

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

S

1

SENATE BILL 904*

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

Sponsors: Senators Rouzer; and Purcell.

Referred to: Judiciary I.

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS.
3 The General Assembly of North Carolina enacts:

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

5 "**§ 1-289. Undertaking to stay execution on money judgment.**

6 (a) If the appeal is from a judgment directing the payment of money, it does not stay the
7 execution of the judgment unless a written undertaking is executed on the part of the appellant,
8 by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, is
9 affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by
10 the judgment, or the part of such amount as to which the judgment shall be affirmed, if
11 affirmed only in part, and all damages which shall be awarded against the appellant upon the
12 appeal, except as provided in ~~subsection (b)~~ subsections (b) and (b1) of this section. Whenever
13 it is satisfactorily made to appear to the court that since the execution of the undertaking the
14 sureties have become insolvent, the court may, by rule or order, require the appellant to
15 execute, file and serve a new undertaking, as above. In case of neglect to execute such
16 undertaking within twenty days after the service of a copy of the rule or order requiring it, the
17 appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a
18 party to an action or proceeding to give a bond or an undertaking with surety or sureties, he
19 may, in lieu thereof, deposit with the officer into court money to the amount of the bond or
20 undertaking to be given. The court in which the action or proceeding is pending may direct
21 what disposition shall be made of such money pending the action or proceeding. In a case
22 where, by this section, the money is to be deposited with an officer, a judge of the court, upon
23 the application of either party, may, at any time before the deposit is made, order the money
24 deposited in court instead of with the officer; and a deposit made pursuant to such order is of
25 the same effect as if made with the officer. The perfecting of an appeal by giving the
26 undertaking mentioned in this section stays proceedings in the court below upon the judgment
27 appealed from; except when the sale of perishable property is directed, the court below may
28 order the property to be sold and the proceeds thereof to be deposited or invested, to abide the
29 judgment of the appellate court.

30 (b) If the appellee in a civil action brought under any legal theory obtains a judgment
31 directing the payment or expenditure of money in the amount of twenty five million dollars
32 (\$25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the
33 period of time during which the appellant has the right to pursue appellate review, including
34 discretionary review and certiorari, the amount of the undertaking that the appellant is required
35 to execute to stay execution of the judgment during the entire period of the appeal shall be
36 twenty five million dollars (\$25,000,000).



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

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

15 **SECTION 2.** This act becomes effective October 1, 2009, and applies to judgments
16 entered on or after that date.