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THE STATE SENATE
Monday, February 22, 2010

Committee Substitute for
Senate Bill No. 2125

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2125 - By: Burrage of the Senate and Sherrer of the House.

[civil procedure - bond - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 990.4, as last amended by Section 8, Chapter 228, O.S.L. 2009 (12 O.S. Supp. 2009, Section 990.4), is amended to read as follows:

Section 990.4 A. Except as provided in subsection C of this section, a party may obtain a stay of the enforcement of a judgment, decree or final order:

- 1. While a posttrial motion is pending;
- 2. During the time in which an appeal may be commenced in any court in or outside of this state; or
- 3. While an appeal is pending in any court in or outside of this state.

Such stay may be obtained by filing with the court clerk a written undertaking and the posting of a supersedeas bond or other security as provided in this section. In the undertaking the appellant shall agree to satisfy the judgment, decree or final order, and pay the costs and interest on appeal, if it is affirmed. The undertaking

1 and supersedeas bond or security may be given at any time. The stay
2 is effective when the bond and the sufficiency of the sureties are
3 approved by the trial court or the security is deposited with the
4 court clerk. The enforcement of the judgment, decree or order shall
5 no longer be stayed, and the judgment, decree or order may be
6 enforced against any surety on the bond or other security:

7 1. If neither a posttrial motion nor a petition in error is
8 filed, and the time for appeal has expired;

9 2. If a posttrial motion is no longer pending, no petition in
10 error has been filed, and the time for appeal has expired; or

11 3. If an appeal is no longer pending.

12 B. The amount of the bond or other security shall be as
13 follows:

14 1. When the judgment, decree or final order is for payment of
15 money:

16 a. Subject to the limitations hereinafter provided, the
17 bond shall be double the amount of the judgment,
18 decree or final order, unless the bond is executed or
19 guaranteed by a surety as hereinafter provided. The
20 bond shall be for the amount of the judgment, decree
21 or order including costs and interest on appeal where
22 it is executed or guaranteed by an entity with
23 suretyship powers as provided by the laws of Oklahoma.

- 1 b. Upon a showing by the judgment debtor that the
2 judgment debtor is likely to suffer substantial
3 economic harm if required to post bond in the amount
4 required by this paragraph, the court shall balance
5 the likely substantial economic harm to the judgment
6 debtor with the ability of the judgment creditor to
7 collect the judgment in the event the judgment is
8 affirmed on appeal and may lower the bond accordingly.
9 "Substantial economic harm" means insolvency or
10 creating a significant risk of insolvency. The court
11 shall not lower a bond as provided in this paragraph
12 to the extent there is in effect an insurance policy,
13 or agreement under which a third party is liable to
14 satisfy part or all of the judgment entered and such
15 party is required to post all or part of the bond.
- 16 c. Subject to the limitations contained in this
17 paragraph, the bond shall not exceed Twenty-five
18 Million Dollars (\$25,000,000.00).
- 19 d. Upon limiting the bond pursuant to subparagraphs b or
20 c of this paragraph, the court shall enter an order
21 enjoining a judgment debtor from dissipating or
22 transferring assets to avoid satisfaction of the
23 judgment, but the court shall not make any order that

1 interferes with the judgment debtor's use of assets in
2 the normal course of business. If it is proven by a
3 preponderance of the evidence that the appellant for
4 whom the bond would be or has been limited pursuant to
5 subparagraph b or c of this paragraph likely will be
6 or is intentionally dissipating or diverting assets or
7 engaging in other conduct outside of the ordinary
8 course of its business for the purpose of avoiding
9 payment of the judgment, the court shall enter such
10 orders as are necessary to prevent such conduct
11 including, but not limited to, requiring that a bond
12 be posted equal to the full amount of security
13 required pursuant to this section, without the
14 reduction or limitations allowed by subparagraph b or
15 c of this paragraph.

16 e. Instead of filing a supersedeas bond, the appellant
17 may obtain a stay by depositing cash with the court
18 clerk in the amount of the judgment or order plus an
19 amount that the court determines will cover costs and
20 interest on appeal. The court shall have discretion
21 to accept United States Treasury notes or general
22 obligation bonds of the State of Oklahoma in lieu of
23 cash. If the court accepts such notes or bonds, it

1 shall make appropriate orders for their safekeeping
2 and maintenance during the stay;

3 2. When the judgment, decree or final order directs execution
4 of a conveyance or other instrument, the amount of the bond shall be
5 determined by the court. Instead of posting a supersedeas bond or
6 other security, the appellant may execute the conveyance or other
7 instrument and deliver it to the clerk of the court for deposit with
8 a public or private entity for safekeeping, as directed by the court
9 in writing;

10 3. When the judgment, decree or final order directs the
11 delivery of possession of real or personal property, the bond shall
12 be in an amount, to be determined by the court, that will protect
13 the interests of the parties. The court may consider the value of
14 the use of the property, any waste that may be committed on or to
15 the property during the pendency of the stay, the value of the
16 property, and all costs. When the judgment, decree or final order
17 is for the sale of mortgaged premises and the payment of a
18 deficiency arising from the sale, the bond must also provide for the
19 payment of the deficiency;

20 4. When the judgment or final order directs the assignment or
21 delivery of documents, they may be placed in the custody of the
22 clerk of the court in which the judgment or order was rendered, for
23 deposit with a public or private entity for safekeeping during the

1 pendency of the stay, as directed by the court in writing, or the
2 bond shall be in such sum as may be prescribed by the court; ~~or~~

3 5. The bond in any action or litigation brought under any legal
4 theory involving a nonparticipating manufacturer to the Master
5 Settlement Agreement dated November 23, 1998, shall be in an amount
6 not to exceed one hundred percent (100%) of the judgment, exclusive
7 of interest and costs, ten percent (10%) of the net worth of the
8 judgment debtor, or Twenty-five Million Dollars (\$25,000,000.00),
9 whichever is less. Provided, however, these bond limitations shall
10 not apply to judgments in favor of the State of Oklahoma, its
11 agencies or officers; or

12 6. In order to protect any monies payable to the Tobacco
13 Settlement Fund as set forth in Section 50 of Title 62 of the
14 Oklahoma Statutes, the bond in any action or litigation brought
15 under any legal theory involving a signatory, successor of a
16 signatory or an affiliate of a signatory to the Master Settlement
17 Agreement dated November 23, 1998, or a signatory, successor of a
18 signatory or an affiliate of a signatory to the Smokeless Tobacco
19 Master Settlement Agreement, also dated November 23, 1998, shall be
20 in an amount not to exceed one hundred percent (100%) of the
21 judgment, exclusive of interest and costs, ten percent (10%) of the
22 net worth of the judgment debtor, or Twenty-five Million Dollars
23 (\$25,000,000.00), whichever is less. However, if it is proved by a

1 preponderance of the evidence that the appellant for whom the bond
2 has been limited pursuant to this paragraph is intentionally
3 dissipating or diverting assets outside of the ordinary course of
4 its business for the purpose of avoiding payment of the judgment,
5 the court shall enter such orders as are necessary to prevent
6 dissipation or diversion, including, but not limited to, requiring
7 that a bond be posted equal to the full amount of security required
8 pursuant to this section. For purposes of this paragraph, "Master
9 Settlement Agreement" shall have the same meaning as that term is
10 defined in paragraph 5 of Section 600.22 of Title 37 of the Oklahoma
11 Statutes, and "Smokeless Tobacco Master Settlement Agreement" means
12 the settlement agreement and related documents entered into on
13 November 23, 1998, by this state and leading United States smokeless
14 tobacco product manufacturers.

15 C. Subsections A and B of this section shall not apply in
16 actions involving temporary or permanent injunctions, actions for
17 divorce, separate maintenance, annulment, paternity, custody,
18 adoption, or termination of parental rights, or in juvenile matters,
19 postdecree matrimonial proceedings or habeas corpus proceedings.
20 The trial or appellate court, in its discretion, may stay the
21 enforcement of any provision in a judgment, decree or final order in
22 any of the types of actions or proceedings listed in this subsection
23 during the pendency of the appeal or while any posttrial motion is

1 pending upon such terms as to bond or otherwise as it considers
2 proper for the security of the rights of the parties. If a
3 temporary or permanent injunction is denied or dissolved, the trial
4 or appellate court, in its discretion, may restore or grant an
5 injunction during the pendency of the appeal and while any posttrial
6 motions are pending upon such terms as to bond or otherwise as it
7 considers proper for the security of the rights of the parties.

8 D. In any action not provided for in subsection A, B or C of
9 this section, the court may stay the enforcement of any judgment,
10 decree or final order during the pendency of the appeal or while any
11 posttrial motion is pending upon such terms as to bond or otherwise
12 as it considers proper for the security of the rights of the
13 parties.

14 E. The trial court shall have continuing jurisdiction during
15 the pendency of any posttrial motion and appeal to modify any order
16 it has entered regarding security or other conditions in connection
17 with a stay.

18 F. The execution of a supersedeas bond shall not be a condition
19 for the granting of a stay of judgment, decree or final order of any
20 judicial tribunal against any county, municipality, or other
21 political subdivision of the State of Oklahoma.

22 G. Executors, administrators and guardians who have given bond
23 in this state, with sureties, according to law, are not required to

1 provide a supersedeas bond if they are granted a stay of enforcement
2 of a judgment, decree or final order.

3 H. After an appeal has been decided, but before the mandate has
4 issued, a party whose trial court judgment has been affirmed, may
5 move the appellate court to order judgment on the bond or other
6 security in the amount of the judgment plus interest, appeals costs
7 and allowable appeal-related attorney fees. After mandate has
8 issued, a party who has posted a bond or other security may move for
9 exoneration of the bond or other security only in the trial court;
10 and all motions concerning the bond or other security must be
11 addressed to the trial court.

12 I. For judgments entered after November 1, 2009, appeal bonds
13 shall not be required for appeals of punitive damages.

14 SECTION 2. This act shall become effective November 1, 2010.

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-17-10 - DO
16 PASS, As Amended and Coauthored.