

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 372

By: Taylor of the Senate

and

Adair of the House

COMMITTEE SUBSTITUTE

An Act relating to tobacco settlement funds; amending Section 2, Chapter 47, O.S.L. 2000, as amended by Section 24, Chapter 8, 1st Extraordinary Session, O.S.L. 2000 (62 O.S. Supp. 2000, Section 50), which relates to the Tobacco Settlement Fund; modifying reference; providing that monies not be paid out of fund except pursuant to legislative appropriation; providing for appointments and staggered terms of office for Board of Investors of the Tobacco Settlement Endowment Trust Fund and Board of Directors of the Tobacco Settlement Endowment Trust Fund; providing for filling of vacancies thereon; amending Section 21, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 2000, Section 990.4), which relates to stay of enforcement of judgments; establishing certain bond amount for judgments relating to tobacco litigation; providing exception; defining terms; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 47, O.S.L. 2000, as amended by Section 24, Chapter 8, 1st Extraordinary Session, O.S.L. 2000 (62 O.S. Supp. 2000, Section 50), is amended to read as follows:

Section 50. There is hereby created in the State Treasury a revolving fund to be known and designated as the Tobacco Settlement Fund, into which fund shall be deposited:

1. All monies received by the state or any official, agency or department of the state in settlement of claims by the state against tobacco manufacturers during the month of April 2000;

2. All monies received by the state or any official, agency or department of the state in settlement of claims by the state against tobacco manufacturers during fiscal year 2001;

3. Except as provided in Section 19 of Title 74 of the Oklahoma Statutes, that portion of monies received by the state or any official, agency or department of the state in settlement of claims by the state against tobacco manufacturers which is not otherwise apportioned ~~in~~ pursuant to the provisions of Section 40 of Article X of the Oklahoma Constitution during fiscal year 2002 and subsequent fiscal years; and

4. Such other monies as may be appropriated or otherwise directed thereto by law.

The Tobacco Settlement Fund shall be a continuing fund, not subject to fiscal year limitations. No monies shall be paid out of such fund except pursuant to ~~authorization~~ appropriation by the Legislature.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50.1 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Appointments to the Board of Investors of the Tobacco Settlement Endowment Trust Fund shall be made as provided in this section, pursuant to the provisions of Section 40 of Article X of the Oklahoma Constitution. The initial staggered terms of office of persons appointed prior to the effective date of this act shall be as follows:

1. The term of office of the person appointed by the Speaker of the House of Representatives shall expire June 30, 2001;

2. The term of office of the person appointed by the President Pro Tempore of the Senate shall expire June 30, 2002;

3. The term of office of the person appointed by the Governor shall expire June 30, 2003; and

4. The term of office of the person appointed by the State Auditor and Inspector shall expire June 30, 2004.

Thereafter, persons shall be appointed for terms of four (4) years beginning July 1. Any vacancy shall be filled by the appointing authority for the remainder of the unexpired term.

B. Appointments to the Board of Directors of the Tobacco Settlement Endowment Trust Fund shall be made as provided in this section, pursuant to the provisions of Section 40 of Article X of the Oklahoma Constitution. The initial staggered terms of office of persons appointed prior to the effective date of this act shall be as follows:

1. The term of office of the person appointed by the Speaker of the House of Representatives shall expire June 30, 2001;

2. The term of office of the person appointed by the President Pro Tempore of the Senate shall expire June 30, 2002;

3. The term of office of the person appointed by the Governor shall expire June 30, 2003;

4. The term of office of the person appointed by the Attorney General shall expire June 30, 2004;

5. The term of office of the person appointed by the State Treasurer shall expire June 30, 2005;

6. The term of office of the person appointed by the State Auditor and Inspector shall expire June 30, 2006; and

7. The term of office of the person appointed by the State Superintendent of Public Instruction shall expire June 30, 2007.

Thereafter, persons shall be appointed for terms of seven (7) years beginning July 1. Any vacancy shall be filled by the appointing authority for the remainder of the unexpired term.

SECTION 3. AMENDATORY Section 21, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 2000, 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 post-trial motion is pending;
2. During the time in which an appeal may be commenced; or
3. While an appeal is pending.

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

1. If neither a post-trial motion nor a petition in error is filed, and the time for appeal has expired;
2. If a post-trial motion is no longer pending, no petition in error has been filed, and the time for appeal has expired; or
3. If an appeal is no longer pending.

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

1. When the judgment, decree or final order is for payment of money:
 - a. The bond shall be double the amount of the judgment, decree or final order, unless the bond is executed or guaranteed by a surety as hereinafter provided. The bond shall be for the amount of the judgment, decree or order including costs and interest on appeal where

it is executed or guaranteed by an entity with suretyship powers as provided by the laws of Oklahoma.

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

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

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

4. When the judgment or final order directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment or order was rendered, for

deposit with a public or private entity for safekeeping during the pendency of the stay, as directed by the court in writing, or the bond shall be in such sum as may be prescribed by the court; or

5. In order to protect any monies payable to the Tobacco Settlement Fund as set forth in Section 50 of Title 62 of the Oklahoma Statutes, the bond in any action or litigation involving a tobacco product manufacturer that is a party to the Master Settlement Agreement dated November 23, 1998, or a party to the Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of interest and costs, or Twenty-five Million Dollars (\$25,000,000.00), whichever is less. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited pursuant to this paragraph is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion, including, but not limited to, requiring that a bond be posted equal to the full amount of security required pursuant to this section. For purposes of this paragraph, "Master Settlement Agreement" and "tobacco product manufacturer" shall have the same meanings as those terms are defined in paragraphs 5 and 9 of Section 600.22 of Title 37 of the Oklahoma Statutes, and "Smokeless Tobacco Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and leading United States smokeless tobacco product manufacturers.

C. Subsections A and B of this section shall not apply in actions involving temporary or permanent injunctions, actions for divorce, separate maintenance, annulment, paternity, custody, adoption, or termination of parental rights, or in juvenile matters, post-decree matrimonial proceedings or habeas corpus proceedings.

The trial or appellate court, in its discretion, may stay the enforcement of any provision in a judgment, decree or final order in any of the types of actions or proceedings listed in this subsection during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties. If a temporary or permanent injunction is denied or dissolved, the trial or appellate court, in its discretion, may restore or grant an injunction during the pendency of the appeal and while any post-trial motions are pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

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

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

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

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

H. After an appeal has been decided, but before the mandate has issued, a party whose trial court judgment has been affirmed, may move the appellate court to order judgment on the bond or other security in the amount of the judgment plus interest, appeals costs

and allowable appeal-related attorney's fees. After mandate has issued, a party who has posted a bond or other security may move for exoneration of the bond or other security only in the trial court; and all motions concerning the bond or other security must be addressed to the trial court.

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

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