

# HOUSE BILL 885

C4

2lr1518  
CF SB 764

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By: Delegates Jameson, Barkley, Burns, Haddaway-Riccio, Impallaria, Love,  
W. Miller, Minnick, and Schulz

Introduced and read first time: February 9, 2012

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 31, 2012

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Fraudulent Insurance Acts – Individual Sureties – Contracts**  
3 **of Surety Insurance**

4 FOR the purpose of establishing that it is a fraudulent insurance act for an individual  
5 surety to make a certain representation or to issue a contract of surety  
6 insurance, except as provided in certain provisions of law; ~~establishing that it is~~  
7 ~~a fraudulent insurance act for a person to knowingly or willfully assist a person~~  
8 ~~to obtain a contract of surety insurance from an individual surety, except as~~  
9 ~~provided in certain provisions of law; establishing that it is a fraudulent~~  
10 ~~insurance act for a person to knowingly or willfully make a certain false or~~  
11 ~~fraudulent statement or representation about certain assets pledged by an~~  
12 ~~individual surety or to knowingly or willfully fail to return certain money or~~  
13 ~~premiums paid for a contract of surety insurance under certain circumstances;~~  
14 establishing certain penalties for certain violations of this Act; defining a  
15 certain term; requiring the Maryland Insurance Administration to conduct a  
16 certain analysis of certain practices of corporate sureties and individual  
17 sureties; requiring the Administration to consult with certain persons or  
18 entities; requiring the Administration to consider certain items, make certain  
19 determinations, and conduct certain surveys and reviews in a certain analysis;  
20 requiring the Administration to submit certain reports to certain committees of  
21 the General Assembly on or before certain dates; and generally relating to  
22 individual sureties, contracts of surety insurance, and fraudulent insurance  
23 acts.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to  
 2 Article – Insurance  
 3 Section 27–406.1  
 4 Annotated Code of Maryland  
 5 (2011 Replacement Volume)

6 BY repealing and reenacting, with amendments,  
 7 Article – Insurance  
 8 Section 27–408  
 9 Annotated Code of Maryland  
 10 (2011 Replacement Volume)

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

13 **Article – Insurance**

14 **27–406.1.**

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

16 (1) ISSUES ~~CONTRACT~~ SURETY BONDS OR CONTRACTS OF SURETY  
 17 INSURANCE; AND

18 (2) DOES NOT HAVE A CERTIFICATE OF AUTHORITY ISSUED BY  
 19 THE COMMISSIONER.

20 (B) ~~EXCEPT AS PROVIDED IN §§ 13-207 AND 17-104 OF THE STATE~~  
 21 ~~FINANCE AND PROCUREMENT ARTICLE, IT~~ IT IS A FRAUDULENT INSURANCE  
 22 ACT FOR AN INDIVIDUAL SURETY TO: SOLICIT OR ISSUE A SURETY BOND OR  
 23 CONTRACT OF SURETY INSURANCE EXCEPT AS PROVIDED IN:

24 (1) §§ 13-207 AND 17-104 OF THE STATE FINANCE AND  
 25 PROCUREMENT ARTICLE; AND

26 (2) FOR AN UNCOMPENSATED PERSON, §§ 5-203 AND 5-204 OF  
 27 THE CRIMINAL PROCEDURE ARTICLE.

28 (1) ~~REPRESENT THAT IT HAS THE LEGAL AUTHORITY TO ISSUE A~~  
 29 ~~CONTRACT OF SURETY INSURANCE; OR~~

30 (2) ~~ISSUE A CONTRACT OF SURETY INSURANCE.~~

31 (C) ~~EXCEPT AS PROVIDED IN §§ 13-207 AND 17-104 OF THE STATE~~  
 32 ~~FINANCE AND PROCUREMENT ARTICLE, IT IS A FRAUDULENT INSURANCE ACT~~

1 ~~FOR A PERSON TO KNOWINGLY OR WILLFULLY ASSIST A PERSON TO OBTAIN A~~  
2 ~~CONTRACT OF SURETY INSURANCE FROM AN INDIVIDUAL SURETY.~~

3 ~~(D) IT IS A FRAUDULENT INSURANCE ACT FOR A PERSON TO:~~

4 ~~(1) KNOWINGLY OR WILLFULLY MAKE A FALSE OR FRAUDULENT~~  
5 ~~STATEMENT OR REPRESENTATION AS TO THE EXISTENCE, VALUE, OR~~  
6 ~~MARKETABILITY OF ANY ASSETS PLEDGED BY AN INDIVIDUAL SURETY TO~~  
7 ~~SECURE ITS OBLIGATIONS UNDER A CONTRACT OF SURETY INSURANCE; OR~~

8 ~~(2) KNOWINGLY OR WILLFULLY FAIL TO RETURN ANY MONEY OR~~  
9 ~~PREMIUMS PAID FOR A CONTRACT OF SURETY INSURANCE ISSUED BY AN~~  
10 ~~INDIVIDUAL SURETY IF THE CONTRACT OF SURETY INSURANCE IS REJECTED OR~~  
11 ~~NOT ACCEPTED BY THE GOVERNMENTAL ENTITY OR PERSON THAT REQUIRES~~  
12 ~~THE CONTRACT OF SURETY INSURANCE.~~

13 27-408.

14 (a) (1) A person that violates § 27-407 of this subtitle, or another  
15 provision of this subtitle in which the claim or act that is the subject of the fraud has a  
16 value of \$300 or more is guilty of a felony and on conviction, for each violation, is  
17 subject to:

18 (i) liability for restoring to the victim the property taken or the  
19 value of the property taken; and

20 (ii) 1. for a violation of any provision of § 27-403 of this  
21 subtitle, a fine, the maximum of which is the greater of three times the value of the  
22 claim or act that is the subject of the fraud and \$10,000 and the minimum of which is  
23 \$500, or imprisonment not exceeding 15 years or both; and

24 2. for a violation of any provision of § 27-404, § 27-405,  
25 § 27-406, **§ 27-406.1**, § 27-407, or § 27-407.1 of this subtitle, a fine not exceeding  
26 \$10,000 or imprisonment not exceeding 15 years or both.

27 (2) A person that violates a provision of this subtitle in which the  
28 claim or act that is the subject of the fraud has a value of less than \$300 is guilty of a  
29 misdemeanor and on conviction, for each violation, is subject to:

30 (i) liability for restoring to the victim the property taken or the  
31 value of the property taken; and

32 (ii) 1. for a violation of any provision of § 27-403 of this  
33 subtitle, a fine, the maximum of which is the greater of three times the value of the  
34 claim or act that is the subject of the fraud and \$10,000 and the minimum of which is  
35 \$500, or imprisonment not exceeding 18 months or both; and

1                   2.     for a violation of any provision of § 27-404, § 27-405,  
2 § 27-406, **§ 27-406.1**, § 27-407, or § 27-407.1 of this subtitle, a fine not exceeding  
3 \$10,000 or imprisonment not exceeding 18 months or both.

4           (b)   (1)   The penalties imposed under this section may be imposed  
5 separately from and consecutively to or concurrently with a sentence for another  
6 offense based on the act that constitutes a violation of this subtitle.

7           (2)   Each act of solicitation under § 27-407 of this subtitle constitutes a  
8 separate violation for purposes of the penalties imposed under this section.

9           (3)   Notwithstanding any other provision of law, a fine imposed under  
10 this section is mandatory and not subject to suspension.

11           SECTION 2. AND BE IT FURTHER ENACTED, That:

12           (a)   In accordance with the provisions of § 2-205 of the Insurance Article, the  
13 Maryland Insurance Administration shall conduct an analysis of the practices of  
14 corporate sureties and individual sureties in the State, as specified under this section.

15           (b)   In conducting the analysis, the Administration shall consult with any  
16 person or entity that the Administration determines appropriate, including corporate  
17 sureties, individual sureties, insurance producers, contractors, the Department of  
18 Transportation, the Department of General Services, and the Maryland Property and  
19 Casualty Insurance Guaranty Corporation.

20           (c)   In its analysis, the Administration shall:

21           (1)   consider whether individual sureties should be licensed or  
22 otherwise regulated like other surety insurers in order to solicit or issue surety bonds  
23 or contracts of surety insurance;

24           (2)   determine whether individual sureties have issued or attempted to  
25 issue surety bonds or contracts of surety insurance for the State, counties, or  
26 municipalities since authorized to issue surety bonds or contracts of surety insurance  
27 under Chapter 299 of the Acts of the General Assembly of 2006, Chapter 266 of the  
28 Acts of the General Assembly of 2008, and other applicable provisions of law, and, if  
29 so, the number of surety bonds or contracts of surety insurance issued, the number of  
30 surety bonds or contracts of surety insurance rejected, and the reasons for any  
31 rejection of the surety bonds or contracts of surety insurance;

32           (3)   consider whether and how the law, as enacted under Chapter 299  
33 of the Acts of the General Assembly of 2006 and Chapter 266 of the Acts of the  
34 General Assembly of 2008, should be expanded to allow individual sureties to issue  
35 surety bonds or contracts of surety insurance to subcontractors;

1           (4) determine whether individual sureties are authorized to issue  
2 surety bonds or contracts of surety insurance in other states and, if so, how individual  
3 sureties are regulated in those states;

4           (5) determine whether corporate sureties or individual sureties have  
5 been sanctioned for issuing surety bonds or contracts of surety insurance in the State  
6 and other states and the reasons for the sanctions;

7           (6) conduct a review of:

8           (i) all corporate sureties that issued surety bonds or contracts  
9 of surety insurance in the State and that were declared insolvent or placed under  
10 receivership of the Administration within the last 10 years;

11           (ii) the impact of the insolvency or receivership of the corporate  
12 sureties on the availability of surety bonds or contracts of surety insurance in the  
13 market;

14           (iii) the impact of the affected surety bonds on surety bond users  
15 and insurance producers; and

16           (iv) the notice requirements that the Administration provides to  
17 surety bond users, insurance producers, and the public in the event of the insolvency  
18 or receivership of a corporate surety;

19           (7) conduct a survey of the Maryland Property and Casualty Insurance  
20 Guaranty Corporation to determine:

21           (i) the number of claims submitted to and paid by the  
22 Corporation as a result of an insolvency of a corporate surety in the last 10 years;

23           (ii) whether contributions provided by surety insurers to the  
24 Corporation are adequate for future claims related to insolvent surety insurers;

25           (iii) the existing statutory requirements of items covered by the  
26 Corporation in the event of the insolvency of a corporate surety; and

27           (iv) whether loss of paid premiums or collateral of surety bond  
28 principal and any other covered items should be expanded;

29           (8) consider whether the laws and regulations for licensing and  
30 regulating corporate sureties are adequate, including whether the current risk-based  
31 capital standards are adequate to prevent the insolvency of corporate sureties;

32           (9) consider whether the laws and regulations regulating corporate  
33 sureties or individual sureties are adequate to prevent the issuance of fraudulent

1 surety bonds or contracts of surety insurance by corporate sureties or individual  
2 sureties;

3 (10) conduct a survey of the Board of Public Works, the Department of  
4 Transportation, the Department of General Services, and a representative sample of  
5 corporate sureties and individual sureties, if appropriate, for each year beginning with  
6 2004, that includes:

7 (i) the percentage of the total surety bonds or contracts of  
8 surety insurance that surety insurers issued in the State on construction projects to  
9 minority business enterprises, as compared to the surety bonds or contracts of surety  
10 insurance that surety insurers issued on construction projects to nonminority business  
11 enterprises; and

12 (ii) the percentage of the total surety bonds or contracts of  
13 surety insurance that surety insurers rejected in the State that would have been  
14 issued to minority business enterprises on construction projects, as compared to the  
15 surety bonds or contracts of surety insurance that surety insurers rejected that would  
16 have been issued to nonminority business enterprises on construction projects;

17 (11) conduct a survey of a representative sample of contractors that  
18 have held a surety bond or contract of surety insurance issued by an insolvent surety  
19 insurer to determine the method each contractor used to acquire a new surety bond or  
20 contract of surety insurance and any additional costs or difficulties the contractor  
21 experienced in acquiring a new surety bond or contract of surety insurance;

22 (12) consider whether there are any programs, including the Maryland  
23 State Bond Development and Financing Authority and the United States Small  
24 Business Administration Bond Guaranty and Lending Program, that enhance the  
25 availability of surety bonds or contracts of surety insurance for new, emerging, and  
26 small businesses, including businesses that qualify as minority business enterprises;  
27 and

28 (13) consider the need to establish licensure requirements that are  
29 specific for surety insurance producers who sell surety bonds or contracts of surety  
30 insurance.

31 (d) (1) On or before December 1, 2012, the Administration shall submit an  
32 interim report, in accordance with § 2-1246 of the State Government Article, on its  
33 findings and recommendations to the Senate Finance Committee, the Senate  
34 Education, Health, and Environmental Affairs Committee, the House Economic  
35 Matters Committee, and the House Health and Government Operations Committee.

36 (2) On or before December 1, 2013, the Administration shall submit a  
37 final report, in accordance with § 2-1246 of the State Government Article, on its  
38 findings and recommendations to the Senate Finance Committee, the Senate

1 Education, Health, and Environmental Affairs Committee, the House Economic  
2 Matters Committee, and the House Health and Government Operations Committee.

3 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
4 effect ~~October~~ June 1, 2012.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.