



**House  
Legislative  
Analysis  
Section**

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**ESTABLISH LIMIT ON APPEAL  
BOND**

**House Bill 5151 (Substitute H-3)  
First Analysis (2-7-02)**

**Sponsor: Rep. Andrew Richner  
Committee: Civil Law and the Judiciary**

***THE APPARENT PROBLEM:***

During the past two decades, it has become common to hear of civil judgments that include monetary awards involving millions of dollars. When faced with a multi-million dollar verdict, a company may choose to appeal, in which case a bond is issued to stay execution on the judgment while the appeal is pending. However, some contend they are placed in a “catch-22” situation: while payment of a judgment might bankrupt them; should they appeal, payment of the bond required for the full amount of a multi-million-dollar judgment could also have that affect, pending the decision in the appeal. As the trend toward multi-million dollar awards continues, some states have enacted legislation to place a cap on appeal bonds in civil cases. In 2001, for example, Mississippi reduced the bond that an appellant could be required to post for the punitive damages portion of a judgment and capped it at \$100 million. In Nevada, in 2001 the legislature passed a bill that would place a \$75,000 cap on the appeal bond that would have to be posted for any form of judgment in civil litigation. In addition, Oklahoma placed a \$25 million cap on appeal bonds in any form of judgment in civil litigation and West Virginia placed \$100 million caps on both punitive damages and on all other forms of relief. Accordingly, legislation has been introduced that would follow this trend by placing a \$25 million cap on appeal bonds in civil cases, and to provide safeguards against companies that attempt to dissipate their assets by allowing the court to remove the \$25 million cap if such behavior is attempted.

***THE CONTENT OF THE BILL:***

The bill would amend Chapter 26 of the Revised Judicature Act, which regulates bonds, to add a new section establishing a limitation on appeal bonds, as follows:

- The amount of a bond issued to stay execution on a judgment while an appeal is pending would be determined according to the applicable Michigan

court rules and statutory provisions. The bond could not exceed \$25 million, regardless of the judgment amount.

- The \$25 million cap allowed for a bond under the bill would have to be adjusted on January 1<sup>st</sup> of the fifth year following the effective date of the bill, and then again on January 1<sup>st</sup> of every fifth year after that. The amount of the adjustment would be determined by the state treasurer and would reflect the annual aggregate percentage change in the Detroit Consumer Price Index (DCPI) since the previous adjustment. “DCPI” would mean the most comprehensive index of consumer prices available for the Detroit area from the Bureau of Labor statistics of the U.S. Department of Labor and as certified by the state treasurer.

- If the appellee proves by a preponderance of the evidence that the party for whom the bond to stay execution had been limited was purposefully dissipating or diverting assets outside of the ordinary course of business to avoid ultimate payment of the judgment, the court would be required to rescind the limitation of \$25 million.

MCL 600.2607

***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would have no fiscal impact. (2-6-02)

***ARGUMENTS:***

***For:***

The provisions of the bill would put a \$25 million cap on appeal bonds in civil cases, and would be most beneficial in litigation involving companies such as big tobacco companies, who fear multi-million-dollar judgments in class action lawsuits. The bill is unlikely to affect smaller personal injury or other tort lawsuits, since Michigan law does not provide for punitive damages. and – consequently –

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judgments rarely exceed \$25 million. Other than the multi-million and multi-billion awards that might be awarded against the tobacco companies, the highest awards in Michigan are generally those involving malpractice, and other suits. In fact, the Detroit Free Press recently listed some of the state's top awards for 2001, quoting survey results from a Michigan Lawyers Weekly, which tracks trends in jury awards exceeding one million dollars:

- A Wayne County jury awarded a Detroit family \$55 million in a malpractice award against the Henry Ford Health System.
- A Washtenaw County woman was awarded a \$23 million judgment against an obstetrician in another malpractice suit.
- A plastics company was awarded \$16.6 million by a jury in the U.S. District Court in Detroit in a case involving stolen trade secrets.
- In Otsego County, a jury ordered Gaylord Community Schools to pay \$3 million to the family of a child who was hit by a car while crossing a road to get to a school bus stop.

A supermarket was ordered to pay the family of a 14-year-old boy \$3 million after the jury found the supermarket responsible for selling alcohol to the driver who hit and killed the boy.

***Response:***

Reportedly, the trend toward multi-million dollar jury awards took a downturn in Michigan last year. In fact, the editor of the magazine quoted by the Detroit Free Press in listing 2001 jury awards speculates that the public has grown weary of litigation involving multi-million dollar awards, and that people might have come to the point where they are questioning such verdicts.

***POSITIONS:***

The Michigan Manufacturers Association supports the bill. (2-6-02)

Ford Motor Company supports the bill. (2-6-02)

The Michigan Chamber of Commerce supports the bill. (2-6-02)

Analyst: R. Young

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.