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CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

Business Corporations: Amend Venue Provisions Regarding Business Corporations; Allow for Removal of Certain Cases; Provide a Maximum Amount for Supersedeas Bonds for Punitive Damages of Civil Judgments; Provide That Foreign Judgments Shall Be Stayed Until Conclusion of All Appeals or the Expiration of Time in Which Appeals Can Be Brought

CODE SECTIONS: O.C.G.A. §§ 5-6-46, 9-12-134, 14-2-510
(amended)

BILL NUMBER: HB 1346

ACT NUMBER: 490

GEORGIA LAWS: 2000 Ga. Laws 228

SUMMARY: The Act, known as the "Civil Litigation Improvement Act of 2000," amends several sections of the Georgia Code referencing civil litigation involving Georgia corporations. The Act provides a maximum amount for supersedeas bonds that a court can require a defendant to provide to insure the punitive damages portion of a civil judgment. The Act provides that a foreign judgment shall be stayed while an appeal is pending or until the expiration of time within which an appeal can be filed. The Act also changes venue requirements regarding corporations and allows for removal of certain cases.

EFFECTIVE DATE: March 30, 2000¹

1. See 2000 Ga. Laws 228, §§ 5-6, at 231. The Act took effect upon approval by the Governor. *See id.*

History

The Act amends three areas of Georgia civil litigation law relating to supersedeas bonds in civil judgments, stays of foreign judgments in civil cases, and changes of venue in civil litigation.²

Supersedeas Bonds

Commonly, once a corporate defendant appeals a judgment against it, the trial court can require the defendant to post a supersedeas bond for the total amount of the judgment, plus costs, as determined by the court.³ Concerned that “runaway juries” may impose excessive punitive damages against a corporate defendant that could unduly harm or even bankrupt the defendant, as evidenced in recent tobacco litigation, several states have considered laws that limit the amount of bond coverage a corporation must purchase while it appeals the judgment.⁴ By passing HB 1346, the Georgia General Assembly followed states such as Virginia, Kentucky, and North Carolina in considering the protection of corporations against large jury verdicts.⁵

Stays of Foreign Judgments

Recent litigation, such as the Florida class action suit against large tobacco corporations, induced the amendment of Georgia’s law regarding stays of foreign judgments in civil litigation.⁶ Big tobacco companies voiced concern that an unreasonably large punitive damages award, such as an award for billions of dollars, found against them by courts in other states could potentially bankrupt them before the completion of the appeals process.⁷

2. See 2000 Ga. Laws 228, §§ 1-6 at 228-31. The venue portion of the bill was originally introduced as HB 389. See Jonathan Ringel, *PI Lawyers, Industry Battle Over Venue Options for Plaintiffs*, FULTON COUNTY DAILY REP., Feb. 14, 2000, at 1. However, that bill was eventually merged into HB 1346. See *id.*

3. See 1994 Ga. Laws 346, § 1, at 346 (formerly found at O.C.G.A. § 5-6-46(a) (1995)).

4. See Kathey Pruitt, *Law Limits Amount Tobacco Firms Must Post for Appeals*, ATLANTA J. & CONST., Mar. 31, 2000, at C4; Ringel, *supra* note 2, at 6.

5. See Pruitt, *supra* note 4.

6. See Telephone Interview with Rep. Jim Martin, House District No. 47 (June 13, 2000) [hereinafter Martin Interview].

7. See *id.*; Pruitt, *supra* note 4.

Thus, the Georgia General Assembly modified Georgia law regarding stays of foreign judgments so that Georgia corporations would be afforded the same protection from foreign judgments as they would receive from Georgia judgments.⁸

Venue Changes

Previously under Georgia law, a plaintiff could sue a corporate defendant for “damages because of torts, wrong, or injury done” either in the county where its registered agent was maintained or in the county where the incident leading to the litigation occurred, if the company had an office and had transacted business in that county.⁹ For the past several years, plaintiffs’ attorneys and others have voiced concern that a corporation may register its agent in a county of its choice, even if it has no other relationship with the county, in an attempt to obtain a more favorable jury in any future lawsuit against it.¹⁰ When a corporation does this, it is commonly known as “venue shopping.”¹¹ Various factions contend that a corporation should be subject to suit also in the county where the alleged injury took place, whether or not the corporate defendant has an office or transacts business in that county.¹² Thus, HB 1346 was a collaborative effort by the tobacco industry, the Georgia Trial Lawyers Association, and other interested parties to balance a plaintiff’s need for fair venue laws and a corporate defendant’s need for protection from runaway juries.¹³

8. See 1986 Ga. Laws 380, § 1, at 381 (formerly found at O.C.G.A. § 19-12-134 (1993)); Martin Interview, *supra* note 6.

9. See 1988 Ga. Laws 1070, § 1, at 1097 (formerly found at O.C.G.A. § 14-2-510 (1994)).

10. See Peter Mantius, *2000 Georgia Legislature: Lawsuit Venue Bill Goes to Barnes’ Desk*, ATLANTA J. & CONST., Mar. 14, 2000, at C1 [hereinafter Mantius, *Lawsuit Venue Bill*]; Telephone Interview with Sue Saleska-Hamilton, Lobbyist, Georgia Trial Lawyers Association (June 22, 2000) [hereinafter Saleska-Hamilton Interview]; see also Peter Mantius, *2000 Georgia Legislature: Chamber Vows To Stop Venue Bill: Effort To Ease State Rules on Where Lawsuits Can Be Filed Against Businesses Faces Tough Opposition*, ATLANTA J. & CONST., Jan. 22, 2000, at E3 (describing a tire company whose registered agent was located in rural Lee County allegedly to make it impractical for plaintiffs to bring their cases).

11. See Audio Recording of House Proceedings, Feb. 28, 2000 (remarks by Rep. Jim Martin) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter House Audio].

12. See Mantius, *Lawsuit Venue Bill*, *supra* note 10.

13. See Martin Interview, *supra* note 6; Saleska-Hamilton Interview, *supra* note 10.

*HB 1346**Introduction*

Representatives Jim Martin, Tom Bordeaux, Ben Allen, Stephanie Stuckey, and Doug Teper, of the 47th, 151st, 117th, 67th, and 61st House Districts, respectively, sponsored HB 1346.¹⁴ Representative Martin introduced the bill on the House floor on February 4, 2000.¹⁵ The House assigned the bill to its Judiciary Committee, which favorably reported the bill as substituted.¹⁶ The House adopted the Committee substitute with additional floor amendments, and passed the bill on February 28, 2000.¹⁷ On February 29, 2000, the Senate assigned the bill to the Senate Judiciary Committee, which favorably reported the bill on March 7, 2000.¹⁸ The Senate passed the bill on March 13, 2000.¹⁹ The Senate forwarded the bill to Governor Roy Barnes, who signed HB 1346 into law on March 30, 2000.²⁰

Consideration by the House Judiciary Committee

Upon introduction, the House assigned the bill to its Judiciary Committee, which favorably reported the bill, as substituted, on February 9, 2000.²¹ The Judiciary Committee reduced the maximum supersedeas bond from \$50 million to \$25 million.²² The Judiciary Committee arrived at the \$25 million amount as a balance between the need to protect a defendant's right to an appeal, and thus the need to keep courts from imposing exorbitant supersedeas bonds against them while the case is on appeal, with the need to protect a plaintiff's judgment while the amount of the judgment is on appeal.²³

14. *See* HB 1346, as introduced, 2000 Ga. Gen. Assem.

15. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

16. *See id.*

17. *See* Georgia House of Representatives Voting Record, HB 1346 (Feb. 28, 2000). The vote was 94 to 72. *See id.*

18. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

19. *See* Georgia Senate Voting Record, HB 1346 (Mar. 13, 2000). The vote was 34 to 20. *See id.*

20. *See* 2000 Ga. Laws 228, § 6, at 231.

21. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

22. *Compare* HB 1346, as introduced, 2000 Ga. Gen. Assem., *with* HB 1346 (HCS), 2000 Ga. Gen. Assem.

23. *See* Martin Interview, *supra* note 6.

The Judiciary Committee also added a provision that would amend Code section 9-12-134, which discusses appeals and stays of foreign judgments.²⁴ The Committee inserted language that would allow a state court, upon proof by the judgment debtor, to stay a foreign judgment until a pending appeal is concluded, or until the time for all available appeals has expired.²⁵ The Committee changed this Code section to protect Georgia corporations from excessive jury awards imposed in other states' courts while the judgment is on appeal, thus offering protection similar to that which this bill offers in Georgia courts.²⁶

From the House Judiciary Committee to the House Floor

The House adopted several floor amendments in the venue portion of the bill before passing the bill on February 28, 2000.²⁷ First, the House amended the provision that allowed a party to remove an action for damages because of "torts, wrong, or injury done" brought in the county where the cause of action originated to the county in which the defendant maintains its principal place of business.²⁸ In addition, the House relaxed the filing time from within thirty days to within forty-five days of service of the summons.²⁹ Next, the House removed language that would have allowed a trial court to transfer an action upon motion by a party "to another court of competent jurisdiction in the State of Georgia," and replaced it with a provision that if venue is based solely on this provision, the defendant has the *right* to remove the action unless the court to which it is remanded finds that removal is improper.³⁰

Finally, the House removed proposed elements that the trial court would have had to determine before allowing a change in venue, such as whether the pending action could have been

24. See 1986 Ga. Laws. 380, § 1, at 381 (formerly found at O.C.G.A. § 9-12-134 (1993)).

25. Compare HB 1346, as introduced, 2000 Ga. Gen. Assem., with HB 1346 (HCS), 2000 Ga. Gen. Assem.

26. See Martin Interview, *supra* note 6.

27. See House Audio, *supra* note 11 (vote on amendments).

28. Compare HB 1346 (HCS), 2000 Ga. Gen. Assem., with HB 1346 (HCSFA), 2000 Ga. Gen. Assem.

29. Compare HB 1346 (HCS), 2000 Ga. Gen. Assem., with HB 1346 (HCSFA), 2000 Ga. Gen. Assem.

30. Compare HB 1346 (HCS), 2000 Ga. Gen. Assem., with HB 1346 (HCSFA), 2000 Ga. Gen. Assem.

filed in the new venue, whether the new venue would have full jurisdiction over all of the claims, whether the forum would be less burdensome on both parties, whether the transferee county had a substantial interest in the incident being litigated, and whether the transfer would unduly impose hardship on any party.³¹ An amendment was introduced that would have required parties to submit to mediation before the case could be heard in superior court, but it failed.³²

Consideration by the Senate

Upon introduction, the Senate assigned the bill to its Judiciary Committee.³³ The bill moved to the Senate floor where it passed on March 13, 2000.³⁴ A proposed floor amendment would have removed the bill's venue portion, but it failed.³⁵ Governor Roy Barnes signed the bill into law on March 30, 2000.³⁶

The Act

Section 1 states that the Act shall be known as the "Civil Litigation Improvement Act of 2000."³⁷

Section 2 amends Code section 5-6-46, regarding supersedeas in civil cases and supersedeas bonds, in two ways.³⁸ First, if a corporate defendant files an appeal to review a judgment against it, the corporation cannot be required to supply a supersedeas bond for the punitive damages in excess of

31. Compare HB 1346 (HCS), 2000 Ga. Gen. Assem., with HB 1346 (HCSFA), 2000 Ga. Gen. Assem.

32. See Failed House Floor Amendment to HB 1346, introduced by Rep. Garland Pinholster, Mar. 7, 2000; House Audio, *supra* note 11 (remarks by Rep. Garland Pinholster).

33. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

34. See Georgia Senate Voting Record, HB 1346 (Mar. 13, 2000).

35. See Failed Senate Floor Amendment to HB 1346, introduced by Sen. Tommie Williams, Mar. 13, 2000; Audio Recording of Senate Proceedings, Mar. 13, 2000 (remarks by Sen. Tommie Williams) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter Senate Audio]; see also Amy Frazier, *Senate Passes Bill Affecting Suits Against Corporations*, AP NEWSWIRE, Mar. 13, 2000, available in Westlaw, GANEWS.

36. See 2000 Ga. Laws 228, § 6, at 231.

37. See 2000 Ga. Laws 228, § 1, at 229.

38. See 2000 Ga. Laws 228, § 2, at 229. Compare 1994 Ga. Laws 346, § 1, at 346 (formerly found at O.C.G.A. § 5-6-46 (1995)), with O.C.G.A. § 5-6-46 (Supp. 2000).

\$25 million.³⁹ Second, if the court determines, however, that the appellee has proven by a preponderance of the evidence that the appellant is “purposefully dissipating or secreting its assets, or diverting assets outside the jurisdiction of the United States courts,” then the \$25 million limitation shall not apply.⁴⁰

Section 3 of the Act amends Code section 9-12-134, regarding the appeal or stay of foreign judgments,⁴¹ by inserting that if a judgment debtor shows a court that an appeal from a foreign judgment is pending, or if the time allowed to file an appeal has not yet tolled, then the court must stay enforcement of the foreign judgment until the appeal is completed or until the time for an appeal has expired.⁴² This provision is subject to the new provisions set out in Section 2 of the Act.⁴³

Section 4 amends Code section 14-2-510, relating to venue regarding business corporations.⁴⁴ The Act allows a cause of action for damages because of “torts, wrong, or injury done” to be brought against a domestic or foreign corporation in the county where the cause of action originated.⁴⁵ However, if venue is based on this provision, the defendant has the right to remove the cause of action to the county in which it maintains its principal place of business, as long as it does so within forty-five days of receipt of service of process.⁴⁶ If the plaintiff files a motion with the court to which the case was removed within forty-five days of the removal, stating that removal was improper under the provisions of this Act, the court can remand the case back to the original court.⁴⁷ Once the defendant has filed a motion to remove the case, the forty-five day time period

39. Compare 1994 Ga. Laws 346, § 1, at 346-47 (formerly found at O.C.G.A. § 5-6-46 (1995)), with O.C.G.A. § 5-6-46 (Supp. 2000).

40. Compare 1994 Ga. Laws 346, § 1, at 346-47 (formerly found at O.C.G.A. § 5-6-46 (1995)), with O.C.G.A. § 5-6-46 (Supp. 2000).

41. See 2000 Ga. Laws 228, § 3, at 229.

42. Compare 1986 Ga. Laws 380, § 1, at 381 (formerly found at O.C.G.A. § 9-12-134 (1993)), with O.C.G.A. § 9-12-134 (Supp. 2000).

43. Compare 1986 Ga. Laws 380, § 1, at 381 (formerly found at O.C.G.A. § 9-12-134 (1993)), with O.C.G.A. § 9-12-134 (Supp. 2000).

44. See 2000 Ga. Laws 228, § 4, at 229-31.

45. Compare 1988 Ga. Laws 1070, § 1, at 1096-97 (formerly found at O.C.G.A. § 14-2-510 (1994)), with O.C.G.A. § 14-2-510 (Supp. 2000).

46. Compare 1988 Ga. Laws 1070, § 1, at 1096-97 (formerly found at O.C.G.A. § 14-2-510 (1994)), with O.C.G.A. § 14-2-510 (Supp. 2000).

47. Compare 1988 Ga. Laws 1070, § 1, at 1096-97 (formerly found at O.C.G.A. § 14-2-510 (1994)), with O.C.G.A. § 14-2-510 (Supp. 2000).

will be tolled from that date until whichever of the following first occurs: (1) the court remands the case back to the original court, (2) the court enters an order that the removal is valid, or (3) the forty-five day period for the plaintiff to challenge the removal expires.⁴⁸

Opposition to HB 1346

Various groups opposed the passage of the Act. Early in the 2000 legislative session, the Georgia Chamber of Commerce opposed the portion of the bill addressing venue because the Chamber contended that it allowed plaintiffs' attorneys to shop for a favorable venue.⁴⁹ However, the Chamber changed its stance when the bill was amended to allow the defendant to change venue to the county of its principal place of business upon motion with the court.⁵⁰

The National Federation of Independent Businesses (NFIB) also opposed the venue provision in the bill.⁵¹ The NFIB contended that allowing a plaintiff to bring suit in the county where the incident occurred, and requiring the defendant to file a motion to change venue back to the county where its principal place of business is located, will result in additional attorneys fees that the defendant must pay, and will thus financially burden small, "mom and pop" corporations.⁵²

Representative Lynn Westmoreland opposed the bill on the Senate floor, also arguing that the venue law will hurt small defendants and will only benefit trial lawyers.⁵³ He further argued that the newly adopted term "principal place of business" is not a legal definition and that the prior law's requirement that the plaintiff bring suit in the county where the defendant's registered agent is located was clearer.⁵⁴

48. Compare 1988 Ga. Laws 1070, § 1, at 1096-97 (formerly found at O.C.G.A. § 14-2-510 (1994)), with O.C.G.A. § 14-2-510 (Supp. 2000).

49. See Kathey Pruitt, *2000 Georgia Legislature: Low-Profile Issues Have Potential for Center Stage*, ATLANTA J. & CONST., Jan. 7, 2000, at D8.

50. See House Audio, *supra* note 11.

51. See Bert Fridlin, GA. TREND, Feb. 1, 2000, at 21.

52. See House Audio, *supra* note 11 (remarks by Rep. Lynn Westmoreland).

53. See *id.*; Telephone Interview with Rep. Lynn A. Westmoreland, House District No. 104 (June 26, 2000) [hereinafter Westmoreland Interview].

54. See Westmoreland Interview, *supra* note 53.

Although the issue was not discussed extensively, a question was raised as to whether HB 1346 is constitutional.⁵⁵ Senator Eric Johnson questioned if the bill complied with Parliamentary Procedure Rule 107, which states that a bill must only discuss one issue.⁵⁶ However, the bill was passed without serious debate on that issue.⁵⁷

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55. See Senate Audio, *supra* note 35 (remarks by Sen. Eric Johnson).

56. See *id.*

57. See *id.*