

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 231

(Senator Feldman)

Judicial Proceedings

Judgments - Appeals - Supersedeas Bond

This bill reduces the amount of a supersedeas bond required by an appellant that is an individual or independently owned and operated business or nonprofit organization with not more than 250 full-time employees.

Under the bill, the amount of the supersedeas bond that must be posted by these entities in a civil action to stay enforcement of a judgment granting any type of relief during the entire course of all appeals or discretionary review may not exceed the lesser of \$5,000,000 or the amount of the judgment, regardless of the amount of the judgment appealed.

The bill applies prospectively to civil actions filed on or after the bill's October 1, 2016 effective date.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing State resources.

Local Effect: None.

Small Business Effect: Potential meaningful effect on small businesses that are able to post lower supersedeas bonds as a result of the bill.

Analysis

Current Law: In general, an appellant may stay the enforcement of a civil judgment from which an appeal is taken by filing a supersedeas bond or alternative security with the clerk

of the court. The bond or security may be filed at any time before satisfaction of the judgment, but the enforcement is stayed from the time the security is filed.

Supersedeas bonds are typically filed with and approved by the clerk of the court and must contain a surety, unless otherwise expressly provided. If a clerk refuses to approve a bond, or an adverse party objects in writing to the bond, the court may approve the bond after notice and a hearing, if necessary. Under Rule 1-402(d), a court may require an increase or decrease in the face amount of a bond for good cause shown. This rule reserves to the trial court the discretion to increase or decrease the face amount of the bond in an extraordinary case. *O'Donnell v. McGann*, 310 Md. 342 (1987).

However, pursuant to Section 12-301.1 of the Courts and Judicial Proceedings Article (Chapter 225 of 2015), in a civil action filed on or after October 1, 2015, the amount of a supersedeas bond that must be posted in a civil action to stay enforcement of a judgment granting any type of relief during the entire course of all appeals or discretionary reviews may not exceed the lesser of \$100,000,000 or the amount of the judgment for each appellant, regardless of the amount of the judgment appealed. These limits on the amount of a supersedeas bond apply notwithstanding any other law or court rule, except for situations involving dissipation or diversion of assets, as described below.

In a civil action, a party seeking a stay of execution of a judgment of any amount pending review may file a motion to reduce the amount of a supersedeas bond required to obtain the stay. Upon this motion or on its own motion, a court may reduce the amount of the supersedeas bond or may set other conditions to obtain the stay, with or without a bond, in the interest of justice or for good cause shown. If an appellant posts a supersedeas bond in an amount that is less than the amount that would be required under Maryland Rule 8-423(b), the appellee may engage in discovery for the limited purpose of determining whether the appellant dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so. The circuit court must retain jurisdiction over the action for the limited purpose of ruling on motions relating to this discovery and to make determinations regarding the dissipation or diversion of assets.

If a court determines that an appellant dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so, the court may (1) enter orders necessary to protect the appellee; (2) require the appellant to post a bond in an amount not to exceed the full amount that would be required under Maryland Rule 8-423(b); and (3) impose other remedies and sanctions that the court considers appropriate.

Under Maryland Rule 8-423(b), subject to Section 12-301.1 of the Courts and Judicial Proceedings Article, the amount of a bond for a judgment of money not otherwise secured must be the amount that will cover the whole amount of the unsatisfied portion of the money judgment, plus interest and costs. However, the court may reduce the amount of

the bond after making specific findings justifying the amount following consideration of all relevant factors. When the judgment determines the disposition of the property in controversy or when the property, or the proceeds of its sale, is in the custody of the lower court or the sheriff, the amount of the bond must be the sum that will secure the amount recovered for the use and detention of the property, interest, costs, and damages for delay. In any other case, the amount of the bond must be fixed by the lower court. Despite these parameters, the parties in a case may agree to an alternative amount for the bond.

Additional Information

Prior Introductions: None.

Cross File: HB 171 (Delegate Dumais) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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md/kdm

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