

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1044

Short Title: Undertaking to Stay Money Judgment. (Public)

Sponsors: Senators Clodfelter; and Hartsell.

Referred to: Judiciary I.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A COURT TO DETERMINE, AFTER NOTICE AND HEARING, WHETHER THE AMOUNT OF UNDERTAKING TO STAY EXECUTION ON A MONEY JUDGMENT PENDING APPEAL IS PROPER AND REASONABLE BASED ON THE CONSIDERATION OF CERTAIN SPECIFIC RELEVANT FACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. 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, as set forth in this section.

(a1) In an action where the judgment directs the payment of money, the court shall specify the amount of the undertaking required to stay execution of the judgment pending appeal as provided in subsections (a2) and (b) of this section. The undertaking shall be 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, except as provided in subsection (b) of this section. 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

1 pending the action or proceeding. In a case where, by this section, the money is to be
2 deposited with an officer, a judge of the court, upon the application of either party, may,
3 at any time before the deposit is made, order the money deposited in court instead of
4 with the officer; and a deposit made pursuant to such order is of the same effect as if
5 made with the officer. The perfecting of an appeal by giving the undertaking mentioned
6 in this section stays proceedings in the court below upon the judgment appealed from;
7 except when the sale of perishable property is directed, the court below may order the
8 property to be sold and the proceeds thereof to be deposited or invested, to abide the
9 judgment of the appellate court.

10 (a2) Except as provided in subsection (b) of this section, the amount of the
11 undertaking that shall be required by the court shall be an amount determined by the
12 court after notice and hearing proper and reasonable for the security of the rights of the
13 adverse party, considering relevant factors including the following:

14 (1) The amount of the judgment.

15 (2) The amount of the limits of all applicable liability policies of the
16 appellant judgment debtor.

17 (3) The aggregate net worth of the appellant judgment debtor.

18 (b) If the appellee in a civil action brought under any legal theory obtains a
19 judgment directing the payment or expenditure of money in the amount of twenty five
20 million dollars (\$25,000,000) or more, and the appellant seeks a stay of execution of the
21 judgment within the period of time during which the appellant has the right to pursue
22 appellate review, including discretionary review and certiorari, the amount of the
23 undertaking that the appellant is required to execute to stay execution of the judgment
24 during the entire period of the appeal shall be twenty five million dollars (\$25,000,000).

25 (c) If the appellee proves by a preponderance of the evidence that the appellant
26 for whom the undertaking has been limited under ~~subsection~~ subsections (a2) and (b) of
27 this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii)
28 secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of
29 North Carolina or the federal courts of the United States other than in the ordinary
30 course of business, then the ~~limitation~~ limitations in subsection subsections (a2) and (b)
31 of this section shall not apply and the appellant shall be required to make an undertaking
32 in the full amount otherwise required by this section."

33 **SECTION 2.** This act becomes effective October 1, 2006, and applies to
34 actions filed on or after that date.