

KANSAS TRIAL LAWYERS ASSOCIATION



To: Senator Rick Wilborn, Chairperson
Members of the Senate Judiciary Committee.

From: Callie Jill Denton JD, Executive Director

Date: January 18, 2018

RE: **SB 199 Concerning civil procedure; relating to appellate procedure; supersedeas bond requirements; amending KSA 2016 Supp. 60-2103 and repealing the existing section. (OPPOSE)**

The Kansas Trial Lawyers Association (KTLA) is a professional association of trial lawyers with members across the state. KTLA opposes SB 199 and requests that the Senate Judiciary Committee not pass it.

A supersedeas bond is often presented by the appellant as part of a request for a stay on appeal of the judgment of the district court. The purpose of a supersedeas bond is to provide security to the court and to a victorious plaintiff and to assure that a judgment will be paid following an appeal, if the appeal is not successful. The bond also prevents the appellant from disposing of assets reserved to pay the judgment during the pendency of the appeal.

A supersedeas bond protects both the appellant and the appellee. Without a supersedeas bond and a stay on appeal, the plaintiff (appellee) could theoretically seek enforcement of the judgment of the district court; if the judgment is reversed on appeal, the appellant would have to re-collect the judgment from the appellee. The supersedeas bond in the full amount of the judgment keeps the plaintiff from collecting while the appellant pursues his/her appeal.

SB 199 substantially amends the policy of 2016 KSA Supp. 60-2103 relating to supersedeas bonds by reducing its statutory protection and limiting the power of the court to protect judgments.

The current supersedeas bond requirements are well-balanced and fair to all sides.

The law protects the judgment of a victorious plaintiff, who may have spent years litigating their case to prove the defendant's acts cost millions in economic loss to their business. The current law also provides flexibility for the appellant to proceed with an appeal. The current

law gives the court the discretion to lower the supersedeas bond from the full judgment amount under certain circumstances. The court can also increase it to the full amount if it appears the appellant is diverting assets to avoid paying the judgment.

Under current law, supersedeas bonds are set at the full amount of the judgment. However, an appellant may request that the court reduce the amount of the bond if the appellant shows, by preponderance of the evidence, a bond at the full amount will result in undue hardship or a denial of the right to appeal. The court may then reduce the supersedeas bond according to a statutory schedule: for judgments less to or equal to \$1 million in value, the bond shall be the full amount of the judgment. For judgments exceeding \$1 million the bond shall be \$1 million plus 25% of the value over \$1 million.

The court also has discretion to protect the judgment if the appellee proves by a preponderance of the evidence that the appellant is purposefully avoiding paying the judgment by diverting assets outside the ordinary course of business. Then the court may enter orders to stop diversion of the assets, including requiring the appellant post a supersedeas bond in the full amount of the judgment.

SB 199 caps supersedeas bonds at \$1 million for “small business” appellants, and offers no assurances to small business appellees with stays on judgments greater than \$1 million.

Under SB 199, supersedeas bonds capped at \$1 million or the full amount of the judgment, whichever is less, for appellants that meet the definition of a small business contained in the bill. It is possible that the victorious plaintiff (the appellee) may also be a “small business,” such as a farmer. Further, the appellee/small business may have experienced several million dollars of economic loss due to the wrongful actions of the appellant; a \$1 million supersedeas bond will offer little security against the appellant’s diversion of assets during the appeals process.

Appellant/defendants have a right to appeal a judgment. Yet victorious plaintiffs deserve to have their judgment protected while the appeal proceeds. SB 199 completely removes the reasonable protections that are part of the current statute, threatening the economic security of any plaintiff with a judgment against a “small business” of over \$1 million, while on appeal.

SB 199 creates a new supersedeas bond cap that applies to all other appellants, regardless of the full amount of the judgment against any individual appellant and its successors or corporate affiliates, individually or collectively.

The current law requires a supersedeas bond in the full amount of the judgment, and gives the court the discretion to adjust the amount. SB 199, by establishing a hard cap, is a significant shift in policy.

First, capping supersedeas bonds is unnecessary. Judgments in Kansas state courts rarely, if ever, and possibly never, have approached the proposed cap of \$25 million. Second, the current law already provides for a reasonable and fair procedure for any appellant that believes the

supersedeas bond is so high that it would prevent the appellant from moving forward with an appeal or the bond amount is otherwise a hardship. A bond in the amount of the judgment assures that an appeal is in good faith and the assets to pay the judgment are protected if the appeal is not successful.

SB 199 affects pending litigation and litigation that is already on appeal, where supersedeas bonds have already been set.

SB 199 applies to proceedings that are filed prior to the effective date of the act and are pending or on appeal on or after the effective date of the act. In some instances, supersedeas bonds may already have been secured and SB 199 is disruptive at best and unconstitutional at worst.

On behalf of the Kansas Trial Lawyers Association, I respectfully request that the Judiciary Committee not pass SB 199.