

1 STATE OF OKLAHOMA

2 1st Extraordinary Session of the 54th Legislature (2013)

3 SENATE BILL 3x

By: Bingman and Sykes of the
Senate

4 and

5 Shannon of the House
6

7
8 AS INTRODUCED

9 An Act relating to appeal bonds; repealing Section 8,
Chapter 228, O.S.L 2009; amending 12 O.S. 2011,
10 Section 990.4, which relates to stay of enforcement
of judgments; modifying ground for obtaining certain
11 stay; removing certain limitation; modifying
requirements for certain orders; removing certain
12 exemption; amending 12 O.S. 2011, Section 990.4, as
amended by Section 2 of this act; which relates to
13 stay of enforcement of judgments; modifying grounds
for obtaining certain stay; limiting amount of appeal
14 bond; authorizing court to enter certain orders;
removing requirement for certain appeal bonds after
15 certain date; and declaring an emergency.
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18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. REPEALER Section 8, Chapter 228, O.S.L. 2009,
20 is hereby repealed.

21 SECTION 2. AMENDATORY 12 O.S. 2011, Section 990.4, is
22 amended to read as follows:
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24

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

4 1. While a ~~posttrial~~ post-trial motion is pending;

5 2. During the time in which an appeal may be commenced ~~in any~~
6 ~~court in or outside of this state~~; or

7 3. While an appeal is pending ~~in any court in or outside of~~
8 ~~this state~~.

9 Such stay may be obtained by filing with the court clerk a written
10 undertaking and the posting of a supersedeas bond or other security
11 as provided in this section. In the undertaking the appellant shall
12 agree to satisfy the judgment, decree or final order, and pay the
13 costs and interest on appeal, if it is affirmed. The undertaking
14 and supersedeas bond or security may be given at any time. The stay
15 is effective when the bond and the sufficiency of the sureties are
16 approved by the trial court or the security is deposited with the
17 court clerk. The enforcement of the judgment, decree or order shall
18 no longer be stayed, and the judgment, decree or order may be
19 enforced against any surety on the bond or other security:

20 1. If neither a ~~posttrial~~ post-trial motion nor a petition in
21 error is filed, and the time for appeal has expired;

22 2. If a ~~posttrial~~ post-trial motion is no longer pending, no
23 petition in error has been filed, and the time for appeal has
24 expired; or

1 3. If an appeal is no longer pending.

2 B. The amount of the bond or other security shall be as
3 follows:

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

6 a. ~~Subject to the limitations hereinafter provided,~~ the
7 bond shall be double the amount of the judgment,
8 decree or final order, unless the bond is executed or
9 guaranteed by a surety as hereinafter provided. The
10 bond shall be for the amount of the judgment, decree
11 or order including costs and interest on appeal where
12 it is executed or guaranteed by an entity with
13 suretyship powers as provided by the laws of Oklahoma.

14 ~~b. Upon~~ On a showing by the judgment debtor that the
15 judgment debtor is likely to suffer substantial
16 economic harm if required to post bond in the amount
17 required by this paragraph, the court shall balance
18 the likely substantial economic harm to the judgment
19 debtor with the ability of the judgment creditor to
20 collect the judgment in the event the judgment is
21 affirmed on appeal and may lower the bond accordingly.
22 "Substantial economic harm" means insolvency or
23 creating a significant risk of insolvency. The court
24 shall not lower a bond as provided in this paragraph

1 to the extent there is in effect an insurance policy,
2 or agreement under which a third party is liable to
3 satisfy part or all of the judgment entered and such
4 party is required to post all or part of the bond.

5 ~~e. Subject to the limitations contained in this~~
6 ~~paragraph, the bond shall not exceed Twenty-five~~
7 ~~Million Dollars (\$25,000,000.00).~~

8 ~~d. Upon limiting lowering the bond pursuant to~~
9 ~~subparagraphs b or c of as provided in this paragraph,~~
10 ~~the court shall enter an order enjoining a judgment~~
11 ~~debtor from dissipating or transferring assets to~~
12 ~~avoid satisfaction of the judgment, but the court~~
13 ~~shall not make any order that interferes with the~~
14 ~~judgment debtor's use of assets in the normal course~~
15 ~~of business. If it is proven by a preponderance of~~
16 ~~the evidence that the appellant for whom the bond~~
17 ~~would be or has been limited pursuant to subparagraph~~
18 ~~b or c of this paragraph likely will be or is~~
19 ~~intentionally dissipating or diverting assets or~~
20 ~~engaging in other conduct outside of the ordinary~~
21 ~~course of its business for the purpose of avoiding~~
22 ~~payment of the judgment, the court shall enter such~~
23 ~~orders as are necessary to prevent such conduct~~
24 ~~including, but not limited to, requiring that a bond~~

1 ~~be posted equal to the full amount of security~~
2 ~~required pursuant to this section, without the~~
3 ~~reduction or limitations allowed by subparagraph b or~~
4 ~~e of this paragraph.; and~~

5 e. ~~Instead~~

6 b. instead of filing a supersedeas bond, the appellant
7 may obtain a stay by depositing cash with the court
8 clerk in the amount of the judgment or order plus an
9 amount that the court determines will cover costs and
10 interest on appeal. The court shall have discretion
11 to accept United States Treasury notes or general
12 obligation bonds of the State of Oklahoma in lieu of
13 cash. If the court accepts such notes or bonds, it
14 shall make appropriate orders for their safekeeping
15 and maintenance during the stay;

16 2. When the judgment, decree or final order directs execution
17 of a conveyance or other instrument, the amount of the bond shall be
18 determined by the court. Instead of posting a supersedeas bond or
19 other security, the appellant may execute the conveyance or other
20 instrument and deliver it to the clerk of the court for deposit with
21 a public or private entity for safekeeping, as directed by the court
22 in writing;

23 3. When the judgment, decree or final order directs the
24 delivery of possession of real or personal property, the bond shall

1 be in an amount, to be determined by the court, that will protect
2 the interests of the parties. The court may consider the value of
3 the use of the property, any waste that may be committed on or to
4 the property during the pendency of the stay, the value of the
5 property, and all costs. When the judgment, decree or final order
6 is for the sale of mortgaged premises and the payment of a
7 deficiency arising from the sale, the bond must also provide for the
8 payment of the deficiency;

9 4. When the judgment or final order directs the assignment or
10 delivery of documents, they may be placed in the custody of the
11 clerk of the court in which the judgment or order was rendered, for
12 deposit with a public or private entity for safekeeping during the
13 pendency of the stay, as directed by the court in writing, or the
14 bond shall be in such sum as may be prescribed by the court;

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

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1 6. In order to protect any monies payable to the Tobacco
2 Settlement Fund as set forth in Section 50 of Title 62 of the
3 Oklahoma Statutes, the bond in any action or litigation brought
4 under any legal theory involving a signatory, successor of a
5 signatory or an affiliate of a signatory to the Master Settlement
6 Agreement dated November 23, 1998, or a signatory, successor of a
7 signatory or an affiliate of a signatory to the Smokeless Tobacco
8 Master Settlement Agreement, also dated November 23, 1998, shall be
9 in an amount not to exceed one hundred percent (100%) of the
10 judgment, exclusive of interest and costs, ~~ten percent (10%) of the~~
11 ~~net worth of the judgment debtor,~~ or Twenty-five Million Dollars
12 (\$25,000,000.00), whichever is less. However, if it is proved by a
13 preponderance of the evidence that the appellant for whom the bond
14 has been limited pursuant to this paragraph is intentionally
15 dissipating or diverting assets outside of the ordinary course of
16 its business for the purpose of avoiding payment of the judgment,
17 the court shall enter such orders as are necessary to prevent
18 dissipation or diversion, including, but not limited to, requiring
19 that a bond be posted equal to the full amount of security required
20 pursuant to this section. For purposes of this paragraph, "Master
21 Settlement Agreement" shall have the same meaning as that term is
22 defined in paragraph 5 of Section 600.22 of Title 37 of the Oklahoma
23 Statutes, and "Smokeless Tobacco Master Settlement Agreement" means
24 the settlement agreement and related documents entered into on

1 November 23, 1998, by this state and leading United States smokeless
2 tobacco product manufacturers.

3 C. Subsections A and B of this section shall not apply in
4 actions involving temporary or permanent injunctions, actions for
5 divorce, separate maintenance, annulment, paternity, custody,
6 adoption, or termination of parental rights, or in juvenile matters,
7 ~~post-decree~~ post-decree matrimonial proceedings or habeas corpus
8 proceedings. The trial or appellate court, in its discretion, may
9 stay the enforcement of any provision in a judgment, decree or final
10 order in any of the types of actions or proceedings listed in this
11 subsection during the pendency of the appeal or while any ~~post-trial~~
12 post-trial motion is pending upon such terms as to bond or otherwise
13 as it considers proper for the security of the rights of the
14 parties. If a temporary or permanent injunction is denied or
15 dissolved, the trial or appellate court, in its discretion, may
16 restore or grant an injunction during the pendency of the appeal and
17 while any ~~post-trial~~ post-trial motions are pending upon such terms
18 as to bond or otherwise as it considers proper for the security of
19 the rights of the parties.

20 D. In any action not provided for in ~~subsection~~ subsections A,
21 B or C ~~of this section~~, the court may stay the enforcement of any
22 judgment, decree or final order during the pendency of the appeal or
23 while any ~~post-trial~~ post-trial motion is pending upon such terms as
24

1 to bond or otherwise as it considers proper for the security of the
2 rights of the parties.

3 E. The trial court shall have continuing jurisdiction during
4 the pendency of any ~~posttrial~~ post-trial motion and appeal to modify
5 any order it has entered regarding security or other conditions in
6 connection with a stay.

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

11 G. Executors, administrators and guardians who have given bond
12 in this state, with sureties, according to law, are not required to
13 provide a supersedeas bond if they are granted a stay of enforcement
14 of a judgment, decree or final order.

15 H. After an appeal has been decided, but before the mandate has
16 issued, a party whose trial court judgment has been affirmed, may
17 move the appellate court to order judgment on the bond or other
18 security in the amount of the judgment plus interest, appeals costs
19 and allowable appeal-related attorney fees. After mandate has
20 issued, a party who has posted a bond or other security may move for
21 exoneration of the bond or other security only in the trial court;
22 and all motions concerning the bond or other security must be
23 addressed to the trial court.

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

3 SECTION 3. AMENDATORY 12 O.S. 2011, Section 990.4, as
4 amended by Section 2 of this act, is amended to read as follows:

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

8 1. While a ~~post-trial~~ posttrial motion is pending;

9 2. During the time in which an appeal may be commenced in any
10 court in or outside of this state; or

11 3. While an appeal is pending in any court in or outside of
12 this state.

13 Such stay may be obtained by filing with the court clerk a written
14 undertaking and the posting of a supersedeas bond or other security
15 as provided in this section. In the undertaking the appellant shall
16 agree to satisfy the judgment, decree or final order, and pay the
17 costs and interest on appeal, if it is affirmed. The undertaking
18 and supersedeas bond or security may be given at any time. The stay
19 is effective when the bond and the sufficiency of the sureties are
20 approved by the trial court or the security is deposited with the
21 court clerk. The enforcement of the judgment, decree or order shall
22 no longer be stayed, and the judgment, decree or order may be
23 enforced against any surety on the bond or other security:

1 1. If neither a ~~post-trial~~ posttrial motion nor a petition in
2 error is filed, and the time for appeal has expired;

3 2. If a ~~post-trial~~ posttrial motion is no longer pending, no
4 petition in error has been filed, and the time for appeal has
5 expired; or

6 3. If an appeal is no longer pending.

7 B. The amount of the bond or other security shall be as
8 follows:

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

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

19 b. ~~On~~ Upon a showing by the judgment debtor that the
20 judgment debtor is likely to suffer substantial
21 economic harm if required to post bond in the amount
22 required by this paragraph, the court shall balance
23 the likely substantial economic harm to the judgment
24 debtor with the ability of the judgment creditor to

1 collect the judgment in the event the judgment is
2 affirmed on appeal and may lower the bond accordingly.

3 "Substantial economic harm" means insolvency or
4 creating a significant risk of insolvency. The court
5 shall not lower a bond as provided in this paragraph
6 to the extent there is in effect an insurance policy,
7 or agreement under which a third party is liable to
8 satisfy part or all of the judgment entered and such
9 party is required to post all or part of the bond.

10 c. Subject to the limitations contained in this
11 paragraph, the bond shall not exceed Twenty-five
12 Million Dollars (\$25,000,000.00).

13 d. Upon ~~lowering~~ limiting the bond as ~~provided in~~
14 pursuant to subparagraphs b or c of this paragraph,
15 the court shall enter an order enjoining a judgment
16 debtor from dissipating or transferring assets to
17 avoid satisfaction of the judgment, but the court
18 shall not make any order that interferes with the
19 judgment debtor's use of assets in the normal course
20 of business; ~~and~~. If it is proven by a preponderance
21 of the evidence that the appellant for whom the bond
22 would be or has been limited pursuant to subparagraph
23 b or c of this paragraph likely will be or is
24 intentionally dissipating or diverting assets or

1 engaging in other conduct outside of the ordinary
2 course of its business for the purpose of avoiding
3 payment of the judgment, the court shall enter such
4 orders as are necessary to prevent such conduct
5 including, but not limited to, requiring that a bond
6 be posted equal to the full amount of security
7 required pursuant to this section, without the
8 reduction or limitations allowed by subparagraph b or
9 c of this paragraph.

10 ~~b.~~ ~~instead~~

11 e. Instead of filing a supersedeas bond, the appellant
12 may obtain a stay by depositing cash with the court
13 clerk in the amount of the judgment or order plus an
14 amount that the court determines will cover costs and
15 interest on appeal. The court shall have discretion
16 to accept United States Treasury notes or general
17 obligation bonds of the State of Oklahoma in lieu of
18 cash. If the court accepts such notes or bonds, it
19 shall make appropriate orders for their safekeeping
20 and maintenance during the stay;

21 2. When the judgment, decree or final order directs execution
22 of a conveyance or other instrument, the amount of the bond shall be
23 determined by the court. Instead of posting a supersedeas bond or
24 other security, the appellant may execute the conveyance or other

1 instrument and deliver it to the clerk of the court for deposit with
2 a public or private entity for safekeeping, as directed by the court
3 in writing;

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

14 4. When the judgment or final order directs the assignment or
15 delivery of documents, they may be placed in the custody of the
16 clerk of the court in which the judgment or order was rendered, for
17 deposit with a public or private entity for safekeeping during the
18 pendency of the stay, as directed by the court in writing, or the
19 bond shall be in such sum as may be prescribed by the court;

20 5. The bond in any action or litigation brought under any legal
21 theory involving a nonparticipating manufacturer to the Master
22 Settlement Agreement dated November 23, 1998, shall be in an amount
23 not to exceed one hundred percent (100%) of the judgment, exclusive
24 of interest and costs, ten percent (10%) of the net worth of the

1 judgment debtor, or Twenty-five Million Dollars (\$25,000,000.00),
2 whichever is less. Provided, however, these bond limitations shall
3 not apply to judgments in favor of the State of Oklahoma, its
4 agencies or officers; or

5 6. In order to protect any monies payable to the Tobacco
6 Settlement Fund as set forth in Section 50 of Title 62 of the
7 Oklahoma Statutes, the bond in any action or litigation brought
8 under any legal theory involving a signatory, successor of a
9 signatory or an affiliate of a signatory to the Master Settlement
10 Agreement dated November 23, 1998, or a signatory, successor of a
11 signatory or an affiliate of a signatory to the Smokeless Tobacco
12 Master Settlement Agreement, also dated November 23, 1998, shall be
13 in an amount not to exceed one hundred percent (100%) of the
14 judgment, exclusive of interest and costs, ten percent (10%) of the
15 net worth of the judgment debtor, or Twenty-five Million Dollars
16 (\$25,000,000.00), whichever is less. However, if it is proved by a
17 preponderance of the evidence that the appellant for whom the bond
18 has been limited pursuant to this paragraph is intentionally
19 dissipating or diverting assets outside of the ordinary course of
20 its business for the purpose of avoiding payment of the judgment,
21 the court shall enter such orders as are necessary to prevent
22 dissipation or diversion, including, but not limited to, requiring
23 that a bond be posted equal to the full amount of security required
24 pursuant to this section. For purposes of this paragraph, "Master

1 Settlement Agreement" shall have the same meaning as that term is
2 defined in paragraph 5 of Section 600.22 of Title 37 of the Oklahoma
3 Statutes, and "Smokeless Tobacco Master Settlement Agreement" means
4 the settlement agreement and related documents entered into on
5 November 23, 1998, by this state and leading United States smokeless
6 tobacco product manufacturers.

7 C. Subsections A and B of this section shall not apply in
8 actions involving temporary or permanent injunctions, actions for
9 divorce, separate maintenance, annulment, paternity, custody,
10 adoption, or termination of parental rights, or in juvenile matters,
11 ~~post-decree~~ postdecree matrimonial proceedings or habeas corpus
12 proceedings. The trial or appellate court, in its discretion, may
13 stay the enforcement of any provision in a judgment, decree or final
14 order in any of the types of actions or proceedings listed in this
15 subsection during the pendency of the appeal or while any ~~post-trial~~
16 posttrial motion is pending upon such terms as to bond or otherwise
17 as it considers proper for the security of the rights of the
18 parties. If a temporary or permanent injunction is denied or
19 dissolved, the trial or appellate court, in its discretion, may
20 restore or grant an injunction during the pendency of the appeal and
21 while any ~~post-trial~~ posttrial motions are pending upon such terms
22 as to bond or otherwise as it considers proper for the security of
23 the rights of the parties.

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1 D. In any action not provided for in ~~subsections~~ subsection A,
2 B or C of this section, the court may stay the enforcement of any
3 judgment, decree or final order during the pendency of the appeal or
4 while any ~~post-trial~~ posttrial motion is pending upon such terms as
5 to bond or otherwise as it considers proper for the security of the
6 rights of the parties.

7 E. The trial court shall have continuing jurisdiction during
8 the pendency of any ~~post-trial~~ posttrial motion and appeal to modify
9 any order it has entered regarding security or other conditions in
10 connection with a stay.

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

15 G. Executors, administrators and guardians who have given bond
16 in this state, with sureties, according to law, are not required to
17 provide a supersedeas bond if they are granted a stay of enforcement
18 of a judgment, decree or final order.

19 H. After an appeal has been decided, but before the mandate has
20 issued, a party whose trial court judgment has been affirmed, may
21 move the appellate court to order judgment on the bond or other
22 security in the amount of the judgment plus interest, appeals costs
23 and allowable appeal-related attorney fees. After mandate has
24 issued, a party who has posted a bond or other security may move for

1 exoneration of the bond or other security only in the trial court;
2 and all motions concerning the bond or other security must be
3 addressed to the trial court.

4 I. For judgments entered after the effective date of this act,
5 appeal bonds shall not be required for appeals of punitive damages.

6 SECTION 4. It being immediately necessary for the preservation
7 of the public peace, health and safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

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