

THE HOUSE OF REPRESENTATIVES
Wednesday, March 31, 2010

ENGROSSED
Senate Bill No. 2125

ENGROSSED SENATE BILL NO. 2125 - By: BURRAGE of the Senate and SHERRER of the House.

An Act relating to civil procedure; amending 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), which relates to stay of enforcement; limiting bond for certain entities under specified circumstances; and providing an effective date.

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

- 1 SECTION 1. AMENDATORY 12 O.S. 2001, Section 990.4, as last amended by
2 Section 8, Chapter 228, O.S.L. 2009 (12 O.S. Supp. 2009, Section 990.4), is amended to
3 read as follows:
- 4 Section 990.4 A. Except as provided in subsection C of this section, a party may
5 obtain a stay of the enforcement of a judgment, decree or final order:
- 6 1. While a posttrial motion is pending;
7 2. During the time in which an appeal may be commenced in any court in or
8 outside of this state; or
9 3. While an appeal is pending in any court in or outside of this state.
- 10 Such stay may be obtained by filing with the court clerk a written undertaking and the
11 posting of a supersedeas bond or other security as provided in this section. In the

1 undertaking the appellant shall agree to satisfy the judgment, decree or final order, and
2 pay the costs and interest on appeal, if it is affirmed. The undertaking and supersedeas
3 bond or security may be given at any time. The stay is effective when the bond and the
4 sufficiency of the sureties are approved by the trial court or the security is deposited with
5 the court clerk. The enforcement of the judgment, decree or order shall no longer be
6 stayed, and the judgment, decree or order may be enforced against any surety on the
7 bond or other security:

- 8 1. If neither a posttrial motion nor a petition in error is filed, and the time for
9 appeal has expired;
- 10 2. If a posttrial motion is no longer pending, no petition in error has been filed, and
11 the time for appeal has expired; or
- 12 3. If an appeal is no longer pending.

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

11 5. The bond in any action or litigation brought under any legal theory involving a
12 nonparticipating manufacturer to the Master Settlement Agreement dated November 23,
13 1998, shall be in an amount not to exceed one hundred percent (100%) of the judgment,
14 exclusive of interest and costs, ten percent (10%) of the net worth of the judgment debtor,
15 or Twenty-five Million Dollars (\$25,000,000.00), whichever is less. Provided, however,
16 these bond limitations shall not apply to judgments in favor of the State of Oklahoma, its
17 agencies or officers; or

18 6. In order to protect any monies payable to the Tobacco Settlement Fund as set
19 forth in Section 50 of Title 62 of the Oklahoma Statutes, the bond in any action or
20 litigation brought under any legal theory involving a signatory, successor of a signatory
21 or an affiliate of a signatory to the Master Settlement Agreement dated November 23,
22 1998, or a signatory, successor of a signatory or an affiliate of a signatory to the

1 Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall
2 be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of
3 interest and costs, ten percent (10%) of the net worth of the judgment debtor, or Twenty-
4 five Million Dollars (\$25,000,000.00), whichever is less. However, if it is proved by a
5 preponderance of the evidence that the appellant for whom the bond has been limited
6 pursuant to this paragraph is intentionally dissipating or diverting assets outside of the
7 ordinary course of its business for the purpose of avoiding payment of the judgment, the
8 court shall enter such orders as are necessary to prevent dissipation or diversion,
9 including, but not limited to, requiring that a bond be posted equal to the full amount of
10 security required pursuant to this section. For purposes of this paragraph, “Master
11 Settlement Agreement” shall have the same meaning as that term is defined in
12 paragraph 5 of Section 600.22 of Title 37 of the Oklahoma Statutes, and “Smokeless
13 Tobacco Master Settlement Agreement” means the settlement agreement and related
14 documents entered into on November 23, 1998, by this state and leading United States
15 smokeless tobacco product manufacturers.

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

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

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

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

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

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

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

1 party who has posted a bond or other security may move for exoneration of the bond or
2 other security only in the trial court; and all motions concerning the bond or other
3 security must be addressed to the trial court.

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

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

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-30-10 - DO PASS.