

# SENATE BILL 851

C4

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By: **Senator Conway**

Introduced and read first time: January 31, 2014

Assigned to: Finance

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## A BILL ENTITLED

AN ACT concerning

### **Maryland Insurance Administration – Individual Sureties – Regulation**

FOR the purpose of requiring certain individual sureties to register each year with the Maryland Insurance Administration in a certain manner and for certain purposes; specifying the contents of the initial and renewal registration application forms; establishing a certain registration fee; providing for the review and approval or denial of a registration application; providing that a registration is effective as of a certain date; providing for the expiration date of a registration; prohibiting individual sureties who are not registered from issuing or soliciting certain surety bonds for certain purposes; providing for the suspension or revocation of a registration for good cause shown in accordance with certain provisions of law; requiring certain individual sureties to comply with a certain provision in order to make issuance or solicitation of certain surety bonds or insurance under certain circumstances not to be punishable as a fraudulent insurance act; defining a certain term; altering the termination provision of certain provisions of law relating to security requirements for procurement; requiring the Administration to study certain issues relating to the regulation of individual sureties; requiring the Administration to submit a report to certain committees of the General Assembly on or before a certain date containing the results of its study and recommendations; authorizing an individual surety to solicit and issue surety bonds in accordance with certain provisions of law without first registering with the Administration until a certain date; providing for the application of this Act; providing for the termination of this Act; and generally relating to individual sureties and security requirements for procurement.

BY repealing and reenacting, without amendments,  
Article – Insurance  
Section 4–205(c)  
Annotated Code of Maryland  
(2011 Replacement Volume and 2013 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY adding to

Article – Insurance  
 Section 21–104  
 Annotated Code of Maryland  
 (2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,

Article – Insurance  
 Section 27–406.1  
 Annotated Code of Maryland  
 (2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,

Chapter 299 of the Acts of the General Assembly of 2006, as amended by  
 Chapter 266 of the Acts of the General Assembly of 2008  
 Section 4

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Insurance**

4–205.

(c) Any of the following acts in the State, effected by mail or otherwise, is considered to be doing an insurance business in the State:

- (1) making or proposing to make, as an insurer, an insurance contract;
- (2) making or proposing to make, as guarantor or surety insurer, a contract of guaranty or suretyship as a vocation and not merely incidental to another legitimate business or activity of the guarantor or surety insurer;
- (3) taking or receiving an application for insurance;
- (4) receiving or collecting premiums, commissions, membership fees, assessments, dues, or other consideration for insurance;
- (5) issuing or delivering an insurance contract to a resident of the State or a person authorized to do business in the State;
- (6) except as provided in subsection (d) of this section, with respect to a subject of insurance resident, located, or to be performed in the State, directly or indirectly acting as an insurance producer for, or otherwise representing or helping on behalf of another, an insurer or other person to:

- of insurance;
- (i) solicit, negotiate, procure, or effect insurance or the renewal
  - (ii) disseminate information about coverage or rates;
  - (iii) forward an application;
  - (iv) deliver a policy or insurance contract;
  - (v) inspect risks;
  - (vi) fix rates;
  - (vii) investigate or adjust claims or losses;
  - (viii) transact matters arising out of an insurance contract after the insurance contract becomes effective; or
  - (ix) in any other manner represent or help an insurer or other person to transact insurance business;
- (7) doing any kind of insurance business specifically recognized as doing an insurance business under statutes relating to insurance;
  - (8) doing or proposing to do any insurance business that is substantially equivalent to any act listed in this subsection in a manner designed to evade the statutes relating to insurance; or
  - (9) as an insurer transacting any other business in the State.

**21-104.**

**(A) IN THIS SECTION, “INDIVIDUAL SURETY” MEANS A PERSON THAT:**

- (1) ISSUES SURETY BONDS OR CONTRACTS OF SURETY INSURANCE; AND**
- (2) DOES NOT HAVE A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER.**

**(B) THIS SECTION APPLIES TO AN INDIVIDUAL SURETY THAT ISSUES OR SOLICITS A BID, PERFORMANCE, OR PAYMENT BOND UNDER § 13-207, § 13-216, OR § 17-104 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

**(C) (1) EACH INDIVIDUAL SURETY SHALL REGISTER EACH YEAR WITH THE ADMINISTRATION UNDER THIS SECTION ON A FORM THE ADMINISTRATION PROVIDES.**

**(2) THE INITIAL REGISTRATION FORM SHALL INCLUDE:**

**(I) THE NAME, ADDRESS, TELEPHONE NUMBER, AND OTHER CONTACT INFORMATION FOR THE INDIVIDUAL SURETY;**

**(II) THE TYPES OF SURETY BONDS AND CONTRACTS OF SURETY INSURANCE THE INDIVIDUAL SURETY INTENDS TO WRITE AND THE AGGREGATE VALUE OF EACH TYPE OF BOND AND CONTRACT;**

**(III) THE TYPES OF PROCUREMENT PROJECTS, CONTRACTORS, AND SUBCONTRACTORS FOR WHICH THE INDIVIDUAL SURETY INTENDS TO PROVIDE SURETY BONDS AND CONTRACTS OF SURETY INSURANCE; AND**

**(IV) ANY OTHER INFORMATION THE ADMINISTRATION CONSIDERS NECESSARY FOR REGULATION OF INDIVIDUAL SURETIES.**

**(3) THE RENEWAL REGISTRATION FORM SHALL INCLUDE:**

**(I) THE INFORMATION REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION;**

**(II) THE TYPES OF SURETY BONDS AND CONTRACTS OF SURETY INSURANCE THE INDIVIDUAL SURETY WROTE DURING THE PRECEDING YEAR AND THE AGGREGATE VALUE OF EACH TYPE OF BOND AND CONTRACT;**

**(III) THE TYPES OF PROCUREMENT PROJECTS, CONTRACTORS, AND SUBCONTRACTORS FOR WHICH THE INDIVIDUAL SURETY PROVIDED SURETY BONDS AND CONTRACTS OF SURETY INSURANCE DURING THE PRECEDING YEAR;**

**(IV) THE TYPES AND AGGREGATE VALUE OF CAPITAL THE INDIVIDUAL SURETY HAS RESERVED FOR USE AS SECURITY FOR SURETY BONDS AND CONTRACTS OF SURETY INSURANCE DURING THE PRECEDING YEAR; AND**

**(V) ANY OTHER FINANCIAL INFORMATION THAT THE ADMINISTRATION REQUIRES PERTINENT TO THE CAPACITY OF THE INDIVIDUAL SURETY TO SECURE SURETY BONDS AND CONTRACTS OF SURETY INSURANCE.**

**(4) THE ANNUAL REGISTRATION FEE IS \$100.**

**(D) (1) THE ADMINISTRATION SHALL REVIEW THE APPLICATION FOR REGISTRATION BASED ON INFORMATION IN THE APPLICATION AND OTHER AVAILABLE INFORMATION.**

**(2) BEFORE APPROVING OR DENYING AN APPLICATION FOR REGISTRATION, THE ADMINISTRATION MAY REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT.**

**(3) (I) THE ADMINISTRATION SHALL APPROVE OR DENY THE APPLICATION FOR REGISTRATION WITHIN 60 DAYS AFTER RECEIVING THE APPLICATION AND ANY REQUIRED ADDITIONAL INFORMATION.**

**(II) IF THE ADMINISTRATION DOES NOT APPROVE OR DENY AN APPLICATION FOR REGISTRATION OR REQUEST ADDITIONAL INFORMATION WITHIN THE 60-DAY PERIOD, THE APPLICATION IS DEEMED APPROVED.**

**(4) A REGISTRATION IS EFFECTIVE AS OF THE DATE AN APPLICATION FOR REGISTRATION IS:**

**(I) APPROVED BY THE ADMINISTRATION UNDER PARAGRAPH (3)(I) OF THIS SUBSECTION; OR**

**(II) DEEMED APPROVED UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION.**

**(E) UNLESS A REGISTRATION IS RENEWED, THE REGISTRATION EXPIRES ON THE FIRST ANNIVERSARY OF ITS EFFECTIVE DATE.**

**(F) AN INDIVIDUAL SURETY MAY NOT ISSUE OR SOLICIT A BID, PERFORMANCE, OR PAYMENT BOND UNDER § 13-207, § 13-216, OR § 17-104 OF THE STATE FINANCE AND PROCUREMENT ARTICLE IF THE INDIVIDUAL SURETY HAS NOT REGISTERED WITH THE ADMINISTRATION UNDER THIS SECTION.**

**(G) THE ADMINISTRATION MAY REVOKE OR SUSPEND A REGISTRATION FOR GOOD CAUSE SHOWN IN ACCORDANCE WITH TITLE 4 OF THIS ARTICLE.**

27-406.1.

(a) In this section, “individual surety” means a person that:

(1) issues surety bonds or contracts of surety insurance; and

(2) does not have a certificate of authority issued by the Commissioner.

(b) It is a fraudulent insurance act for an individual surety to solicit or issue a surety bond or contract of surety insurance except as provided in:

(1) **§ 21-104 OF THIS ARTICLE AND §§ 13-207 and 17-104** of the State Finance and Procurement Article; and

(2) for an uncompensated person, §§ 5-203 and 5-204 of the Criminal Procedure Article.

**Chapter 299 of the Acts of 2006, as amended by Chapter 266 of the Acts of 2008**

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2006. It shall remain effective for a period of [8] **13** years and, at the end of September 30, [2014] **2019**, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Administration shall further study and report on the optimal method to regulate the activities of individual sureties who are involved in issuing and soliciting bid, performance, and payment bonds under §§ 13-207, 13-216, and 17-104 of the State Finance and Procurement Article.

(b) The study shall assess:

(1) the benefits and costs associated with different levels of regulation, including registration, licensure, and certification;

(2) the anticipated costs to the State of each form of regulation and different means of covering those costs, including a flat fee for application and a sliding scale based on the book of business of the individual surety;

(3) appropriate reserve levels and other financial safeguards for other parties in contracts and transactions involving individual sureties;

(4) appropriate enforcement mechanisms for the regulatory structures proposed, including penalties and procedures tailored to best practices of the individual surety industry; and

(5) any other pertinent matter that the Administration considers appropriate to include.

(c) On or before January 14, 2015, the Administration, in accordance with § 2–1246 of the State Government Article, shall submit a report of its study and recommendations, including proposed legislative and regulatory changes to accomplish the recommendations, to the Senate Finance Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Economic Matters Committee, and the House Health and Government Operations Committee.

SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding the provisions of §§ 21–104 and 27–406.1(b)(1) of the Insurance Article, as enacted by Section 1 of this Act, until January 1, 2015, an individual surety may continue to solicit and issue surety bonds in accordance with §§ 13–207, 13–216, and 17–104 of the State Finance and Procurement Article without first registering with the Maryland Insurance Administration.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014. It shall remain effective for a period of 5 years and 3 months and, at the end of September 30, 2019, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.