

The Senate Judiciary Committee offered the following substitute to SB 411:

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 5-6-46 of the Official Code of Georgia Annotated, relating to the operation of the notice of appeal acting as supersedeas bond in civil cases, the requirements of the supersedeas bond including the amount, the procedure where there is an insufficient filing, and the surety's liability as to the bond, so as to change certain provisions relating to the type of security allowed for supersedeas; to provide for global supersedeas for all appeals; to provide for a maximum allowable bond or security for all appellants collectively for supersedeas; to amend Code Section 9-12-134 of the Official Code of Georgia Annotated, relating to appeal or stay of a foreign judgment, so as to correct a cross-reference; to provide for related matters; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 5-6-46 of the Official Code of Georgia Annotated, relating to the operation of the notice of appeal acting as supersedeas bond in civil cases, the requirements of the supersedeas bond including the amount, the procedure where there is an insufficient filing, and the surety's liability as to the bond, is amended by striking the Code section and inserting in lieu thereof the following:

"5-6-46.

(a) In civil cases, the notice of appeal filed as provided in Code Sections 5-6-37 and 5-6-38 shall serve as supersedeas upon payment of all costs in the trial court by the appellant and it shall not be necessary that a supersedeas bond or other form of security be filed; provided, however, that upon motion by the appellee, made in the trial court before or after the appeal is docketed in the appellate court, the trial court shall require that supersedeas bond or other form of security be given with such surety and in such amount as the court may require, conditioned for the satisfaction of the judgment in full, together with costs, interest, and damages for delay; if ~~for any reason~~ the appeal is ~~dismissed or is found to be~~

1 frivolous, and to satisfy in full such modification of the judgment and such costs, interest,
2 and damages as the appellate court may award. When the judgment is for the recovery of
3 money not otherwise secured, the amount of the bond or other form of security shall be
4 fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied,
5 costs on the appeal, interest, and damages for delay, unless the court after notice and
6 hearing and for good cause shown fixes a ~~different~~ lesser amount ~~or orders security other~~
7 ~~than the bond~~. When the judgment determines the disposition of the property in
8 controversy as in real actions, trover, and actions to foreclose mortgages and other security
9 instruments, or when such property is in the custody of the sheriff or other levying officer,
10 or when the proceeds of such property or a bond for its value are in the custody or control
11 of the court, the amount of the supersedeas bond or other form of security shall be fixed at
12 such sum only as will secure the amount recovered for the use and detention of the
13 property, the costs of the action, costs on appeal, interest, and damages for delay.

14 (b) Notwithstanding subsection (a) of this Code section, in any civil case under any legal
15 theory, including cases involving individual, aggregated, class-action, or otherwise joined
16 claims, the amount of supersedeas bond or other form of security to be furnished during the
17 pendency of all appeals or discretionary reviews of any judgment granting legal, equitable,
18 or any other form of relief or damages, including compensatory, special, punitive,
19 exemplary, or other damages, in order to stay execution of the judgment during the entire
20 course of appellate review by any court shall be set in accordance with applicable laws or
21 court rules, but the total supersedeas bond or other form of security that is required of all
22 appellants collectively shall not exceed \$25 million regardless of the value of the judgment.

23 ~~(b)(c)~~ (c) If supersedeas bond or other form of security is not filed within the time specified
24 by the judge, or if the bond or other form of security filed is found insufficient, a bond or
25 other form of security may be filed at such time as may be fixed by the trial court.

26 ~~(e)(d)~~ (d) By entering into an appeal or supersedeas bond or other form of security given
27 pursuant to this Code section, the surety submits himself or herself to the jurisdiction of the
28 court and irrevocably appoints the clerk of the court as ~~his~~ the surety's agent upon whom
29 any papers affecting ~~his~~ the surety's liability on the bond may be served. ~~His~~ The surety's
30 liability may be enforced on motion without the necessity of notice or an independent
31 action.

32 ~~(d)(e)~~ (e) Nothing in this Code section shall deprive the superior courts of their separate power
33 to grant supersedeas under paragraph (1) of Code Section 15-6-9, nor deprive the appellate
34 courts of the power to grant supersedeas in such manner as they may determine to meet the
35 ends of justice.

36 ~~(e) If the appellee in a civil action obtains a judgment including punitive damages and the~~
37 ~~appellant files a notice of appeal of the judgment in order to obtain review by an appellate~~

1 ~~court, the supersedeas bond for the punitive damages portion of the judgment shall not~~
2 ~~exceed \$25 million.~~

3 (f) ~~If after notice and hearing the court finds that the an appellee has proven proves by a~~
4 ~~preponderance of the evidence that a party bringing an appeal, for whom the supersedeas~~
5 ~~bond requirement or other form of security has been limited pursuant to subsection (e) (b)~~
6 ~~of this Code section, is purposefully dissipating or secreting its assets, or diverting assets~~
7 ~~outside the jurisdiction of the United States courts, the limitation contained in subsection~~
8 ~~(e) of this Code section shall not apply ordinary course of business to avoid payment of a~~
9 ~~judgment, a court may require the appellant to post a bond or other form of security in an~~
10 ~~amount not to exceed the total amount of the judgment.~~"

11 SECTION 2.

12 Code Section 9-12-134 of the Official Code of Georgia Annotated, relating to appeal or stay
13 of a foreign judgment, is amended by striking subsection (b) and inserting in lieu thereof the
14 following:

15 "(b) If the judgment debtor shows the court any ground on which enforcement of a
16 judgment of the court of this state would be stayed, including the ground that an appeal
17 from the foreign judgment is pending or will be taken or that the time for taking such an
18 appeal has not yet expired, the court shall stay enforcement of the foreign judgment for an
19 appropriate period until all available appeals are concluded or the time for taking all
20 appeals has expired and require the same security for satisfaction of the judgment that is
21 required in this state, subject to the provisions of subsections ~~(e) through (b) and~~ (f) of
22 Code Section 5-6-46."

23 SECTION 3.

24 This Act shall become effective upon its approval by the Governor or upon its becoming law
25 without such approval.

26 SECTION 4.

27 This Act shall apply to any case pending on or filed on or after the effective date of this Act.

28 SECTION 5.

29 All laws and parts of laws in conflict with this Act are repealed.