

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 784  
Judiciary II Committee Substitute Adopted 4/8/03

Short Title: Judgment Bonding Legislation.

(Public)

Sponsors:

Referred to:

April 3, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT CONCERNING BONDING OF CERTAIN JUDGMENTS.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Article 17A of Chapter 1C of the General Statutes is repealed.

5 **SECTION 2.** G.S. 1C-1705 reads as rewritten:

6 "**§ 1C-1705. Defenses; ~~procedure.~~ procedure; stay.**

7 (a) The judgment debtor may file a motion for relief from, or notice of defense  
8 to, the foreign judgment on the grounds that the foreign judgment has been appealed  
9 from, or enforcement has been stayed by, the court which rendered it, or on any other  
10 ground for which relief from a judgment of this State would be allowed.  
11 Notwithstanding subsection (b) of this section, the court shall stay enforcement of the  
12 foreign judgment for an appropriate period if the judgment debtor shows that:

13 (1) The foreign judgment has been stayed by the court that rendered it; or

14 (2) An appeal from the foreign judgment is pending or the time for taking  
15 an appeal has not expired and the judgment debtor executes a written  
16 undertaking in the same manner and amount as would be required in  
17 the case of a judgment entered by a court of this State under G.S.  
18 1-289.

19 (b) If the judgment debtor has filed a motion for relief or notice of defenses then  
20 the judgment creditor may move for enforcement of the foreign judgment as a judgment  
21 of ~~this State~~ this State, unless the court stays enforcement of the judgment under  
22 subsection (a) of this section. The judgment creditor's motion shall be heard before a  
23 judge of the trial division which would be the proper division for the trial of an action in  
24 which the amount in controversy is the same as the amount remaining unpaid on the  
25 foreign judgment. The Rules of Civil Procedure (G.S. 1A-1) shall apply. The judgment  
26 creditor shall have the burden of proving that the foreign judgment is entitled to full  
27 faith and credit."

28 **SECTION 3.** G.S. 1-289 reads as rewritten:

29 "**§ 1-289. Undertaking to stay execution on money judgment.**

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

26 (b) If the appellee in a civil action brought under any legal theory obtains a  
27 judgment ~~that includes an award of noncompensatory damages directing the payment or~~  
28 expenditure of money in the amount of twenty five million dollars (\$25,000,000) or  
29 more, and the appellant seeks a stay of execution of the judgment within the period of  
30 time during which the appellant has the right to pursue appellate review, including  
31 discretionary review and certiorari, the amount of the undertaking ~~for noncompensatory~~  
32 ~~damages~~ that the appellant is required to execute to stay execution of the judgment  
33 during the entire period of the appeal shall be twenty five million dollars (\$25,000,000).  
34 ~~For the purposes of this subsection, the term "noncompensatory damages" means that~~  
35 ~~portion of money damages other than compensatory damages or in excess of~~  
36 ~~compensatory damages. Except as expressly provided in this subsection, this subsection~~  
37 ~~shall not affect or limit the amount of the undertaking otherwise required by subsection~~  
38 ~~(a) of this section.~~

39 (c) If the appellee proves by a preponderance of the evidence that the appellant  
40 for whom the undertaking has been limited under subsection (b) of this section is, for  
41 the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or  
42 (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the  
43 federal courts of the United States other than in the ordinary course of business, then the

1 limitation in subsection (b) of this section shall not apply and the appellant shall be  
2 required to make an undertaking in the full amount otherwise required by this section."

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