

**2000**

**SENATE  
COMMITTEE OF THE  
WHOLE**

**SPECIAL SESSION**  
**CIVIL REMEDIES APPEAL**  
**BOND (TOBACCO)**  
**April 5**

**MINUTES**

**SENATE  
COMMITTEE OF THE WHOLE**

**APRIL 5, 2000**

**SENATOR MARC BASNIGHT, CHAIRMAN  
SUSAN M. MOORE, COMMITTEE ASSISTANT**

Minutes  
Senate Committee of the Whole  
April 5, 2000

The North Carolina Senate met as a Committee of the Whole on Wednesday, April 5, 2000 in the Senate Chamber at 9:30 a.m. A majority of members was present.

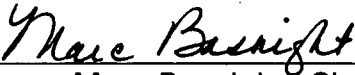
Senator Basnight, presiding as Chairman, called the meeting to order and recognized Senator Linda Garrou to explain Senate Bill 2 – AN ACT TO ALLOW THE STAY OF ENFORCEMENT OF CIVIL JUDGMENTS FOR DAMAGES IN ADDITION TO OR IN EXCESS OF COMPENSATORY DAMAGES UPON THE POSTING OF A BOND IN AN AMOUNT UP TO A MAXIMUM OF TWENTY-FIVE MILLION DOLLARS FOR THE AMOUNT OF NONCOMPENSATORY DAMAGES PLUS AN ADDITIONAL AMOUNT EQUAL TO THE AMOUNT OF THE AWARD FOR COMPENSATORY DAMAGES.

Senator Garrou reminded the Committee that the purpose of this legislation was the necessity to protect the jobs of workers in the tobacco industry until pending lawsuits can be resolved.

Walter Reagan, Committee Counsel, was recognized to give a technical explanation of the bill.

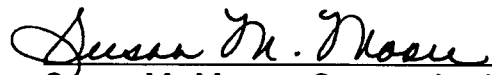
Senator William Martin moved to give the bill a favorable report. The motion carried by a majority vote.

There being no further business, the meeting was adjourned.



Senator Marc Basnight, Chairman

(Signed with permission of Sen. Basnight by  
Susan Moore)



Susan M. Moore, Comm. Ass't.

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 2000

S

D

SENATE DRS6716\*-RH115(4.4)

Short Title: Civil Remedies Appeal Bond.

(Public)

Sponsors: Senators Garrou, Albertson, Carter, Dannelly, Hagan, Harris, Hoyle, Jordan, Kerr, Lucas, Martin of Guilford, Martin of Pitt, Metcalf, Phillips, Plyler, Purcell, Soles, Warren, Weinstein, and Wellons.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW THE STAY OF ENFORCEMENT OF CIVIL JUDGMENTS  
3 FOR DAMAGES IN ADDITION TO OR IN EXCESS OF COMPENSATORY  
4 DAMAGES UPON THE POSTING OF A BOND IN AN AMOUNT UP TO A  
5 MAXIMUM OF TWENTY-FIVE MILLION DOLLARS FOR THE AMOUNT OF  
6 NONCOMPENSATORY DAMAGES PLUS AN ADDITIONAL AMOUNT  
7 EQUAL TO THE AMOUNT OF THE AWARD FOR COMPENSATORY  
8 DAMAGES.  
9 The General Assembly of North Carolina enacts:  
10 Section 1. Chapter 1C of the General Statutes is amended by adding a  
11 new Article to read:  
12 "ARTICLE 17A.  
13 "Enforcement of Foreign Judgments for Noncompensatory Damages.  
14 "§ 1C-1750. Definitions.  
15 As used in this Article:  
16 (1) 'Action' means (i) an action under Article 17 of this Chapter or  
17 (ii) any civil action in this State to enforce a foreign judgment in  
18 this State.  
19 (2) 'Foreign judgment' means any judgment, decree, or order of a  
20 court of the United States or any other state.  
21 "§ 1C-1760. Enforcement of foreign judgments for noncompensatory damages.  
22 In any action in this State to enforce a foreign judgment directing the payment of  
23 money damages other than compensatory damages, or in excess of the compensatory

1 damages, if the judgment debtor shows the court that an appeal from the foreign  
2 judgment is pending or that the time for taking an appeal has not expired, the court  
3 shall stay enforcement of the foreign judgment until all available appeals are  
4 concluded or the time for taking all appeals has expired, upon requiring the same  
5 undertaking by the judgment debtor as would be required in the case of a judgment  
6 entered by a court of this State, subject to G.S. 1-289."

7 Section 2. G.S. 1-289 reads as rewritten:

8 **"§ 1-289. Undertaking to stay execution on money judgment.**

9 (a) If the appeal is from a judgment directing the payment of money, it does not  
10 stay the execution of the judgment unless a written undertaking is executed on the  
11 part of the appellant, by one or more sureties, to the effect that if the judgment  
12 appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the  
13 appellant will pay the amount directed to be paid by the judgment, or the part of  
14 such amount as to which the judgment shall be affirmed, if affirmed only in part, and  
15 all damages which shall be awarded against the appellant upon the appeal. Whenever  
16 it is satisfactorily made to appear to the court that since the execution of the  
17 undertaking the sureties have become insolvent, the court may, by rule or order,  
18 require the appellant to execute, file and serve a new undertaking, as above. In case  
19 of neglect to execute such undertaking within twenty days after the service of a copy  
20 of the rule or order requiring it, the appeal may, on motion to the court, be dismissed  
21 with costs. Whenever it is necessary for a party to an action or proceeding to give a  
22 bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with  
23 the officer into court money to the amount of the bond or undertaking to be given.  
24 The court in which the action or proceeding is pending may direct what disposition  
25 shall be made of such money pending the action or proceeding. In a case where, by  
26 this section, the money is to be deposited with an officer, a judge of the court, upon  
27 the application of either party, may, at any time before the deposit is made, order the  
28 money deposited in court instead of with the officer; and a deposit made pursuant to  
29 such order is of the same effect as if made with the officer. The perfecting of an  
30 appeal by giving the undertaking mentioned in this section stays proceedings in the  
31 court below upon the judgment appealed from; except when the sale of perishable  
32 property is directed, the court below may order the property to be sold and the  
33 proceeds thereof to be deposited or invested, to abide the judgment of the appellate  
34 court.

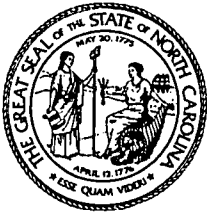
35 (b) If the appellee in a civil action obtains a judgment that includes an award of  
36 noncompensatory damages of twenty-five million dollars (\$25,000,000) or more, and  
37 the appellant seeks a stay of execution of the judgment within the period of time  
38 during which the appellant has the right to pursue appellate review, including  
39 discretionary review and certiorari, the amount of the undertaking for  
40 noncompensatory damages that the appellant is required to execute to stay execution  
41 of the judgment during the period of the appeal shall be twenty-five million dollars  
42 (\$25,000,000). For the purposes of this subsection, the term 'noncompensatory  
43 damages' means that portion of money damages other than compensatory damages or  
44 in excess of compensatory damages. Except as expressly provided in this subsection,

1 this subsection shall not affect or limit the amount of the undertaking otherwise  
2 required by subsection (a) of this section.

3 (c) If the appellee proves by a preponderance of the evidence that the appellant  
4 for whom the undertaking has been limited under subsection (b) of this section is, for  
5 the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets,  
6 or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or  
7 the federal courts of the United States other than in the ordinary course of business,  
8 then the limitation in subsection (b) of this section shall not apply and the appellant  
9 shall be required to make an undertaking in the full amount otherwise required by  
10 this section."

11 Section 3. The provisions of this act are severable. If any portion of this  
12 act is declared unconstitutional or the application of any part of this act to any person  
13 or circumstance is held invalid, the remaining portions of the act and their  
14 applicability to any person or circumstance shall remain valid and enforceable.

15 Section 4. This act is effective when it becomes law and applies to  
16 judgments filed or entered in this State on or after the effective date, without regard  
17 to the date on which the foreign judgment was rendered in the foreign state.



## SENATE BILL DRS6716-RH115: Civil Remedies Appeal Bond.

### BILL ANALYSIS

**Committee:** Senate Committee of the Whole  
**Date:** April 5, 2000  
**Version:** DRS6716-RH115

**Introduced by:** Senators Garrou  
**Summary by:** O. Walker Reagan  
Committee Counsel

**SUMMARY:** *Senate Bill DRS6716-RH115 would allow the unsuccessful party ("judgment debtor") in an out-of-State civil action to post a bond in NC to stay (i.e., postpone) the execution of a judgment for money damages other than or in addition to compensatory damages.<sup>1</sup> The purpose of the bond is to guarantee the availability of assets to satisfy the amount of the judgment pending an appeal in the other state. The bill also would limit to \$25 million the maximum amount of a bond needed to stay execution of the punitive damages<sup>2</sup> portion of an out-of-State or in-State judgment.*

**CURRENT LAW:** Currently, judgment debtors are not allowed to post a bond in NC to stay enforcement of any portion of a foreign judgment (i.e., one that originates in a court of another state or in a federal court) for money damages. Bonds to stay enforcement of the punitive damages portion of a NC judgment (i.e., one originating in NC courts) are not limited to a maximum amount.

**North Carolina Judgments:** A judgment debtor has 30 days from the entry of a civil judgment in NC to file an appeal from that judgment. The trial court may issue a stay of the enforcement of a judgment pending appeal provided that a bond in an amount equal to the amount of judgment is posted. When a stay is not otherwise allowable by the trial court, the appellate court may grant a writ of supersedeas to allow a stay pending appeal without the required bond when "extraordinary circumstances make it impracticable to obtain a stay by deposit of security."

**Foreign Judgments:** North Carolina has adopted a modified version of the Uniform Enforcement of Foreign Judgments Act ("Uniform Act"), which provides that a final, unsatisfied foreign judgment is treated as any other judgment entered in this State (i.e., it constitutes a judgment lien). However, the enforcement or execution of the foreign judgment is stayed without bond for at least 30 days after notice of the filing is served on the judgment debtor in order to allow the debtor to raise defenses against the enforcement of the judgment in NC. These defenses include (i) the judgment debtor has appealed from the foreign judgment; (ii) the foreign court that rendered the judgment has stayed enforcement of the foreign judgment; or (iii) other grounds exist, including that the issues in the underlying case were not fully and fairly litigated, for which relief from the judgment would be allowed in North Carolina. The judgment creditor (i.e., the successful party in the underlying civil action) has the burden of proving that the foreign judgment is entitled to full faith and credit. Unlike the Uniform Act adopted in most other states, NC does not require the posting of a bond in the foreign state or in NC to stay the execution of a foreign judgment in NC pending an appeal in the other state. Nevertheless, there is caselaw that requires the posting of a bond to stay enforcement of a foreign judgment pending an appeal in the foreign court.

As an alternative to enforcing a judgment under the Uniform Act, the judgment creditor also has a common law right to bring a civil action in North Carolina to enforce the foreign judgment here. Presumably, the decision of the North Carolina court in this process may be appealed and a supersedeas bond posted to stay execution pending the appeal of the North Carolina court's decision to enforce the judgment.

<sup>1</sup> These money damages compensate the injured party for the loss caused by a wrong or injury sustained.

<sup>2</sup> These money damages are designed to punish the wrongdoer. They are in addition to compensatory damages and are typically awarded in cases where there has been violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the wrongdoer.

# SENATE BILL DRS6716-RH115

Page 2

**BILL ANALYSIS:** Section 1 of the bill would amend Chapter 1C of the General Statutes by creating a new Article 17A entitled, "Enforcement of Foreign Judgments for Noncompensatory Damages". This Article would apply to actions under the Uniform Act and to civil actions in this State to enforce a foreign judgment for the payment of money damages other than or in excess of compensatory damages. Article 17A would direct courts to stay enforcement of these foreign judgments in NC until all available appeals in the foreign state are concluded or the time for taking all appeals has expired, upon the posting of a bond as required under G.S. 1-289.

Section 2 of the bill would amend G.S. 1-289, which governs stays of execution of civil judgments during an appeal, by adding two new subsections. Subsection (b) would authorize judgment debtors to obtain a stay by posting a maximum bond of \$25 million for the portion of money damages other than compensatory damages or in excess of compensatory damages. Judgment debtors would still be required to post a bond of 100% of the amount of compensatory damages as required under subsection (a). Subsection (c) would provide that this limitation of the bond for punitive damages would not apply if the judgment creditor proves by the preponderance of the evidence that the judgment debtor, for the purpose of evading the judgment, is dissipating assets, secreting assets, or diverting assets other than in the ordinary course of business outside the jurisdiction of North Carolina courts or the federal courts.

## CONSTITUTIONAL ISSUES:

**Full Faith and Credit:** A question has been raised as to whether a maximum amount on the bond that is posted to stay execution of the punitive damages portion of a foreign judgment would violate the Full Faith and Credit clause of the U.S. Constitution. Article IV, Section 1, of the U.S. Constitution provides that "Full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The U.S. Supreme Court has said this clause demands that a final judgment in one state, if rendered by a court that had both jurisdiction and competence, is preclusive on all substantive claims and issues in all other states. However, the enforcement of a foreign judgment depends upon the procedural laws<sup>3</sup> of the state in which the judgment is being enforced. The bill would establish procedural rules, applicable to all litigants, for the enforcement of judgments in this State. Those rules would provide for the enforcement of judgments to assure that litigants' due process rights are protected while the enforcement actions are being pursued in North Carolina. The bill does not deny recognition to the substantive effect of the final judgment from the foreign state.

**Equal Protection:** Another question is whether the bill unconstitutionally treats wealthy litigants and large enterprises differently than smaller ones. The 14<sup>th</sup> Amendment of the U.S. Constitution prohibits a state from denying any person within its jurisdiction the equal protection of the laws. To determine when discrimination violates the Equal Protection clause, the U.S. Supreme Court has set up a two-tiered system of scrutiny for alleged discrimination. It will employ *strict scrutiny* where the alleged discrimination involves either a "suspect class"<sup>4</sup> or a "fundamental right".<sup>5</sup> If strict scrutiny applies, the discrimination can be justified only if it is narrowly tailored to satisfy a compelling State interest. Discrimination not involving a suspect class or a fundamental right will be given ordinary scrutiny and can be justified if it has a rational relation to a public purpose. The U.S. Supreme Court has rejected the idea that wealth or lack thereof is a suspect class. In the case of this bill, there does not appear to be a suspect class or fundamental right, so the rational relation test would apply. It could be argued that a good public policy reason for the \$25 million limitation on punitive damages bonds is that businesses large enough to be protected by the limitation are likely to have a large impact on the workforce and economy of the State.

**EFFECTIVE DATE:** The bill would be effective when it becomes law. It would apply to judgments filed or entered in North Carolina on or after that date, without regard to the date on which a foreign judgment is rendered in the foreign state.

<sup>3</sup> In the 1998 case of *Baker v. General Motors*, 522 U.S. 222, (1998), Justice Ginsburg cited an earlier decision by saying, "Full faith and credit does not require that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments."

<sup>4</sup> Those involving race and national origin. Gender is treated as almost a suspect class, perhaps subject to a middle level of scrutiny.

<sup>5</sup> Fundamental rights include the rights to vote, to interstate travel, and to be free of wealth distinction in the criminal process.



Subsection (c) of G.S. 1-289 is intended to protect judgment creditors against wrongful dissipation or hiding of assets and allows the court to impose the full bond if these activities occur.

The subsection is also intended, however, to allow companies to continue to conduct their business as usual, including paying dividends on stock and making charitable and civic contributions. For example, these companies made over \$7 million dollars in charitable contributions to their local communities last year alone. They also made significant contributions to hurricane relief in the aftermath of Hurricanes Fran and Floyd, contributions for upgrading tobacco barns to address the nitrosamene problems and purchases of pooled tobacco to support our tobacco farmers. This legislation is intended to allow these types of transactions, which not only are taken in the ordinary course of business but are also consistent with the exercise of good business judgment, to continue during the course of the appeal.

**NORTH CAROLINA GENERAL ASSEMBLY  
SENATE**

**COMMITTEE OF THE WHOLE COMMITTEE REPORT  
Sen. Marc Basnight, Chair**

Wednesday, April 05, 2000

SEN. BASNIGHT,  
submits the following with recommendations as to passage:

**FAVORABLE**

S.B.	2	Civil Remedies Appeal Bond	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 1

Committee Clerk Comment: Will have Sen. Basnight sign