

Written Testimony of
the National Association of Surety Bond Producers, Inc.

Before the Maryland General Assembly
House of Delegates
Economic Matters Committee

In Strong Support of

H.B. 885
“An Act concerning
Fraudulent Insurance Acts – Individual Sureties – Contracts of Surety
Insurance”



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The National Association of Surety Bond Producers (NASBP) is a national trade organization of professional surety bond producers, whose membership includes businesses employing licensed surety bond producers placing bid, performance, and payment bonds in Maryland and elsewhere in the United States. NASBP appreciates the opportunity to provide the Economic Matters Committee with written testimony in support of H.B. 885.

Interest of the Bond Producer in H.B. 885

Bond producers are licensed and regulated by the Maryland Insurance Administration. They play vital roles in the construction procurement process. They stand as the “bridge” between construction firms and surety companies. The bond producer works closely with construction businesses of all sizes, serving as an advisor, educator, and matchmaker to position these businesses to meet underwriting requirements to obtain surety credit.

The objective of the bond producer is not only to assist the construction firm with obtaining surety credit for each contract requiring surety credit but to ensure that the firm’s business remains viable and thrives for years to come. To that end, bond producers assist construction firms with creating networks of knowledgeable professional services providers, such as construction attorneys, certified public accountants familiar with construction business practices, and construction lenders, and may assist construction firms with market intelligence and even strategic and succession planning.

Bond producers often are asked by construction firms to help them assess the strength and reputation of a surety furnishing a bond to which the firm is a beneficiary. Bond producers understand that the financial strength and stability of the surety is the key to the success of the surety bonding system. A surety that is not sound financially cannot add to the credit standing of the firm to which it has bonded. Moreover, such a surety will not supply the protection promised by the bond. As a result, bond producers advocate for well-regulated surety markets and protection for consumers of surety insurance, thereby protecting taxpayers and businesses from the actions of unscrupulous and financially unsound surety insurers and promoting consumer confidence in the surety marketplace.

Individual Sureties Are Not Licensed

Of particular concern are sureties that exist outside of the current state regulatory structure. Surety companies must possess a certificate of authority to act as a surety insurer in Maryland. Under a statutory exception, however, individuals in certain, limited circumstances may act as sureties in Maryland without possessing a certificate of authority from the Maryland Insurance Administration. In such circumstances, no governmental authority has reviewed the financial soundness or the character of the individual surety before they transact business.

Those firms and entities reliant on the protection of a payment bond have no third-party assurance of its efficacy. Moreover, Maryland consumers and businesses purchasing bonds from unlicensed individuals, whether they are aware or not, essentially enter a *caveat emptor* (“buyer beware”) marketplace with respect to those bonds. If a consumer or business is harmed as a result of an illusory or fraudulent individual surety bond, their only recourse may be a direct lawsuit against the individual surety, the time, cost, and emotional toll of which they may be ill able to afford. Even if they obtain a legal judgment against the individual surety, such judgment may be uncollectible from a person that may have minimal or no contacts with the State.

Individual sureties have conducted business in Maryland, both within and outside of legal requirements. Individual surety activity has resulted in harm to Maryland citizens and businesses. Last year, during the 2011 session of the Maryland General Assembly, the Economic Matters Committee, in consideration of H.B. 1071/S.B. 782, heard witnesses testify that individual sureties had written bonds in Maryland that were not honored or that individual sureties had collected premiums on rejected bonds which were not returned. The Maryland Insurance Administration even issued Bulletin 10-29 (Amended) in November 2010 that related in part that individual sureties without certificates of authority have been found to be engaging in surety business in Maryland outside of any statutory exceptions to possessing a certificate of authority.

A Specific Statute Is Needed As a Deterrent to Fraudulent Individual Surety Acts & As a Remedy for Such Acts When They Occur

A specific statute addressing fraudulent individual surety acts is a strong deterrent to persons engaging in such behavior in Maryland and harming Maryland consumers and businesses. Currently, the Maryland Code does not contain a statute specifically tailored to the fraudulent acts of individual sureties; yet, a statutory exception has been provided under Maryland law to permit individuals to act as sureties on public works contracts without any oversight by the Maryland Insurance Administration. H.B. 885 would specifically codify the types of actions undertaken by unlicensed individual sureties which constitute fraud, such as misrepresentation of authority to act as a surety, knowingly or willfully misrepresent the existence, value or marketability of an asset pledged by an individual surety to secure its bond obligation, and failure to return premiums for rejected bonds, providing the statutory means to enable the Maryland Insurance Administration to protect Maryland citizens from unscrupulous actors. Maryland consumers and businesses deserve to be protected; H.B. 885 will accomplish just that.