing of the entire case ☺

The bill permits the appellate court or the Supreme Court to enter such orders as are necessary to the resolution of the ~~motion~~ ^{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) ^e(a) Unless otherwise ordered by the court, and except as provided
3 in s. 813.025 (3), an interlocutory or final judgment in an action for an injunction or
4 in a receivership action shall not be stayed during the period after its entry and until
5 an 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:

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} motion for relief
8 ^{interlocutory review} pending appeal 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} motion for relief pending
12 ^{interlocutory review} appeal 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

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} motion for relief pending appeal with the supreme court
 19 or an expedited ^{petition for interlocutory review} motion for relief pending appeal with an appellate court under ch.
 20 752. A ^{petition} motion for ^{interlocutory review} relief pending appeal filed no later than 10 days after entry of the
 21 order described under par. (a) is an expedited ^{petition} motion for ^{interlocutory review} relief under this paragraph.
 22 If an expedited ^{petition for interlocutory review} motion for relief pending appeal is filed, the automatic stay under this
 23 paragraph remains in effect until one of the following occurs:

****NOTE: Do you want to make motions filed under this par. (b) to be filed in accordance with s. 809.14? (Compare s. 809.12, amended in this bill.)

1. The supreme court or the appellate court with which the expedited ^{petition} motion ^{a interlocutory review} for relief pending appeal is filed grants the ^{petition for interlocutory review} motion for relief pending appeal and subsequently orders that the automatic stay be lifted.

2. The supreme court or the appellate court with which the expedited ^{petition} motion ^{a interlocutory review} for relief pending appeal is filed denies the ^{petition for interlocutory review} motion for relief pending appeal and simultaneously orders that the automatic stay be lifted.

3. The supreme court or the appellate court with which the expedited motion for relief pending appeal is filed enters a final judgment in the action and orders that the automatic stay be lifted.

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

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

SECTION 13. Initial applicability.

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

(END)

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



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0926/P6

TKK:eev:jm

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

thought
no changes

Revised

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
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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:

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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.

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:

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;

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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
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25 must show why it was impractical to seek relief in the trial court or, if a motion had

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
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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:

Parisi, Lori

From: Lewis, Amy
Sent: Tuesday, April 09, 2013 2:21 PM
To: LRB.Legal
Subject: Draft Review: LRB -0926/1 Topic: Staying injunctions barring laws having statewide effect

Please Jacket LRB -0926/1 for the ASSEMBLY.