

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS15194-LB-176 (3/25)

Short Title: Judgment Bonding Legislation.

(Public)

Sponsors: Senators Hartsell; Garrou, Berger, Hagan, and Horton.

Referred to:

A BILL TO BE ENTITLED

AN ACT CONCERNING BONDING OF CERTAIN JUDGMENTS.

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, under any legal theory, 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~~appeal, except that the total bond or undertaking that is required of all appellants shall not exceed twenty-five million dollars (\$25,000,000) regardless of the value of the judgment.

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

1 made with the officer. The perfecting of an appeal by giving the undertaking mentioned
2 in this section stays proceedings in the court below upon the judgment appealed from;
3 except when the sale of perishable property is directed, the court below may order the
4 property to be sold and the proceeds thereof to be deposited or invested, to abide the
5 judgment of the appellate court.

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

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

25 **SECTION 2.** This act is effective when it becomes law.