

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 2000

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HOUSE BILL 2*

Short Title: Civil Remedies Appeal Bond.

(Public)

Sponsors: Representatives Baddour, Cole, Hill, Jarrell, Jeffus, Oldham, Redwine (Primary Sponsors); Brubaker, Adams, Alexander, Allen, Allred, Baker, Barbee, Barefoot, Berry, Bonner, Bowie, Brown, Buchanan, Cansler, Capps, Church, Clary, Cox, Creech, Culp, Culpepper, Cunningham, Daughtry, Davis, Decker, Dedmon, Dockham, Earle, Easterling, Eddins, Edwards, Ellis, Esposito, Fitch, Ford, Fox, Gardner, Goodwin, Grady, Gray, Gulley, Hair, Hall, Hiatt, Holmes, Horn, Howard, Hunter, Hurley, Justus, Kiser, McAllister, McComas, McCombs, McCrary, McLawhorn, McMahan, Melton, Miner, Mitchell, Moore, Morgan, Nye, Owens, Pope, Preston, Rayfield, Rogers, Russell, Saunders, Setzer, Sexton, Sherrill, Smith, Starnes, Sutton, Tallent, Teague, Thomas, Thompson, Tolson, Tucker, Wainwright, Walend, Warner, Warren, Warwick, C. Wilson, G. Wilson, Womble, Wood, Wright, and Yongue.

Referred to: Select committee on Appellate Procedure.

April 5, 2000

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE STAY OF ENFORCEMENT OF CIVIL JUDGMENTS FOR DAMAGES IN ADDITION TO OR IN EXCESS OF COMPENSATORY DAMAGES UPON THE POSTING OF A BOND IN AN AMOUNT UP TO A MAXIMUM OF TWENTY-FIVE MILLION DOLLARS FOR THE AMOUNT OF NONCOMPENSATORY DAMAGES PLUS AN ADDITIONAL AMOUNT EQUAL TO THE AMOUNT OF THE AWARD FOR COMPENSATORY DAMAGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 17A.

"Enforcement of Foreign Judgments for Noncompensatory Damages.

"§ 1C-1750. Definitions.

As used in this Article:

- (1) 'Action' means (i) an action under Article 17 of this Chapter or (ii) any civil action in this State to enforce a foreign judgment in this State.
- (2) 'Foreign judgment' means any judgment, decree, or order of a court of the United States or any other state.

"§ 1C-1760. Enforcement of foreign judgments for noncompensatory damages.

In any action in this State to enforce a foreign judgment directing the payment of money damages other than compensatory damages, or in excess of the compensatory damages, if the judgment debtor shows the court that an appeal from the foreign judgment is pending or that the time for taking an appeal has not expired, the court shall stay enforcement of the foreign judgment until all available appeals are concluded or the time for taking all appeals has expired, upon requiring the same undertaking by the judgment debtor as would be required in the case of a judgment entered by a court of this State, subject to G.S. 1-289."

Section 2. G.S. 1-289 reads as rewritten:

"§ 1-289. Undertaking to stay execution on money judgment.

(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(b) If the appellee in a civil action obtains a judgment that includes an award of noncompensatory damages of twenty-five million dollars (\$25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking for noncompensatory damages that the appellant is required to execute to stay execution of the judgment during the period of the appeal shall be twenty-five million dollars (\$25,000,000). For the purposes of this subsection, the term 'noncompensatory damages' means that portion of money damages other than compensatory damages or in excess of compensatory damages. Except as expressly provided in this subsection, this subsection shall not affect or limit the amount of the undertaking otherwise required by subsection (a) of this section.

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under subsection (b) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the limitation in subsection (b) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section."

Section 3. The provisions of this act are severable. If any portion of this act is declared unconstitutional or the application of any part of this act to any person or circumstance is held invalid, the remaining portions of the act and their applicability to any person or circumstance shall remain valid and enforceable.

Section 4. This act is effective when it becomes law and applies to judgments filed or entered in this State on or after the effective date, without regard to the date on which the foreign judgment was rendered in the foreign state.