

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

House Bill 1509  
Judiciary

(Delegate Anderson)

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**Judgments - Appeals - Supersedeas Bond**

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This bill specifies that the supersedeas bond an appellant must post to stay enforcement of a judgment may not exceed \$200,000,000, regardless of the amount of the judgment, if: (1) the appellant is a participating tobacco manufacturer in the Master Settlement Agreement (MSA); and (2) the appellant is appealing a judgment in favor of the plaintiffs in a certified class action or an action by multiple plaintiffs in which damages are not proved for each plaintiff individually.

If the appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside of the ordinary course of business to avoid the payment of a judgment, the court may require the appellant to post a bond in an amount not to exceed the full amount of the judgment.

The bill applies prospectively civil actions pending on or filed on or after the bill's October 1, 2010 effective date.

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**Fiscal Summary**

**State Effect:** Any increase in State expenditures to conduct "dissipating assets" hearings resulting from this bill can be handled with the existing resources of the Judiciary.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Current Law:** In general, an appellant may stay the enforcement of a civil judgment from which an appeal is taken by filing a supersedeas bond or alternative security with the clerk of the court. The bond or security may be filed at any time before satisfaction of the judgment, but the enforcement is stayed from the time the security is filed. Usually the amount of the supersedeas bond is the sum that will cover the whole amount of the unsatisfied portion of the money judgment, plus interest, costs, and damages entered or awarded on appeal.

Supersedeas bonds are typically filed with and approved by the clerk of the court and must contain a surety, unless otherwise expressly provided. If a clerk refuses to approve a bond, or an adverse party objects in writing to the bond, the court may approve the bond after notice and a hearing, if necessary. Courts may require an increase or decrease in the face amount of a bond for good cause shown. Under Rule 2-632, courts have the authority to enter a stay pending appeal without the filing of a supersedeas bond if the court determines that the nature of the action warrants the exception.

**Background:** The filing of an appeal does not, in and of itself, stay the execution of a judgment in a civil case. To stay execution of a judgment pending appeal, courts often require the filing of a supersedeas bond – bonds to secure a judgment (*i.e.*, supersede the judgment) of money or property pending appeal. The filing of a supersedeas bond to stay the execution of a judgment pending appeal has historically been considered a feature of common law. Debate continues in the legal community as to the wisdom of continuing the requirement of filing a supersedeas bond as more lenders leave the market and the availability of these bonds decreases.

In November 1998, 46 states and the major tobacco companies entered into MSA. Through MSA, participating tobacco manufacturers pay 46 states, 5 territories, and the District of Columbia about \$206 billion for 25 years. In Maryland, the Cigarette Restitution Fund Program (CRF) receive a majority of its funding through payments made under MSA. Funds in CRF must be used to support eight health- and tobacco-related priorities specified in statute. CRF revenues are expected to total \$176 million in fiscal 2011.

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## Additional Information

**Prior Introductions:** Several bills that would limit the amount of the supersedeas bond needed to stay the enforcement of a judgment under specified circumstances have been introduced in recent years, none of which passed. None of the bills were limited exclusively to cases involving the Master Settlement Agreement.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:** First Reader - March 24, 2010  
mam/kdm

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