

1 **Suspensive Appeal Amendments**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

House Sponsor:

3 **LONG TITLE**

4 **General Description:**

5 This bill addresses a suspensive appeal in a civil action.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▶ modifies the appellate jurisdiction of the Supreme Court and Court of Appeals;
- 9 ▶ defines terms related to a civil action in which a trial court grants an injunctive order
- 10 restraining the execution or enforcement of a state law;
- 11 ▶ allows a defendant, or a party affected by the injunctive order, to file a motion for a
- 12 written finding regarding the injunctive order;
- 13 ▶ grants a right to suspensive appeal in certain circumstances;
- 14 ▶ addresses the effect of a suspensive appeal;
- 15 ▶ does not require a governmental entity to provide a bond for a suspensive appeal;
- 16 ▶ addresses the applicability of a suspensive appeal to a pending civil action; and
- 17 ▶ makes technical and conforming changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **78A-3-102**, as last amended by Laws of Utah 2009, Chapter 344

25 **78A-4-103**, as last amended by Laws of Utah 2023, Chapter 516

26 ENACTS:

27 **78B-5-1001**, Utah Code Annotated 1953

28 **78B-5-1002**, Utah Code Annotated 1953

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **78A-3-102** is amended to read:

32 **78A-3-102 . Supreme Court jurisdiction.**

- 33 (1) The Supreme Court has original jurisdiction to answer questions of state law certified
34 by a court of the United States.
- 35 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
36 authority to issue all writs and process necessary to carry into effect [its] the Supreme
37 Court's orders, judgments, and decrees or in aid of its jurisdiction.
- 38 (3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory
39 appeals, over:
- 40 (a) a judgment of the Court of Appeals;
- 41 (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment
42 by the Court of Appeals;
- 43 (c) discipline of lawyers;
- 44 (d) final orders of the Judicial Conduct Commission;
- 45 (e) final orders and decrees in formal adjudicative proceedings originating with:
- 46 (i) the Public Service Commission;
- 47 (ii) the State Tax Commission;
- 48 (iii) the School and Institutional Trust Lands Board of Trustees;
- 49 (iv) the Board of Oil, Gas, and Mining;
- 50 (v) the state engineer; or
- 51 (vi) the executive director of the Department of Natural Resources reviewing actions
52 of the Division of Forestry, Fire, and State Lands;
- 53 (f) final orders and decrees of the district court review of informal adjudicative
54 proceedings of agencies under Subsection (3)(e);
- 55 (g) a final judgment or decree of any court of record holding a statute of the United
56 States or this state unconstitutional on its face under the Constitution of the United
57 States or the Utah Constitution;
- 58 (h) interlocutory appeals from any court of record involving a charge of a first degree or
59 capital felony;
- 60 (i) appeals from the district court involving a conviction or charge of a first degree
61 felony or capital felony;
- 62 (j) orders, judgments, and decrees of any court of record over which the Court of
63 Appeals does not have original appellate jurisdiction;[-and]
- 64 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative

- 65 subpoenas[-] ; and
- 66 (l) a suspensive appeal described in Section 78B-5-1002.
- 67 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which
- 68 the Supreme Court has original appellate jurisdiction, except for:
- 69 (a) capital felony convictions or an appeal of an interlocutory order of a court of record
- 70 involving a charge of a capital felony;
- 71 (b) election and voting contests;
- 72 (c) reapportionment of election districts;
- 73 (d) retention or removal of public officers;
- 74 (e) matters involving legislative subpoenas; and
- 75 (f) ~~[those matters described in Subsections (3)(a) through (d).]~~ a matter described in
- 76 Subsections (3)(a) through (d) or Subsection (3)(l).
- 77 (5) The Supreme Court has sole discretion in granting or denying a petition for writ of
- 78 certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall
- 79 review those cases certified to ~~[it]~~ the Supreme Court by the Court of Appeals under
- 80 Subsection (3)(b).
- 81 (6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4,
- 82 Administrative Procedures Act, in ~~[its]~~ the Supreme Court's review of agency
- 83 adjudicative proceedings.
- 84 Section 2. Section **78A-4-103** is amended to read:
- 85 **78A-4-103 . Court of Appeals jurisdiction.**
- 86 (1) As used in this section, "adjudicative proceeding" does not include a proceeding under
- 87 Title 63G, Chapter 2, Part 4, Appeals, that precedes judicial review under Section
- 88 63G-2-404.
- 89 (2) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all
- 90 writs and process necessary:
- 91 (a) to carry into effect ~~[its]~~ the judgments, orders, and decrees of the Court of Appeals; or
- 92 (b) in aid of ~~[its]~~ the jurisdiction of the Court of Appeals.
- 93 (3) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory
- 94 appeals, over:
- 95 (a)(i) a final order or decree resulting from:
- 96 (A) a formal adjudicative proceeding of a state agency;
- 97 (B) a special adjudicative proceeding, as described in Section 19-1-301.5; or
- 98 (C) a hearing before a local school board or the State Board of Education as

- 99 described in Section 53G-11-515; or
- 100 (ii) an appeal from the district court review of an informal adjudicative proceeding of
- 101 an agency other than the following:
- 102 (A) the Public Service Commission;
- 103 (B) the State Tax Commission;
- 104 (C) the School and Institutional Trust Lands Board of Trustees;
- 105 (D) the Division of Forestry, Fire, and State Lands, for an action reviewed by the
- 106 executive director of the Department of Natural Resources;
- 107 (E) the Board of Oil, Gas, and Mining; or
- 108 (F) the state engineer;
- 109 (b) appeals from the district court review of:
- 110 (i) adjudicative proceedings of agencies of political subdivisions of the state or other
- 111 local agencies; and
- 112 (ii) a challenge to agency action under Section 63G-3-602;
- 113 (c) appeals from the juvenile courts;
- 114 (d) interlocutory appeals from any court of record in criminal cases, except those
- 115 involving a charge of a first degree or capital felony;
- 116 (e) appeals from a court of record in criminal cases, except those involving a conviction
- 117 or charge of a first degree felony or capital felony;
- 118 (f) appeals from orders on petitions for extraordinary writs sought by persons who are
- 119 incarcerated or serving any other criminal sentence, except for petitions constituting a
- 120 challenge to a conviction of or the sentence for a first degree or capital felony;
- 121 (g) appeals from the orders on petitions for extraordinary writs challenging the decisions
- 122 of the Board of Pardons and Parole except in cases involving a first degree or capital
- 123 felony;
- 124 (h) appeals from district court involving domestic relations cases, including, but not
- 125 limited to, divorce, annulment, property division, child custody, support, parent-time,
- 126 visitation, adoption, and paternity;
- 127 (i) appeals from the Utah Military Court; and
- 128 (j) cases transferred to the Court of Appeals from the Supreme Court.
- 129 (4) The Court of Appeals does not have appellate jurisdiction over a suspensive appeal
- 130 described in Section 78B-5-1002.
- 131 ~~(4)~~ (5) The Court of Appeals upon its own motion only and by the vote of four judges of
- 132 the court may certify to the Supreme Court for original appellate review and

133 determination any matter over which the Court of Appeals has original appellate
134 jurisdiction.

135 ~~[(5)]~~ (6) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4,
136 Administrative Procedures Act, in its review of agency adjudicative proceedings.

137 Section 3. Section **78B-5-1001** is enacted to read:

138 **CHAPTER 5. TRIAL, JUDGMENT, AND APPEAL**

139 **Part 10. Appeals**

140 **78B-5-1001 . Definitions for part.**

141 Reserved.

142 Section 4. Section **78B-5-1002** is enacted to read:

143 **78B-5-1002 . Right to a suspensive appeal.**

144 (1) As used in this section:

145 (a) "Defendant" means the defendant in the action or a party affected by the injunctive
146 order.

147 (b) "Governmental entity" means the state, a county, a municipality, a special district, a
148 special service district, a school district, a state institution of higher education, or any
149 other political subdivision or administrative unit of the state.

150 (c) "Injunctive order" means a temporary restraining order, a preliminary injunction, a
151 permanent injunction, or any order or judgment that restrains the execution or
152 enforcement of a state law.

153 (d) "Plaintiff" means the party seeking the injunctive order.

154 (e) "State law" means a state statute, a provision of the Utah Constitution, or any action
155 of the Legislature.

156 (f) "Suspensive appeal" means an appeal that suspends the decision of the trial court
157 until the appeal is resolved.

158 (2) If a trial court of this state grants an injunctive order and the underlying claim is that the
159 state law is unconstitutional, the defendant may file a motion for the court to make a
160 finding as to whether the plaintiff can establish, by clear and convincing evidence, that
161 there is a substantial likelihood that the plaintiff will prevail on the merits of the
162 underlying claim that the state law is unconstitutional.

163 (3) Upon a motion under Subsection (2), the trial court shall make a finding as described in
164 Subsection (2), in writing, that:

165 (a) resolves any doubts in favor of constitutionality; and

- 166 (b) states the facts, law, and reasoning that support the court's finding.
- 167 (4) Upon the court making a finding as described in Subsections (2) and (3), the defendant
- 168 has the right to a suspensive appeal to the Supreme Court as to whether:
- 169 (a) the state law is unconstitutional; and
- 170 (b) the injunctive order should remain in effect during the pendency of the civil action.
- 171 (5) If a defendant brings a suspensive appeal under Subsection (4), the injunctive order is
- 172 suspended until the appeal is resolved or the parties stipulate otherwise.
- 173 (6) If a governmental entity brings a suspensive appeal under Subsection (4), the
- 174 governmental entity is not required to post a bond for the appeal.
- 175 (7) This section applies to an action pending in a court of this state on and after May 7,
- 176 2025.

177 **Section 5. Effective Date.**

178 This bill takes effect on May 7, 2025.