

APPEAL BOND FAIRNESS



Ensuring access to appeal

Appeal bonds create a barrier to due process

New York requires that a defendant post a bond equal to the entire amount of the judgment plus interest before a verdict can be appealed. The goal of the appeal bond is to ensure that a plaintiff's award is secure in the event the defendant's appeal is unsuccessful.

However, appeal bonds can create serious problems for defendants seeking to appeal. Because of New York's extremely high fixed rate of judgment interest (9%), the cost of obtaining an appeal bond can make appealing a case extremely difficult or impossible. Multi-million or multi-billion dollar verdicts can effectively deny defendants their right to appeal because they cannot afford a bond. Because of this, defendants may opt simply to settle a case early, even if the merits are weak, because the cost of securing a bond to appeal an adverse judgment is impossibly high. This is troubling because approximately 45% of judgments against defendants are overturned on appeal.¹ Even if the bonding requirement does not bankrupt a company, the cost of posting such a bond can seriously disrupt business and adversely affect employees and shareholders. This is an especially great concern for companies which have few capital assets, such as accounting or financial firms.

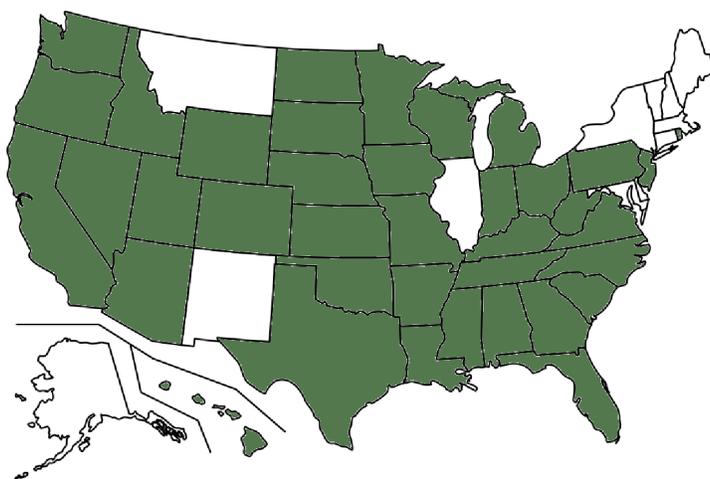
45%

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A reasonable cap on appeal bonds is needed

The right to appeal is a fundamental element of a fair legal system. In order to preserve access to appeal and protect defendants from runaway verdicts, appeal bonds must be capped—except in instances where a defendant is intentionally liquidating assets or attempting to flee justice.

A vast majority of states—38 to date—have implemented limitations on the size of appeal bonds. New York must follow suit and cap appeals at a fixed amount or a percentage of the defendant's net worth.



States which limit the size of appeal bonds

¹ Eisenberg, T. "Appeal Rates and Outcomes in Tried and Nontried Cases." Cornell Law Faculty Publications. November, 2004.

