

SENATE BILL 764

C4

2lr1180
CF HB 885

By: **Senators Kelley, Klausmeier, and Mathias**

Introduced and read first time: February 3, 2012

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 2012

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.

24 BY adding to

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 Article – Insurance
 2 Section 27–406.1
 3 Annotated Code of Maryland
 4 (2011 Replacement Volume)

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

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

12 **Article – Insurance**

13 **27–406.1.**

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

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

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

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

23 (1) §§ 13–207 AND 17–104 OF THE STATE FINANCE AND
 24 PROCUREMENT ARTICLE; AND

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

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

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

30 (C) ~~EXCEPT AS PROVIDED IN §§ 13–207 AND 17–104 OF THE STATE~~
 31 ~~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:

Governor.

President of the Senate.

Speaker of the House of Delegates.