

SB0204S03 compared with SB0204

~~{Omitted text}~~ shows text that was in SB0204 but was omitted in SB0204S03

inserted text shows text that was not in SB0204 but was inserted into SB0204S03

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1 ~~{Suspensive}~~ Right to Appeal Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

House Sponsor: Casey Snider

2 LONG TITLE

3 General Description:

4 This bill addresses a ~~{suspensive}~~ right to an appeal ~~{in a civil action}~~ of an injunctive order.

5 Highlighted Provisions:

6 This bill:

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

17 Money Appropriated in this Bill:

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None

Other Special Clauses:

None

AMENDS:

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

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

ENACTS:

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

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

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

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

78A-3-102. Supreme Court jurisdiction.

- (1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.
- (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect [its] the Supreme Court's orders, judgments, and decrees or in aid of its jurisdiction.
- (3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
 - (a) a judgment of the Court of Appeals;
 - (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
 - (c) discipline of lawyers;
 - (d) final orders of the Judicial Conduct Commission;
 - (e) final orders and decrees in formal adjudicative proceedings originating with:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the School and Institutional Trust Lands Board of Trustees;
 - (iv) the Board of Oil, Gas, and Mining;

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- 50 (v) the state engineer; or
- 51 (vi) the executive director of the Department of Natural Resources reviewing actions of the Division of
Forestry, Fire, and State Lands;
- 53 (f) final orders and decrees of the district court review of informal adjudicative 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 States or this state
unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
- 58 (h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
- 60 (i) appeals from the district court involving a conviction or charge of a first degree felony or capital
felony;
- 62 (j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have
original appellate jurisdiction;[-and]
- 64 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas[-] ;
and
- 66 (l) ~~{a suspensive appeal}~~ an appeal of an injunctive order as described in Section 78B-5-1002.
- 67 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over which 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 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 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 certiorari for the
review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified
to [it] the Supreme Court by the Court of Appeals under Subsection (3)(b).
- 81 (6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4, Administrative
Procedures Act, in [its] the Supreme Court's review of agency adjudicative proceedings.
- 79 Section 2. Section **78A-4-103** is amended to read:

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78A-4-103. Court of Appeals jurisdiction.

- (1) As used in this section, "adjudicative proceeding" does not include a proceeding under Title 63G, Chapter 2, Part 4, Appeals, that precedes judicial review under Section 63G-2-404.
- (2) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:
- (a) to carry into effect [its] the judgments, orders, and decrees of the Court of Appeals; or
 - (b) in aid of [its] the jurisdiction of the Court of Appeals.
- (3) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
- (a)
 - (i) a final order or decree resulting from:
 - (A) a formal adjudicative proceeding of a state agency;
 - (B) a special adjudicative proceeding, as described in Section 19-1-301.5; or
 - (C) a hearing before a local school board or the State Board of Education as described in Section 53G-11-515; or
 - (ii) an appeal from the district court review of an informal adjudicative proceeding of an agency other than the following:
 - (A) the Public Service Commission;
 - (B) the State Tax Commission;
 - (C) the School and Institutional Trust Lands Board of Trustees;
 - (D) the Division of Forestry, Fire, and State Lands, for an action reviewed by the executive director of the Department of Natural Resources;
 - (E) the Board of Oil, Gas, and Mining; or
 - (F) the state engineer;
 - (b) appeals from the district court review of:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
 - (ii) a challenge to agency action under Section 63G-3-602;
 - (c) appeals from the juvenile courts;
 - (d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
 - (e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

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- (f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except for petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
- (g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;
- (h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;
- (i) appeals from the Utah Military Court; and
- (j) cases transferred to the Court of Appeals from the Supreme Court.
- (4) The Court of Appeals does not have appellate jurisdiction over {a-suspensive-appeal} **an appeal of an injunctive order** described in Section 78B-5-1002.

[(4)] (5) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

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

Section 3. Section 3 is enacted to read:

CHAPTER 5. TRIAL, JUDGMENT, AND APPEAL

Part 10. Appeals

78B-5-1001. Definitions for part.

Reserved.

Section 4. Section 4 is enacted to read:

78B-5-1002. Right to {a-suspensive-appeal} **an appeal of an injunctive order.**

(1) As used in this section:

- (a) "Defendant" means {the} a defendant in the civil action or a party affected by the injunctive order.
- (b) "Governmental entity" means the state, a county, a municipality, a special district, a special service district, a school district, a state institution of higher education, or any other political subdivision or administrative unit of the state.

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

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

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

(2) A defendant has a right in a civil action to appeal a decision by a trial court of this state to grant, continue, modify, or refuse to modify an injunctive order if the underlying claim for the injunctive order is that the state law, or any part of the state law, is unconstitutional on its face.

(3) Upon an appeal described in Subsection (2), the Supreme Court shall determine whether:

{(f)} (a) {"Suspensive appeal" means an appeal that suspends} the decision of the trial court {until the appeal is resolved.} is correct; and

{(2)} (b) {If a trial court of this state grants an injunctive order and the underlying claim is that the state law is unconstitutional, the defendant may file a motion for the court to make a finding as to whether the plaintiff can establish, by clear and convincing evidence, that} there is a substantial likelihood that the plaintiff will prevail on the merits of the {underlying} claim that the state law, or any part of the state law, is unconstitutional on its face.

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

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

{(b) {states the facts, law, and reasoning that support the court's finding.} }

{(4) {Upon the court making a finding as described in Subsections (2) and (3), the defendant has the right to a suspensive appeal to the Supreme Court as to whether:} }

{(a) {the state law is unconstitutional; and} }

{(b) {the injunctive order should remain in effect during the pendency of the civil action.} }

{(5) {If a defendant brings a suspensive appeal under Subsection (4), the injunctive order is suspended until the appeal is resolved or the parties stipulate otherwise.} }

{(6)} (4) If a governmental entity brings {a suspensive} an appeal under Subsection {(4)} (2), the governmental entity is not required to post a bond for the appeal.

{(7)} (5) This section applies to an action pending in a court of this state on and after May 7, 2025.

Section 5. **Effective date.**

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This bill takes effect on May 7, 2025.

3-3-25 11:00 AM