

ENROLLED SENATE
BILL NO. 725

By: Smith of the Senate

and

Toure of the House

An Act relating to civil procedure; amending 12 O.S. 2001, Sections 721 and 990.4, which relate to foreign judgments and stays of enforcement; modifying requirements for filing certain judgments for specified purpose; limiting bond required to be paid by certain parties; clarifying applicability of provision; amending Section 10 of Enrolled House Bill No. 1574 of the 1st Session of the 49th Oklahoma Legislature, which relates to certain mortgages; removing certain arbitration provisions; amending 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2002, Section 9.1), which relates to punitive damages; modifying requirements for certain findings; amending 30 O.S. 2001, Sections 4-201 and 4-303, which relate to guardian's bond and settlement of accounts; modifying requirement for certain finding by court; modifying requirements for filing of certain report; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 721, is amended to read as follows:

Section 721. A copy of any foreign judgment authenticated in accordance with the applicable Act of Congress or of the statutes of this state may be filed in the office of the court clerk of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner. Provided, however, that no such filed foreign judgment shall be a lien on real estate of the judgment debtor until ~~a certified copy of the judgment so filed is also filed in the office of the county clerk in the county where the real estate is located~~ the judgment creditor complies with the requirements of subsection B of Section 706 of this title.

SECTION 2. AMENDATORY 12 O.S. 2001, 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;

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;

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;

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 brought under any legal theory involving a tobacco product manufacturer that is a party signatory, successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement dated November 23, 1998, or a party signatory, successor of a signatory, or an affiliate of a signatory 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 3. AMENDATORY Section 10 of Enrolled House Bill No. 1574 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 10. (1) Limitation on terms on subsection 10 mortgages. A subsection 10 mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes shall not contain a demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

- (a) there is fraud or material misrepresentation by the consumer in connection with the loan;
- (b) the consumer fails to meet the repayment terms of the agreement for any outstanding balance; or
- (c) there is any action or inaction by the consumer that adversely affects the creditor's security for the loan or, any right of the creditor in such security;

(2) Restriction on activities. In connection with a subsection 10 mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes:

- (a) a creditor shall not replace or consolidate a zero interest rate or other low-rate loan made by a governmental or nonprofit creditor with a subsection 10 mortgage within the first ten (10) years of the zero interest or other low-rate loan unless the current holder of the loan consents in writing to the refinancing. For purposes of this paragraph a "low-rate loan" is a loan that carries a current interest rate two (2) percentage points or more below the current yield on United States Department of the Treasury securities with a comparable maturity;
- (b) no creditor shall recommend or encourage default on an existing loan or other debt by an obligor before or in connection with the closing or planned closing of a subsection 10 mortgage that refinances all or any portion of such existing loan or debt;
- (c) a creditor extending mortgage credit subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes may not engage in a pattern or practice of extending credit subject to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. There is a presumption that a creditor has violated this subsection if the creditor engages in a pattern or practice of making subsection 10 mortgages without verifying and documenting consumers' repayment ability. A consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the total monthly debts of the consumer, including amounts owed under the loan, do not exceed fifty-five percent (55%) of the monthly gross income of the consumer as verified by the credit application, the financial statement of the consumer, a credit report, financial information provided to the creditor by or on behalf of the consumer, or any other reasonable means; provided, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the consumer's total

monthly debts, including amounts owed under the loan, exceed fifty-five percent (55%) of the monthly gross income of the consumer;

- (d) within one (1) year of having extended credit subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes, a creditor may not refinance any loan subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes to the same borrower into another loan subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes to the same borrower into another loan subject to subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes, unless the refinancing is in the borrower's interest. A creditor or assignee is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement, whether or not the existing loan is satisfied and replaced by the new loan, and charging a fee;
- (e) in connection with credit secured by the consumer's dwelling that does not meet the definition of open-end credit defined at 12 C.F.R. Section 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes;
- (f) ~~a subsection 10 mortgage referred to in subsection (10) of Section 1-301 of Title 14A of the Oklahoma Statutes shall not contain a mandatory arbitration provision that:~~
 - ~~(i) does not comply with rules set forth by a nationally recognized arbitration organization such as the American Arbitration Association,~~
 - ~~(ii) does not require the arbitration proceeding to be conducted:~~
 - ~~(aa) within the federal judicial district in which the subject property is located,~~
 - ~~(bb) in the city nearest the obligor's residence where a federal district court is located,~~
~~or~~

~~(cc) at such other location as may be mutually agreed upon by the parties,~~

~~(iii) does not require the creditor to contribute at least fifty percent (50%) of the amount of any filing fee, and~~

~~(iv) does not require the creditor to pay standard daily arbitration fees, both its own and those of the obligor, for at least the first day of arbitration;~~

~~(g)~~ a creditor or its servicer shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the creditor on a subsection 10 mortgage to a nationally recognized consumer credit reporting agency. This subsection shall not prevent a creditor or its servicer from agreeing with the obligor not to report payment history information in the event of a resolved or unresolved dispute with the obligor and shall not apply to subsection 10 mortgages held or serviced by a creditor for less than ninety (90) days.

(3) Preemption. The laws of this state relating to the brokering, originating, making, servicing and collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes prescribe rules of conduct on citizens generally, comprise a comprehensive regulatory framework intended to operate uniformly throughout the state under the same circumstances and conditions and constitute general laws of this state. Silence in the statutes of this state with respect to any act or practice in the brokering, originating, making, servicing or collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes shall not be interpreted to mean that the state has not completely occupied the field or has only set minimum standards in its regulation of brokering, originating, making, servicing or collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes. It is the intent of the Legislature to entirely preempt political subdivisions from the regulation and licensing of persons engaged in the brokering, originating, making, servicing or collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes in this state. No political subdivision shall enact any ordinance, resolution, local regulation, rule or law that regulates, directly or indirectly, the brokering, originating, making, servicing or collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes, the terms of mortgage loans subject to Title 14A of the Oklahoma Statutes or that makes the eligibility of any person or entity to do business with the political subdivision dependent on the terms of mortgage loans subject to Title 14A of the Oklahoma Statutes originated or serviced by such person or entity or that imposes any reporting requirements or other obligations on a person, or its subsidiaries or affiliates engaged in the brokering, originating, making, servicing or collecting of mortgage loans subject to Title 14A of the Oklahoma Statutes in this state. For purposes of this section, "political subdivision" means any county,

city, town, school district, or other local governmental or public entity, located within this state.

(4) Nothing in this section shall be construed to invalidate or prohibit any ordinance, resolution, regulation, rule or law by a political subdivision to establish and administer voluntary neighborhood reinvestment programs in furtherance of the goals and purposes of the "Community Reinvestment Act of 1977", 91 Stat. 1147, 12 U.S.C.A. 2901, as amended.

(5) Nothing in this section shall be construed to invalidate any ordinance, resolution, local regulation, rule or law by a political subdivision that is required to meet the criteria for adequacy of law established by the United States Department of Housing and Urban Development in order to obtain certification as a fair housing assistance program.

SECTION 4. AMENDATORY 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2002, Section 9.1), is amended to read as follows:

Section 9.1 A. In an action for the breach of an obligation not arising from contract, the jury, in addition to actual damages, may, subject to the provisions and limitations in subsections B, C and D of this section, award punitive damages for the sake of example and by way of punishing the defendant based upon the following factors:

1. The seriousness of the hazard to the public arising from the defendant's misconduct;
2. The profitability of the misconduct to the defendant;
3. The duration of the misconduct and any concealment of it;
4. The degree of the defendant's awareness of the hazard and of its excessiveness;
5. The attitude and conduct of the defendant upon discovery of the misconduct or hazard;
6. In the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and
7. The financial condition of the defendant.

B. Category I. Where the jury finds by clear and convincing evidence that:

1. The defendant has been guilty of reckless disregard for the rights of others; or
2. An insurer has recklessly disregarded its duty to deal fairly and act in good faith with its insured; the jury, in a separate proceeding conducted after the jury has made such finding

and awarded actual damages, may award punitive damages in an amount not to exceed the greater of:

- a. One Hundred Thousand Dollars (\$100,000.00), or
- b. the amount of the actual damages awarded.

Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

C. Category II. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or

2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured;

the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in an amount not to exceed the greatest of:

- a. Five Hundred Thousand Dollars (\$500,000.00),
- b. twice the amount of actual damages awarded, or
- c. the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing the injury to the plaintiff and other persons or entities.

The trial court shall reduce any award for punitive damages awarded pursuant to the provisions of subparagraph c of this paragraph by the amount it finds the defendant or insurer has previously paid as a result of all punitive damage verdicts entered in any court of this state for the same conduct by the defendant or insurer. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

D. Category III. 1. Where the jury finds by clear and convincing evidence that:

~~1. The~~

a. the defendant has acted intentionally and with malice towards others; ~~or~~

~~2. An~~

b. an insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; and ~~the~~

2. The court finds, on the record and out of the presence of the jury, that there is evidence beyond a reasonable doubt that the defendant or insurer acted intentionally and with malice and engaged in conduct life-threatening to humans, the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in any amount the jury deems appropriate, without regard to the limitations set forth in subsections B and C of this section. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

E. In determining the amount, if any, of punitive damages to be awarded under either subsection B, C or D of this section, the jury shall make the award based upon the factors set forth in subsection A of this section.

F. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

G. This section shall apply to all civil actions filed after the effective date of this act.

SECTION 5. AMENDATORY 30 O.S. 2001, Section 4-201, is amended to read as follows:

Section 4-201. A. Before the entry of an order appointing a person or organization as a guardian of the person and before the letters issue, the court may require the person or organization to be appointed to provide a bond to this state, with sufficient sureties, to be approved by the court, and in such penal sum as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

B. 1. Before the entry of an order appointing a person or organization as the guardian of a minor or as the guardian or limited guardian of the property of an incapacitated or partially incapacitated person takes effect, and before the letters issue, the court shall require the person or organization to be appointed to provide a bond, in an amount not less than the value of intangible personal property as alleged in the petition or otherwise determined by the court at the hearing on the petition, to this state, with sufficient sureties, to be approved by the court, and in such penal sum as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

2. Except as otherwise provided by paragraph 3 of this subsection, upon a finding by the court that:

- a. the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than Forty Thousand Dollars (\$40,000.00) ~~and~~

~~b. the guardian of the ward is either a parent, spouse, brother, sister, grandparent, child, or grandchild of the ward,~~

the court may order that a bond is not necessary. For purposes of this paragraph, personal property shall not include property owned with a joint tenant.

3. The provisions of this section shall not apply to cases subject to the Uniform Veterans Guardianship Act.

C. In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the court at the hearing on the petition, the guardian shall file at the time the inventory is filed a bond sufficient for the full amount of the intangible personal property, which bond will be in substitution for the bond originally filed on the appointment of the guardian. The amount of the bond in the future may be adjusted up or down in amount based upon the intangible personal property shown in future annual accountings; provided, however, no bond shall be reduced except upon order of the court.

SECTION 6. AMENDATORY 30 O.S. 2001, Section 4-303, is amended to read as follows:

Section 4-303. A. Except as otherwise provided by subsection B of this section, a guardian or limited guardian of the property shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the court for settlement and allowance as part of the guardianship report as required by Section 4-306 of this title.

B. 1. In addition, a guardian or limited guardian of the property shall:

- a. present accounts whenever the court requires that such report or accounts be presented, and
- b. with the annual report of accounts, report any changes of property listed on the inventory required by Section 4-301 of this title. The report shall state the compensation requested by the guardian and for the attorneys.

2. If there has been a significant change in the physical or mental condition of the ward, or the ward's financial resources, the details thereof shall be set forth in the annual report required by subsection A of this section.

3. Except as otherwise directed by the court or required by the Uniform Veteran's Guardianship Act (72 U.S.C. 126.1, et seq.), the provisions of this subsection regarding the filing of an annual accounting and annual plan shall not apply to any guardianship of the property of a ward if the ward's financial resources or assets, other than a homestead, are worth less than Forty Thousand Dollars (\$40,000.00) if a bond has been posted, or are worth less than Ten

Thousand Dollars (\$10,000.00) regardless of whether or not a bond has been posted, and if the guardian or limited guardian of the property is the spouse or a relative of the ward within the fourth degree of consanguinity.

C. In addition to the reports required by subsections A and B of this section, a guardian or limited guardian shall submit a report:

1. If the ward is an incapacitated or partially incapacitated person, when there is a significant change in the capacity of the ward to meet the essential requirements for the physical health or safety of the ward or to manage the financial resources of the ward;

2. If the ward is a minor, any significant change in the condition of the minor or in the condition of the estate of the minor;

3. When the guardian or limited guardian resigns or is removed; and

4. When the guardianship is terminated.

D. 1. Unless waived at the discretion of the court, a guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file a report on the guardianship of the person pursuant to Section 4-305 of this title.

2. ~~Unless waived at the discretion of the court, or not required by Section 21.5 of Title 10 of the Oklahoma Statutes, a~~ A guardian of the person of a minor ward shall not be required to file such annual reports of the guardianship of the person of the ward as required unless ordered by the court in such form as the court may require.

3. A guardian or limited guardian of the property of a ward shall file a report on the guardianship of the property pursuant to Section 4-306 of this title.

E. The court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same person or organization is required to file reports as to both the person and the property of a ward, the reports may be consolidated.

G. An accounting information submitted by a guardian or limited guardian of the property of a ward shall be verified and shall be rendered in the same manner as required by Title 58 of the Oklahoma Statutes with respect to an information of an estate of a decedent. Such information shall also set forth any charges to the property of the ward which have accrued since the previous accounting or, in the case of an initial accounting, since the filing of an inventory of the property of the ward placed under the control of the guardian or limited guardian.

H. In addition to other specified information any order of the court approving an annual guardianship plan and report shall include the date certain by which the guardian shall file the next annual report.

SECTION 7. This act shall become effective November 1, 2003.

Passed the Senate the 20th day of May, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 27th day of May, 2003.

Presiding Officer of the House
of Representatives