

SENATE BILL NO. 48

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY SENATOR HUGGINS

Introduced: 1/16/07

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act amending Rule 62, Alaska Rules of Civil Procedure, to limit the amount of the**
2 **bond required to stay execution of a judgment in a civil litigation during an appeal or**
3 **review; and amending Rules 204 and 205, Alaska Rules of Appellate Procedure, to limit**
4 **the amount of the bond required to stay execution of a judgment in a civil litigation**
5 **during an appeal."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 DIRECT COURT RULE AMENDMENT. Rule 62(d), Alaska Rules of Civil
10 Procedure, is amended to read:

11 (d) **Stay Upon Appeal or Proceedings for Review.** When an appeal is taken
12 or review sought the appellant or petitioner by giving a supersedeas bond may obtain a
13 stay subject to the exceptions contained in subdivision (a) of this rule. The bond may

1 be given at or after the time of filing the notice of appeal or of filing the petition for
 2 review, as the case may be. **The amount of the bond required collectively of all**
 3 **appellants may not exceed the lesser of \$5,000,000 or 10 percent of all appellants'**
 4 **net worth, regardless of the value of the judgment. The limitation on the amount**
 5 **of the bond set out in this subdivision does not apply to awards resulting from the**
 6 **injury, loss, or destruction of natural resources caused by an environmental**
 7 **disaster. However, if an appellee proves by a preponderance of the evidence that**
 8 **an appellant whose bond has been limited is dissipating assets outside of the**
 9 **ordinary course of business to avoid payment of a judgment, the court may**
 10 **require the appellant to post a bond in an amount up to the full amount of the**
 11 **judgment.** The stay is effective when the supersedeas bond is approved by the court.
 12 **In this subdivision, "environmental disaster" means a real and substantial threat**
 13 **to the environment caused by the release of oil or other petroleum products or**
 14 **hazardous substances from a facility or carrier.**

15 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
 16 read:

17 DIRECT COURT RULE AMENDMENT. Rule 204(d), Alaska Rules of
 18 Appellate Procedure, is amended to read:

19 (d) **Supersedeas Bond.**

20 (1) Whenever in a civil case an appellant entitled thereto desires a stay
 21 on appeal, the appellant may present to the superior court for its approval a
 22 supersedeas bond which shall have such surety or sureties as the court requires. The
 23 bond shall be conditioned for the satisfaction of the judgment in full, together with
 24 costs and interest, if for any reason the appeal is dismissed or if the judgment is
 25 affirmed, and to satisfy in full such modification of the judgment and such costs and
 26 interest as the supreme court may adjudge and award.

27 (2) When the judgment is for the recovery of money not otherwise
 28 secured, the amount of the bond shall be fixed at such sum as will cover the whole
 29 amount of the judgment remaining unsatisfied, costs on the appeal, and interest, unless
 30 the superior court, after notice and hearing and for good cause shown, fixes a different
 31 amount or orders security other than the bond. **However, the amount of the bond**

1 that is required collectively of all appellants may not exceed the lesser of
 2 \$5,000,000 or 10 percent of all appellants' net worth regardless of the value of the
 3 judgment. This limitation does not apply to awards resulting from the injury,
 4 loss, or destruction of natural resources caused by an environmental disaster.
 5 However, if an appellee proves by a preponderance of the evidence that an
 6 appellant is intentionally dissipating assets outside the ordinary course of
 7 business to avoid payment of a judgment, the court may require the appellant to
 8 post bond in an amount up to the full amount of the judgment. In this paragraph,
 9 "environmental disaster" means a real and substantial threat to the environment
 10 caused by the release of oil or other petroleum products or hazardous substances
 11 from a facility or carrier.

12 (3) When the judgment determines the disposition of the property in
 13 controversy as in real actions, replevin, and actions to foreclose mortgages or when
 14 such property is in the custody of the court or the state troopers or when the proceeds
 15 of such property of a bond for its value is in the custody or control of the court, the
 16 amount of the supersedeas bond shall be fixed at such sum only as will secure the
 17 amount recovered for the use and detention of the property, the cost of the action,
 18 costs on appeal, and interest, unless the superior court, after notice and hearing and for
 19 good cause shown, fixes a different amount or orders security other than the bond.

20 (4) A municipality or an officer or agent thereof desiring a stay on
 21 appeal is exempted from the requirement of posting supersedeas bond imposed by this
 22 subsection.

23 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
 24 read:

25 DIRECT COURT RULE AMENDMENT. Rule 205, Alaska Rules of
 26 Appellate Procedure, is amended to read:

27 **Rule 205. Stays Pending Appeal in Civil Cases.** (a) In a civil case, the
 28 supreme court or a justice thereof may stay the enforcement or effect of the judgment
 29 appealed from or the proceedings in the trial court upon such terms as to bond or other
 30 matters as may be proper. The amount of the bond required collectively of all
 31 appellants may not exceed the lesser of \$5,000,000 or 10 percent of all appellants'

1 net worth, regardless of the value of the judgment. The limitation on the amount
2 of the bond set out in this subdivision does not apply to awards resulting from the
3 injury, loss, or destruction of natural resources caused by an environmental
4 disaster. However, if an appellee proves by a preponderance of the evidence that
5 an appellant whose bond has been limited is dissipating assets outside of the
6 ordinary course of business to avoid payment of a judgment, the court may
7 require the appellant to post a bond in an amount up to the full amount of the
8 judgment. In this subdivision, "environmental disaster" means a real and
9 substantial threat to the environment caused by the release of oil or other
10 petroleum products or hazardous substances from a facility or carrier.

11 (b) A motion for a stay will normally not be considered by the supreme court
12 unless application has previously been made to the trial court and has been denied, or
13 has been granted on conditions other than those requested.

14 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 APPLICABILITY. This Act applies to cases pending on or filed on or after the date
17 this Act becomes law.