

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH80464-RU-43 (04/05)

Short Title: Appeal Bond for Medical Malpractice. (Public)

Sponsors: Representatives England, Nye, Wright, Rapp (Primary Sponsors); Tucker and Hollo.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS,
AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HEALTH
CARE.

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, 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)~~ subsections (b) and (b1) 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 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

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

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

14 (b1) If the appellee in any medical malpractice action, as defined in G.S. 90-21.11,
15 obtains a judgment directing the payment or expenditure of money, and the appellant
16 seeks a stay of execution of the judgment within the period of time during which the
17 appellant has the right to pursue appellate review, including discretionary review and
18 certiorari, the amount of the undertaking that the appellant is required to execute to stay
19 execution of the judgment during the entire period of the appeal shall be the lesser of the
20 amount of the judgment or the amount of the appellant's medical malpractice insurance
21 coverage applicable to the action.

22 (c) If the appellee proves by a preponderance of the evidence that the appellant
23 for whom the undertaking has been limited under subsection (b) or (b1) of this section
24 is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its
25 assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina
26 or the federal courts of the United States other than in the ordinary course of business,
27 then the limitation in ~~subsection (b)~~ subsections (b) and (b1) of this section shall not
28 apply and the appellant shall be required to make an undertaking in the full amount
29 otherwise required by this section."

30 **SECTION 2.** This act becomes effective October 1, 2006, and applies to
31 judgments enter on or after that date.