

1 **RESOLUTION AMENDING RULES OF CIVIL**
2 **PROCEDURE - JUDGMENT**

3 2004 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Greg J. Curtis**

7 **LONG TITLE**

8 **General Description:**

9 This joint resolution amends the Utah Rules of Civil Procedure by providing for a
10 maximum supersedeas bond amount that may be required of an appellant.

11 **Highlighted Provisions:**

12 This resolution:

13 ▶ limits the appellate bond amount to ~~10% of the defendant's net worth or~~ **10%**
14 \$25,000,000; and

15 ▶ allows a judge to require an appellant to execute a bond in excess of the limit if the
16 **10%** ~~defendant~~ **PLAINTIFF 10%**, by a preponderance of the evidence, proves that the appellant, outside
16a the
17 normal course of business, is dissipating assets to avoid the payment of a judgment.

18 **Special Clauses:**

19 This resolution provides an immediate effective date.

20 **Utah Rules of Civil Procedure Affected:**

21 AMENDS:

22 **Rule 62**, Utah Rules of Civil Procedure

24 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*
25 *of the two houses voting in favor thereof:*

26 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend
27 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of



28 all members of both houses of the Legislature:

29 Section 1. **Rule 62**, Utah Rules of Civil Procedure is amended to read:

30 **Rule 62. Stay of Proceedings to Enforce a Judgment.**

31 (a) Stay upon entry of judgment. Execution or other proceedings to enforce a judgment
32 may issue immediately upon the entry of the judgment, unless the court in its discretion and on
33 such conditions for the security of the adverse party as are proper, otherwise directs.

34 (b) Stay on motion for new trial or for judgment. In its discretion and on such
35 conditions for the security of the adverse party as are proper, the court may stay the execution
36 of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new
37 trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a
38 judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a
39 motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the
40 findings or for additional findings made pursuant to Rule 52(b).

41 (c) Injunction pending appeal. When an appeal is taken, from an interlocutory or final
42 judgment granting, dissolving, or denying an injunction, the court in its discretion may
43 suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such
44 conditions as it considers proper for the security of the rights of the adverse party.

45 (d) Stay upon appeal. When an appeal is taken, the appellant by giving a supersedeas
46 bond or other form of security may obtain a stay throughout the course of all appeals or
47 discretionary reviews, unless such a stay is otherwise prohibited by law or these rules. The
48 bond or other form of security may be given at or after the time of filing the notice of appeal.
49 The stay is effective when the supersedeas bond or other form of security is approved by the
50 court. In cases brought under any legal theory in which the amount or value of the judgment
51 exceeds \$5,000,000, including cases involving individual, aggregated, class-action, or
52 otherwise joined claims, the amount of the bond required collectively of all appellants may not
53 exceed \$25,000,000, and the bond or other form of security required of any single appellant
54 may not exceed the lesser of (1) \$5,000,000 plus 10% of the judgment award, or (2)
55 \$25,000,000, regardless of the amount of the judgment. The court may require an appellant to
56 execute a bond in an amount up to the total amount of the judgment if an appellant whose bond
57 or other form of security has been limited is dissipating assets outside the ordinary course of
58 business to avoid payment of a judgment.

59 (e) Stay in favor of the state, or agency thereof. When an appeal is taken by the United
60 States, the state of Utah, or an officer or agency of either, or by direction of any department of
61 either, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other
62 security shall be required from the appellant.

63 (f) Stay in quo warranto proceedings. Where the defendant is adjudged guilty of
64 usurping, intruding into or unlawfully holding public office, civil or military, within this state,
65 the execution of the judgment shall not be stayed on an appeal.

66 (g) Power of appellate court not limited. The provisions in this rule do not limit any
67 power of an appellate court or of a judge or justice thereof to stay proceedings or to suspend,
68 modify, restore, or grant an injunction, or extraordinary relief or to make any order appropriate
69 to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

70 (h) Stay of judgment upon multiple claims. When a court has ordered a final judgment
71 on some but not all of the claims presented in the action under the conditions stated in Rule
72 54(b), the court may stay enforcement of that judgment until the entering of a subsequent
73 judgment or judgments and may prescribe such conditions as are necessary to secure the
74 benefit thereof to the party in whose favor the judgment is entered.

75 (i) Form of supersedeas bond; deposit in lieu of bond; waiver of bond; jurisdiction over
76 sureties to be set forth in undertaking.

77 (i) (1) A supersedeas bond given under Subdivision (d) may be either a commercial
78 bond having a surety authorized to transact insurance business under Title 31A, or a personal
79 bond having one or more sureties who are residents of Utah having a collective net worth of at
80 least twice the amount of the bond, exclusive of property exempt from execution. Sureties on
81 personal bonds shall make and file an affidavit setting forth in reasonable detail the assets and
82 liabilities of the surety.

83 (i) (2) Upon motion and good cause shown, the court may permit a deposit of money in
84 court or other security to be given in lieu of giving a supersedeas bond under Subdivision (d).

85 (i) (3) The parties may by written stipulation waive the requirement of giving a
86 supersedeas bond under Subdivision (d) or agree to an alternate form of security.

87 (i) (4) A supersedeas bond given pursuant to Subdivision (d) shall provide that each
88 surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as
89 the surety's agent upon whom any papers affecting the surety's liability on the bond may be

90 served, and that the surety's liability may be enforced on motion and upon such notice as the
91 court may require without the necessity of an independent action.

92 (j) Objecting to sufficiency or amount of security. Any party whose judgment is stayed
93 or sought to be stayed pursuant to Subdivision (d) may object to the sufficiency of the sureties
94 on the supersedeas bond or the amount thereof, or to the sufficiency or amount of other security
95 given to stay the judgment by filing and giving notice of such objection. The party so objecting
96 shall be entitled to a hearing thereon upon five days notice or such shorter time as the court
97 may order. The burden of justifying the sufficiency of the sureties or other security and the
98 amount of the bond or other security, shall be borne by the party seeking the stay. The fact that
99 a supersedeas bond, its surety or other security is generally permitted under this rule shall not
100 be conclusive as to its sufficiency or amount.

101 Section 2. **Effective date.**

102 This resolution takes effect upon approval by a constitutional two-thirds vote of all
103 members elected to each house.

Legislative Review Note
as of 1-28-04 9:30 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HJR016

Resolution Amending Rules of Civil Procedure-Judgment

06-Feb-04

10:36 AM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

The fiscal impact is not determinable.

Office of the Legislative Fiscal Analyst