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SENATE BILL 306

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Richard C. 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

1 amount of fifty million dollars (\$50,000,000), with sufficient
2 sureties, and approved by the clerk of the district court in
3 case of appeals or by the clerk of the supreme court in case of
4 writ of error. The bond shall be conditioned for the payment
5 of the judgment and all costs that may be finally adjudged
6 against him if the appeal or writ of error is dismissed or the
7 judgment or decision of the district court is affirmed. The
8 district court, for good cause shown, may grant the appellant
9 not to exceed thirty days' additional time within which to file
10 the bond, and a like extension of time may be granted by the
11 supreme court in cases of writs of error upon a like showing.

12 B. If the decision appealed from, or from which a
13 writ of error is sued out, is for a recovery other than a fixed
14 amount of money, the amount of the bond, if any, shall be fixed
15 by the district court if an appeal is taken, except that it
16 shall not exceed the maximum bond amount of fifty million
17 dollars (\$50,000,000), or, in case of a writ of error, by the
18 chief justice or any justice of the supreme court, conditioned
19 that the appellant or plaintiff in error shall prosecute the
20 appeal or writ of error with diligence and that if the decision
21 of the district court is affirmed or the appeal or writ of
22 error is dismissed, he will comply with the judgment of the
23 district court and pay all damages and costs finally adjudged
24 against him in the district court and in the supreme court or
25 court of appeals on the appeal or writ of error, including any

underscored material = new
[bracketed material] = del ete

1 legal damages caused by taking the appeal, whether the damages
2 are assessed upon motion in the cause or in a civil action on
3 the bond.

4 C. Notwithstanding the provisions of Subsection A
5 and B of this section, if an appellee proves by a preponderance
6 of the evidence that an appellant is dissipating assets, a
7 court shall enter orders that are necessary to protect the
8 appellee and shall require the appellant to post a bond that is
9 equal to the total amount of judgement.

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

16 [~~D.~~] E. In all cases where an appeal has been taken
17 or a writ of error sued out against any interlocutory judgment,
18 order or decision of the district court, from any final order
19 affecting a substantial right made after entry of a final
20 judgment or from any proceeding or conviction of civil
21 contempt, supersedeas may be granted under the provisions of
22 this section, but the bond shall be filed within thirty days
23 from the entry of such judgment, order, decision or conviction
24 and no extension of time for the filing of the bond shall be
25 granted in excess of ten days.

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

Section 2. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2005.

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