

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 199**

As Agreed to May 1, 2018

Brief*

SB 199, as amended, would amend law concerning stay of enforcement of a judgment while on appeal, which currently specifies that if an appellant seeks such a stay, the *supersedeas* bond shall be set at the full amount of the judgment, subject to certain limitations where the appellant can prove an undue hardship or denial of the right to an appeal. The bill would create a rebuttable presumption that an appellant will suffer an undue hardship when the judgment amount exceeds \$2.5 million, the defendant is a small business, and judgment is for a claim arising from activities within the appellant's ordinary course of business. For these purposes, "small business" would be defined as a sole proprietorship, partnership, limited liability company, corporation, or other business entity, whether for-profit or not-for-profit, with between 2 and 50 employees that is not a corporate affiliate or subsidiary of, or owned in whole or in part by any other business. The bill would also limit the amount of any *supersedeas* bond to no more than \$25.0 million, regardless of the full amount of judgment.

In addition to a continuing exception to limitations on the amount of a *supersedeas* bond applicable where the appellee proves the appellant is purposefully dissipating or diverting its assets, the bill would add an exception where the appellee proves the appellant is likely to purposefully dissipate or divert assets outside of the ordinary course of its business.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would specify the court may enter orders necessary to stop dissipation and diversion of assets when an appellee proves the dissipation or diversion or likely dissipation or diversion was for the primary purpose of avoiding ultimate payment of the judgment. This replaces language stating these limitations would not apply if the court makes a finding on the record that the appellant bringing the appeal is likely to disburse assets reasonably necessary to satisfy the judgment and allowing the court to increase the amount of such bond required not to exceed the full amount of the judgment.

The bill would apply to any proceeding filed on or after the effective date of the bill.

Conference Committee Action

The Conference Committee agreed to the provisions of the bill, as amended by the House Committee on Judiciary, except for an amendment restoring language stating limitations would not apply if the court makes a finding on the record that the appellant bringing the appeal is likely to disburse assets. The Conference Committee also agreed to amend the bill to:

- Create a rebuttable presumption that an appellant will suffer an undue hardship when the judgment amount exceeds \$2.5 million, the defendant is a small business, and the judgment is for a claim arising from activities within the appellant's ordinary course of business;
- State limitations on the amount of a *supersedeas* bond would not apply if the appellee proves by a preponderance of the evidence that the appellant is likely to purposefully dissipate or divert assets outside of the ordinary course of its business; and
- Specify the court may enter orders necessary to stop dissipation and diversion of assets when an

appellee proves the dissipation or diversion or likely dissipation or diversion was for the primary purpose of avoiding ultimate payment of the judgment.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of the Kansas Chamber of Commerce. In the Senate Committee on Judiciary hearing, representatives of the American Tort Reform Association, Kansas Chamber of Commerce, Kansas Society of Certified Public Accountants (CPAs), and National Federation of Independent Business (NFIB) appeared in support of the bill. Additional proponent testimony was provided by representatives of the Greater Kansas City Chamber of Commerce, Kansas Association of Defense Counsel (KADC), and NFIB. Representatives of Aeroflex/Cobham AvComm and the Kansas Trial Lawyers Association appeared as opponents. No other testimony was provided.

The Senate Committee amended the bill to increase the maximum amount of a *supersedeas* bond for a small business from \$1.0 million to \$2.5 million, amend the definition of “small business” for these purposes to reduce the maximum annual revenue from \$50.0 million to \$25.0 million, delete language that would have allowed the bill to apply to a proceeding filed prior to the effective date that is pending or on appeal on or after the effective date, and make a technical correction.

In the House Committee on Judiciary hearing, representatives of the American Tort Reform Association, Kansas Chamber of Commerce, and Kansas Society of CPAs appeared in support of the bill. Written-only proponent testimony was submitted by representatives of the NFIB and KADC. No other testimony was provided.

The House Committee amended the bill to:

- Reinsert language removed by the bill, as introduced, regarding the non-applicability of *supersedeas* bond limitations when the court makes a finding that an appellant is likely to disburse assets reasonably necessary to satisfy the judgment; [Note: The Conference Committee did not retain this amendment.]
- Remove provisions added by the bill, as introduced and amended by Senate Committee, governing the limitations on the amount of *supersedeas* bonds of individual, corporate, and small business appellants;
- Establish a \$25.0 million cap on any *supersedeas* bond, subject to continuing exceptions; and
- Make the bill effective upon publication in the statute book.

[Note: Except as noted above, the Conference Committee retained these amendments.]

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates any fiscal effect of enactment of the bill would be negligible.

supersedeas bonds

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