

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

D

SENATE DRS55212-LD-70 (2/20)

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

Sponsors: Senator Clodfelter.

Referred to:

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) General Rule. – 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, except as provided in ~~subsection (b)~~ subsection (a1) 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~~ the party 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

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

9 (a1) Undertaking Limited in Discretion of Court. – Except as provided in
10 subsection (c) of this section, if the court determines that the interest of an appellant to
11 appeal will be unreasonably burdened by the requirement in subsection (a) of this
12 section to make an undertaking in the full amount of the judgment, the court may set a
13 lesser amount for the undertaking. After notice and hearing, the court shall determine
14 what lesser amount is proper and reasonable for the security of the rights of the
15 appellee, considering relevant factors including the following:

16 (1) The amount of the judgment.

17 (2) The amount of the limits of all applicable liability policies of the
18 appellant for which the insurer has released all reservations of right or
19 the right to deny coverage.

20 (3) The aggregate net worth of the appellant.

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

28 (c) Full Amount If Assets in Jeopardy. – If the appellee proves by a
29 preponderance of the evidence that the appellant for whom the undertaking has been
30 limited under ~~subsection (b)~~subsection (a1) of this section is, for the purpose of evading
31 the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets
32 outside the jurisdiction of the courts of North Carolina or the federal courts of the
33 United States other than in the ordinary course of business, then the ~~limitation~~
34 limitations in ~~subsection (b)~~subsection (a1) of this section shall not apply and the
35 appellant shall be required to make an undertaking in the full amount of the judgment
36 ~~otherwise~~ required by subsection (a) of this section."

37 **SECTION 2.** This act becomes effective October 1, 2007, and applies to
38 actions filed on or after that date.