

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1259

To amend chapter 93 of title 31, United States Code, to provide additional requirements for a surety corporation to be approved by the Secretary of the Treasury, to provide for equal access to surety bonding, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 20 (legislative day, JUNE 30), 1993

Mr. SIMON (for himself and Ms. MOSELEY-BRAUN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend chapter 93 of title 31, United States Code, to provide additional requirements for a surety corporation to be approved by the Secretary of the Treasury, to provide for equal access to surety bonding, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equal Surety Bond  
5 Opportunity Act of 1993”.

1 **SEC. 2. ADDITIONAL REQUIREMENTS REGARDING AP-**  
2 **PROVAL OF SURETIES.**

3 (a) IN GENERAL.—A company may not be approved  
4 as a surety by the Secretary of the Treasury under section  
5 9304 of title 31, United States Code, or provide any surety  
6 bond pursuant to such section unless the company main-  
7 tains full compliance with the requirements of section  
8 9310 of title 31, United States Code.

9 (b) REQUIREMENTS RELATING TO ENFORCE-  
10 ABILITY.—

11 (1) SIGNED STATEMENT OF COMPLIANCE WITH  
12 APPLICATION.—Section 9305(a) of title 31, United  
13 States Code, is amended—

14 (A) by striking “and” at the end of para-  
15 graph (1);

16 (B) by striking the period at the end of  
17 paragraph (2) and inserting “; and”; and

18 (C) by adding at the end the following new  
19 paragraph:

20 “(3) a statement of compliance with section  
21 9310, which is signed under penalty of perjury by  
22 the president and the secretary of the corporation.”.

23 (2) COMPLIANCE AS A CONDITION FOR AP-  
24 PROVAL OF APPLICATION.—Section 9305(b) of title  
25 31, United States Code, is amended—

1 (A) by striking “and” at the end of para-  
2 graph (2);

3 (B) by striking the period at the end of  
4 paragraph (3) and inserting “; and”; and

5 (C) by adding at the end the following new  
6 paragraph:

7 “(4) the corporation is in full compliance with  
8 section 9310.”.

9 (3) SIGNED STATEMENT OF COMPLIANCE WITH  
10 QUARTERLY REPORTS.—Section 9305(c) of title 31,  
11 United States Code, is amended by inserting “and a  
12 statement of compliance with section 9310,” before  
13 “signed and sworn”.

14 (4) ENFORCEMENT AUTHORITY OF SECRETARY  
15 OF THE TREASURY.—Section 9305(d) of title 31,  
16 United States Code, is amended—

17 (A) in paragraph (1), by striking “9304 or  
18 9306” and inserting “9304, 9306, or 9310”;  
19 and

20 (B) by striking “and” at the end of para-  
21 graph (2);

22 (C) by striking the period at the end of  
23 paragraph (3) and inserting “; and”; and

24 (D) by adding at the end the following new  
25 paragraph:

1           “(4) may, after the end of the 1-year period be-  
2           ginning on the effective date of any revocation under  
3           paragraph (1) of the authority of a surety corpora-  
4           tion for noncompliance with section 9310, reauthor-  
5           ize such corporation to provide surety bonds under  
6           section 9304.”.

7           (5) REVOCATION FOR FAILURE TO PAY CER-  
8           TAIN JUDGMENTS.—Section 9305(e) of title 31,  
9           United States Code, is amended—

10           (A) by striking “and” at the end of para-  
11           graph (1);

12           (B) by redesignating paragraph (2) as  
13           paragraph (3); and

14           (C) by inserting after paragraph (1) the  
15           following new paragraph:

16           “(2) the corporation does not pay a final judg-  
17           ment or order against the corporation for noncompli-  
18           ance with section 9310, or fails to comply with any  
19           order under that section; and”.

20           (c) TECHNICAL AND CONFORMING AMENDMENT.—  
21           Section 9304(a)(3) of title 31, United States Code, is  
22           amended by striking “9305 and 9306” and inserting  
23           “9305, 9306, and 9310”.

1 **SEC. 3. INFORMATION FOR BOND APPLICANTS AND NON-**  
2 **DISCRIMINATION.**

3 (a) IN GENERAL.—Chapter 93 of title 31, United  
4 States Code, is amended by adding at the end the follow-  
5 ing new section:

6 **“SEC. 9310. INFORMATION FOR BOND APPLICANTS; NON-**  
7 **DISCRIMINATION.**

8 “(a) REASONS FOR ADVERSE ACTION; PROCEDURE  
9 APPLICABLE.—

10 “(1) NOTICE REQUIRED.—

11 “(A) IN GENERAL.—Except as provided in  
12 subparagraph (B), any surety approved under  
13 section 9304 shall notify an applicant for a bid  
14 bond, payment bond, or performance bond of its  
15 action on a completed application within 10  
16 days of receipt of the application.

17 “(B) EXTENSION.—The notification re-  
18 quired by subparagraph (A) may be furnished  
19 within 20 days, if the surety has not issued a  
20 bond to the applicant in the preceding 12  
21 months.

22 “(2) STATEMENT OF REASONS.—

23 “(A) IN GENERAL.—Each applicant  
24 against whom adverse action is taken shall be  
25 entitled to a statement of reasons for such ac-  
26 tion from the surety.

1           “(B) ACCEPTABLE FORMS OF STATE-  
2           MENT.—A surety satisfies the requirements of  
3           subparagraph (A)—

4                   “(i) by providing a statement of rea-  
5                   sons in writing as a matter of course to  
6                   applicants against whom adverse action is  
7                   taken; or

8                   “(ii) by giving written notification of  
9                   adverse action which discloses—

10                           “(I) the applicant’s right to a  
11                           statement of reasons not later than 30  
12                           days after receipt by the surety of a  
13                           written request made by the applicant  
14                           not later than 60 days after such noti-  
15                           fication; and

16                           “(II) the identity of the person or  
17                           office from which such statement may  
18                           be obtained.

19           “(C) ORAL STATEMENT PERMITTED.—A  
20           required statement of reasons for adverse action  
21           may be given orally if written notification ad-  
22           vises the applicant of the applicant’s right to  
23           have the statement of reasons confirmed in  
24           writing upon the applicant’s written request.

1           “(3) SPECIFICITY OF REASONS.—A statement  
2 of reasons meets the requirements of this section  
3 only if it contains specific reasons for the adverse  
4 action taken.

5           “(4) APPLICABILITY IN CASE OF THIRD PARTY  
6 APPLICATIONS.—In the case of a request to a surety  
7 by a third party to issue a bond directly or indirectly  
8 to an applicant, the notification and statement of  
9 reasons required by this section may be made di-  
10 rectly by such surety, or indirectly through the third  
11 party, if the identity of the surety is disclosed to the  
12 applicant.

13           “(5) APPLICABILITY IN CASE OF SURETIES  
14 WHICH ACCEPT FEW APPLICATIONS.—The require-  
15 ments of paragraphs (2), (3), and (4) may be satis-  
16 fied by oral statements or notifications in the case  
17 of any surety which acted on not more than 100 ap-  
18 plications during the calendar year in which the ad-  
19 verse action is taken.

20           “(b) NONDISCRIMINATION.—

21           “(1) ACTIVITIES.—It shall be unlawful for any  
22 surety to discriminate against any applicant, with  
23 respect to any aspect of a surety bond transaction—

24                   “(A) on the basis of race, color, religion,  
25                   national origin, sex, marital status, disability,

1 or age (if the applicant has the capacity to con-  
2 tract);

3 “(B) because the applicant has in good  
4 faith exercised any right under this chapter;

5 “(C) because the applicant previously ob-  
6 tained a bond through an individual or personal  
7 surety; or

8 “(D) because the applicant previously ob-  
9 tained a bond through—

10 “(i) any bonding assistance program  
11 expressly authorized by law;

12 “(ii) any bonding assistance program  
13 administered by a nonprofit organization  
14 for its members or an economically dis-  
15 advantaged class of persons; or

16 “(iii) any special purpose bonding pro-  
17 gram offered by a profitmaking organiza-  
18 tion to meet special needs.

19 “(2) ACTIVITIES NOT CONSTITUTING DISCRIMI-  
20 NATION.—It shall not constitute discrimination for  
21 purposes of this section for a surety—

22 “(A) to make an inquiry of marital status  
23 if such inquiry is for the purpose of  
24 ascertaining the surety’s rights and remedies

1 applicable to the granting of a bond and not to  
2 discriminate in a determination of bondability;

3 “(B) to make an inquiry of the applicant’s  
4 age if such inquiry is for the purpose of deter-  
5 mining the amount and probable continuance of  
6 bondability; or

7 “(C) to make an inquiry as to where the  
8 applicant has previously obtained a bond, in  
9 order to determine bonding history, or other  
10 pertinent element of bondability, except that an  
11 applicant may not be assigned a negative factor  
12 or value because such applicant previously ob-  
13 tained a bond through—

14 “(i) an individual or personal surety;

15 “(ii) a bonding assistance program ex-  
16 pressly authorized by law;

17 “(iii) any bonding program adminis-  
18 tered by a nonprofit organization for its  
19 members or an economically disadvantaged  
20 class of persons; or

21 “(iv) any special purpose bonding pro-  
22 gram offered by a profitmaking organiza-  
23 tion to meet special needs.

24 “(3) ADDITIONAL ACTIVITIES NOT CONSTITUT-  
25 ING DISCRIMINATION.—It is not a violation of this

1 section for a surety to refuse to issue a bond pursu-  
2 ant to—

3 “(A) any bonding assistance program au-  
4 thorized by law for an economically disadvan-  
5 taged class of persons;

6 “(B) any bonding assistance program ad-  
7 ministered by a nonprofit organization for its  
8 members or an economically disadvantaged  
9 class of persons; or

10 “(C) any special purpose bonding program  
11 offered by a profitmaking organization to meet  
12 special needs,

13 if such refusal is required by or made pursuant to  
14 such program.”.

15 (b) DEFINITION OF ADVERSE ACTION.—Section  
16 9301 of title 31, United States Code, is amended—

17 (1) by striking the period at the end of para-  
18 graph (1) and inserting a semicolon;

19 (2) by striking the period at the end of para-  
20 graph (2) and inserting “; and”; and

21 (3) by adding at the end the following new  
22 paragraph:

23 “(3) ‘adverse action’—

24 “(A) means a denial of a bond, a change  
25 in the terms of an existing bonding arrange-

1           ment, or a refusal to issue a bond in the  
2           amount or on substantially the terms requested;  
3           and

4           “(B) does not include any refusal to issue  
5           an additional bond under an existing bonding  
6           arrangement where the applicant is in default,  
7           or where such additional bond would exceed a  
8           previously established bonding limit.”.

9   **SEC. 4. CIVIL PENALTIES.**

10          Section 9308 of title 31, United States Code, is  
11   amended—

12           (1) in the first sentence by striking “A surety  
13          corporation” and inserting the following:

14          “(a) LIABILITY TO THE UNITED STATES.—A surety  
15          corporation”;

16           (2) in the second sentence by striking “A civil  
17          action” and inserting the following:

18          “(c) JURISDICTION.—A civil action”;

19           (3) in the third sentence by striking “A penalty  
20          imposed” and inserting the following:

21          “(d) EFFECT OF PENALTIES ON CONTRACTS.—A  
22          penalty imposed”; and

23           (4) by inserting after subsection (a) (as des-  
24          ignated by paragraph (1)) the following new sub-  
25          section:

1       “(b) LIABILITY FOR DISCRIMINATORY ACTION.—Any  
2 surety corporation that fails to comply with section  
3 9310(b) shall be liable to the applicant for—

4               “(1) any actual damage sustained by such ap-  
5 plicant (individually or as a member of a class); and

6               “(2) in the case of any successful action under  
7 this subsection, the costs of the action, together with  
8 reasonable attorney’s fees, as determined by the  
9 court.”.

10 **SEC. 5. REGULATIONS.**

11       The Secretary of the Treasury shall issue such pro-  
12 posed regulations as may be necessary to carry out this  
13 Act not later than 270 days after the date of the enact-  
14 ment of this Act. The final regulations shall become effec-  
15 tive not later than 1 year after the date of enactment of  
16 this Act.

17 **SEC. 6. EFFECTIVE DATE.**

18       The amendments made by this Act shall become ef-  
19 fective on the earlier of—

20               (1) the effective date of final regulations pro-  
21 mulgated pursuant to section 5; or

22               (2) the end of the 1-year period beginning on  
23 the date of enactment of this Act.

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