

Chapter 300

(House Bill 885)

AN ACT concerning

Fraudulent Insurance Acts – Individual Sureties – Contracts of Surety Insurance

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

BY adding to

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

BY repealing and reenacting, with amendments,

Article – Insurance
Section 27–408
Annotated Code of Maryland
(2011 Replacement Volume)

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

Article – Insurance**27-406.1.**

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

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

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

(B) ~~EXCEPT AS PROVIDED IN §§ 13-207 AND 17-104 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, 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) ~~§§ 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.~~

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

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

(C) ~~EXCEPT AS PROVIDED IN §§ 13-207 AND 17-104 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, IT IS A FRAUDULENT INSURANCE ACT FOR A PERSON TO KNOWINGLY OR WILLFULLY ASSIST A PERSON TO OBTAIN A CONTRACT OF SURETY INSURANCE FROM AN INDIVIDUAL SURETY.~~

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

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

(2) ~~KNOWINGLY OR WILLFULLY FAIL TO RETURN ANY MONEY OR PREMIUMS PAID FOR A CONTRACT OF SURETY INSURANCE ISSUED BY AN INDIVIDUAL SURETY IF THE CONTRACT OF SURETY INSURANCE IS REJECTED OR~~

~~NOT ACCEPTED BY THE GOVERNMENTAL ENTITY OR PERSON THAT REQUIRES THE CONTRACT OF SURETY INSURANCE.~~

27-408.

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

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

(c) In its analysis, the Administration shall:

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

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

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

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

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

(6) conduct a review of:

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

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

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

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

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

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

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

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

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

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

(9) consider whether the laws and regulations regulating corporate sureties or individual sureties are adequate to prevent the issuance of fraudulent surety bonds or contracts of surety insurance by corporate sureties or individual sureties;

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

(i) the percentage of the total surety bonds or contracts of surety insurance that surety insurers issued in the State on construction projects to

minority business enterprises, as compared to the surety bonds or contracts of surety insurance that surety insurers issued on construction projects to nonminority business enterprises; and

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

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

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

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

(d) (1) On or before December 1, 2012, the Administration shall submit an interim report, in accordance with § 2-1246 of the State Government Article, on its findings and 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.

(2) On or before December 1, 2013, the Administration shall submit a final report, in accordance with § 2-1246 of the State Government Article, on its findings and 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 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October June 1, 2012.

Approved by the Governor, May 2, 2012.