

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 199

As Amended by House Committee on Judiciary

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 add to these limitations a provision limiting the amount of any *supersedeas* bond to no more than \$25.0 million, regardless of the full amount of judgment, subject to continuing exceptions applicable where the appellee proves the appellant is purposely dissipating or diverting its assets, or the court finds the appellant is likely to disburse assets, to avoid paying a judgment.

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

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

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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;
- 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.

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.