

108TH CONGRESS
2D SESSION

H. R. 4455

To prohibit discrimination on the basis of certain factors with respect to
any aspect of a surety bond transaction.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2004

Ms. NORTON introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To prohibit discrimination on the basis of certain factors
with respect to any aspect of a surety bond transaction.

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”.

6 **SEC. 2. EQUAL SURETY BOND OPPORTUNITY REQUIRE-**
7 **MENTS.**

8 (a) **ACTIVITIES CONSTITUTING DISCRIMINATION.**—It
9 shall be unlawful for any surety to discriminate against

1 any applicant, with respect to any aspect of a surety bond
2 transaction—

3 (1) on the basis of race, color, religion, national
4 origin, sex, marital status, sexual orientation, dis-
5 ability, or age (if the applicant has the capacity to
6 contract);

7 (2) because the applicant has in good faith ex-
8 ercised any right under this Act;

9 (3) because the applicant previously obtained a
10 bond through an individual or personal surety; or

11 (4) because the applicant previously obtained a
12 bond through—

13 (A) any bonding assistance program ex-
14 pressly authorized by law;

15 (B) any bonding assistance program ad-
16 ministered by a nonprofit organization for its
17 members or an economically disadvantaged
18 class of persons; or

19 (C) any special purpose bonding program
20 offered by a profit-making organization to meet
21 special needs.

22 (b) ACTIVITIES NOT CONSTITUTING DISCRIMINA-
23 TION.—It shall not constitute discrimination for purposes
24 of this Act for a surety—

1 (1) to make an inquiry of marital status if such
2 inquiry is for the purpose of ascertaining the sure-
3 ty's rights and remedies applicable to the granting
4 of a bond and not to discriminate in a determination
5 of bondability;

6 (2) to make an inquiry of the applicant's age if
7 such inquiry is for the purpose of determining the
8 amount and probable continuance of bondability; or

9 (3) to make an inquiry as to where the appli-
10 cant has previously obtained a bond, in order to de-
11 termine bonding history, or other pertinent element
12 of bondability, except that an applicant may not be
13 assigned a negative factor or value because the ap-
14 plicant previously obtained a bond through—

15 (A) an individual or personal surety;

16 (B) a bonding assistance program ex-
17 pressly authorized by law;

18 (C) any bonding program administered by
19 a nonprofit organization for its members or an
20 economically disadvantaged class of persons; or

21 (D) any special purpose bonding program
22 offered by a profit-making organization to meet
23 special needs.

1 (c) ADDITIONAL ACTIVITIES NOT CONSTITUTING
2 DISCRIMINATION.—It is not a violation of this Act for a
3 surety to refuse to issue a bond pursuant to—

4 (1) any bonding assistance program authorized
5 by law for an economically disadvantaged class of
6 persons;

7 (2) any bonding assistance program adminis-
8 tered by a nonprofit organization for its members or
9 an economically disadvantaged class of persons; or

10 (3) any special purpose bonding program of-
11 fered by a profit-making organization to meet special
12 needs;

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

15 (d) REASONS FOR ADVERSE ACTION; PROCEDURE
16 APPLICABLE; DEFINITION.—

17 (1) NOTICE REQUIRED.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (B), any surety approved under
20 section 9304 of title 31, United States Code,
21 shall notify an applicant of the surety's action
22 on a completed application before the end of the
23 10-day period beginning on the date the appli-
24 cation is filed with the surety.

1 (B) EXTENSION.—The 10-day period re-
2 ferred to in subparagraph (A) may be extended
3 an additional 10 days if the surety has not
4 issued a bond to the applicant during the 1-
5 year period ending on the date the application
6 is filed with the surety.

7 (2) STATEMENT OF REASONS.—

8 (A) IN GENERAL.—Each applicant against
9 whom adverse action is taken shall be entitled
10 to a statement of reasons for such action from
11 the surety.

12 (B) ACCEPTABLE FORMS OF STATE-
13 MENT.—A surety satisfies the requirement es-
14 tablished under subparagraph (A) by—

15 (i) providing a statement of reasons in
16 writing as a matter of course to applicants
17 against whom adverse action is taken; or

18 (ii) giving written notification of ad-
19 verse action which discloses—

20 (I) the applicant's right to a
21 statement of reasons within 30 days
22 after receipt by the surety of a re-
23 quest made within 60 days after such
24 notification; and

1 (II) the identity of the person or
2 office from which such statement may
3 be obtained.

4 (C) ORAL STATEMENT PERMITTED.—Such
5 statement may be given orally if the written no-
6 tification advises the applicant of the appli-
7 cant’s right to have the statement of reasons
8 confirmed in writing on written request.

9 (3) SPECIFICITY OF REASONS.—A statement of
10 reasons meets the requirements of this Act only if
11 it contains specific reasons for the adverse action
12 taken.

13 (4) APPLICABILITY IN CASE OF 3D PARTY AP-
14 PPLICATIONS.—In the case of a request to a surety
15 by a third party to issue a bond directly or indirectly
16 to an applicant, the notification and statement of
17 reasons required by this section may be made di-
18 rectly by such surety, or indirectly through the third
19 party, if the identity of the surety is disclosed to the
20 applicant.

21 (5) APPLICABILITY IN CASE OF SURETIES
22 WHICH ACCEPT FEW APPLICATIONS.—The require-
23 ments of paragraph (2), (3), or (4) may be satisfied
24 by oral statements or notifications in the case of any
25 surety who did not act on more than 100 applica-

1 tions during the calendar year in which the adverse
2 action is taken.

3 (e) ADVERSE ACTION DEFINED.—For purposes of
4 this Act, the term “adverse action”—

5 (1) means a denial of a bond, a change in the
6 terms of an existing bonding arrangement, or a re-
7 fusal to issue a bond in the amount or on substan-
8 tially the terms requested; and

9 (2) does not include any refusal to issue an ad-
10 ditional bond under an existing bonding arrange-
11 ment where the applicant is in default, or where
12 such additional bond would exceed a previously es-
13 tablished bonding limit.

14 **SEC. 3. CIVIL LIABILITY.**

15 (a) DAMAGES.—Any surety who fails to comply with
16 section 2(a) shall be liable to the aggrieved applicant for—

17 (1) any actual damage sustained by such appli-
18 cant (individually or as a member of a class); and

19 (2) in the case of any successful action under
20 this section, the costs of the action, together with
21 reasonable attorney’s fees as determined by the
22 court.

23 (b) EQUITABLE RELIEF.—Upon application by an
24 aggrieved applicant, a court of competent jurisdiction may
25 enjoin a surety from violating the requirements of this Act

1 or grant such other equitable relief as the court deter-
2 mines to be appropriate to enforce such requirements.

3 (c) JURISDICTION.—Any action under this section
4 may be brought in any United States district court, or
5 in any other court of competent jurisdiction, within 1 year
6 after the date of the occurrence of the violation involved.

7 **SEC. 4. ADMINISTRATIVE ENFORCEMENT.**

8 (a) IN GENERAL.—A company may not be approved
9 as a surety by the Secretary of the Treasury under section
10 9304 of title 31, United States Code, or provide any surety
11 bond pursuant to such section unless such company main-
12 tains full compliance with the requirements of this Act.

13 (b) REQUIREMENTS RELATING TO ENFORCEABILITY
14 OF ACT.—

15 (1) SIGNED STATEMENT OF COMPLIANCE WITH
16 APPLICATION.—Section 9305(a) of title 31, United
17 States Code, is amended—

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

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

22 (C) by adding at the end the following new
23 paragraph:

24 “(3) a statement of compliance with the Equal
25 Surety Bond Opportunity Act which is signed under

1 penalty of perjury by the president and the secretary
2 of the corporation.”.

3 (2) COMPLIANCE AS A CONDITION FOR AP-
4 PROVAL OF APPLICATION.—Section 9305(b) of title
5 31, United States Code, is amended—

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

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

10 (C) by adding at the end the following new
11 paragraph:

12 “(4) the corporation is in full compliance with
13 the Equal Surety Bond Opportunity Act.”.

14 (3) SIGNED STATEMENT OF COMPLIANCE WITH
15 QUARTERLY REPORTS.—Section 9305(c) of title 31,
16 United States Code, is amended by inserting “and a
17 statement of compliance with the Equal Surety
18 Bond Opportunity Act” before the period.

19 (4) ENFORCEMENT AUTHORITY OF SECRETARY
20 OF THE TREASURY.—Section 9305(d) of title 31,
21 United States Code, is amended—

22 (A) in paragraph (1), by inserting “or the
23 provisions of the Equal Surety Bond Oppor-
24 tunity Act” before the semicolon;

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

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

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

7 “(4) may, after the end of the 1-year period be-
8 ginning on the effective date of any revocation under
9 paragraph (1) of the authority of a surety corpora-
10 tion for noncompliance with the Equal Surety Bond
11 Opportunity Act, reauthorize such corporation to
12 provide surety bonds under section 9304.”.

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

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

18 (B) by redesignating paragraph (2) as
19 paragraph (3); and

20 (C) by inserting after paragraph (1) the
21 following new paragraph:

22 “(2) the corporation does not pay a final judg-
23 ment or order against the corporation for noncompli-
24 ance with the Equal Surety Bond Opportunity Act

1 or fails to comply with any order under section 3(c)
2 of such Act;”.

3 (c) TECHNICAL AND CONFORMING AMENDMENT.—
4 Section 9304(a)(3) of title 31, United States Code, is
5 amended by inserting “and section 4(a) of the Equal Sur-
6 ety Bond Opportunity Act” before the period.

7 (d) REGULATIONS.—

8 (1) IN GENERAL.—The Secretary of the Treas-
9 ury shall prescribe such regulations as may be nec-
10 essary to carry out the purposes of this Act.

11 (2) INITIAL REGULATIONS.—The initial regula-
12 tions prescribed pursuant to paragraph (1) shall
13 take effect at the earliest practicable date after the
14 date of the enactment of this Act and not later than
15 the end of the 1-year period beginning on such date
16 of enactment.

17 **SEC. 5. EFFECTIVE DATE.**

18 Sections 2(d) and 4(a) shall take effect on the earlier
19 of—

20 (1) the effective date of the initial regulations
21 prescribed pursuant to section 4(d); or

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

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