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HOUSE BILL 798

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO COURTS; ESTABLISHING A MAXIMUM BOND AMOUNT ON
SUPERSEDEAS BONDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 39-3-22 NMSA 1978 (being Laws 1917,
Chapter 43, Section 17, as amended) is amended to read:

"39-3-22. SUPERSEDEAS AND STAY IN CIVIL ACTIONS. --

A. There shall be no supersedeas or stay of
execution upon any final judgment or decision of the district
court in any civil action in which an appeal has been taken or
a writ of error sued out unless the appellant or plaintiff in
error, or some responsible person for him, within sixty days
from the entry of the judgment or decision, executes a bond to
the adverse party in double the amount of the judgment
complained of, except that it shall not exceed the maximum bond

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 amount of twenty-five million dollars (\$25,000,000), with
2 sufficient sureties, and approved by the clerk of the district
3 court in case of appeals or by the clerk of the supreme court
4 in case of writ of error. The bond shall be conditioned for
5 the payment of the judgment and all costs that may be finally
6 adjudged against him if the appeal or writ of error is
7 dismissed or the judgment or decision of the district court is
8 affirmed. The district court, for good cause shown, may grant
9 the appellant not to exceed thirty days' additional time within
10 which to file the bond, and a like extension of time may be
11 granted by the supreme court in cases of writs of error upon a
12 like showing.

13 B. Notwithstanding the provisions of Subsection A
14 of this section, if an appellee proves by a preponderance of
15 the evidence that an appellant is dissipating assets outside
16 the ordinary course of business to avoid payment of a judgment,
17 a court may enter orders that are necessary to protect the
18 appellee and require the appellant to post a bond that is equal
19 to the total amount of judgment when that amount exceeds
20 twenty-five million dollars (\$25,000,000).

21 ~~[B.]~~ C. If the decision appealed from, or from
22 which a writ of error is sued out, is for a recovery other than
23 a fixed amount of money, the amount of the bond, if any, shall
24 be fixed by the district court if an appeal is taken, except
25 that it shall not exceed the maximum bond amount of twenty-five

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[bracketed material] = delete

1 million dollars (\$25,000,000), or, in case of a writ of error,
2 by the chief justice or any justice of the supreme court,
3 conditioned that the appellant or plaintiff in error shall
4 prosecute the appeal or writ of error with diligence and that
5 if the decision of the district court is affirmed or the appeal
6 or writ of error is dismissed, he will comply with the judgment
7 of the district court and pay all damages and costs finally
8 adjudged against him in the district court and in the supreme
9 court or court of appeals on the appeal or writ of error,
10 including any legal damages caused by taking the appeal,
11 whether the damages are assessed upon motion in the cause or in
12 a civil action on the bond.

13 [~~C.~~] D. Upon approval of a bond provided for in
14 this section and upon filing the bond, in case of appeal with
15 the clerk of the district court and in case of writ of error
16 with the clerk of the supreme court, there shall be a stay of
17 proceedings in the action until the appeal or writ of error is
18 finally determined.

19 [~~D.~~] E. In all cases where an appeal has been taken
20 or a writ of error sued out against any interlocutory judgment,
21 order or decision of the district court from any final order
22 affecting a substantial right made after entry of a final
23 judgment or from any proceeding or conviction of civil
24 contempt, supersedeas may be granted under the provisions of
25 this section, but the bond shall be filed within thirty days

1 from the entry of such judgment, order, decision or conviction
2 and no extension of time for the filing of the bond shall be
3 granted in excess of ten days.

4 [E-] F. Any supersedeas granted under this section
5 in any matter appealed to the supreme court or court of appeals
6 shall automatically continue in effect pending any action or
7 further review [~~which~~] that may be taken in the supreme court
8 or court of appeals. "

9 Section 2. EFFECTIVE DATE. --The effective date of the
10 provisions of this act is July 1, 2003.

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