

Subsec. (d)(1). Pub. L. 107-217, §3(h)(9)(B), substituted “sections 3131 and 3133 of title 40” for “the Act of August 24, 1935 (known as the Miller Act) (40 U.S.C. 270a-270d)” and “section 3133(b) of title 40” for “section 2 of the Act (40 U.S.C. 270b)”.

Subsec. (e)(2)(A). Pub. L. 107-217, §3(h)(9)(C), substituted “sections 3131 and 3133 of title 40” for “the Act of August 24, 1935 (known as the Miller Act) (40 U.S.C. 270a-270d)”.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

§ 9304. Surety corporations

(a) When a law of the United States Government requires or permits a person to give a surety bond through a surety, the person satisfies the law if the surety bond is provided for the person by a corporation—

- (1) incorporated under the laws of—
 - (A) the United States; or
 - (B) a State, the District of Columbia, or a territory or possession of the United States;
- (2) that may under those laws guarantee—
 - (A) the fidelity of persons holding positions of trust; and
 - (B) bonds and undertakings in judicial proceedings; and
- (3) complying with sections 9305 and 9306 of this title.

(b) Each surety bond shall be approved by the official of the Government required to approve or accept the bond. The official may not require that the surety bond be given through a guaranty corporation or through any particular guaranty corporation.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1047.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|----------------------------|
| 9304 | 6:6. | |

Subsection (a) is substituted for 6:6(1st sentence) to eliminate unnecessary words and for clarity and consistency. Clause (3) is added for clarity.

In subsection (b), the words “Each surety bond” are substituted for “Such recognizance, stipulation, bond, or undertaking”, the words “official of the Government” are substituted for “head of department, court, judge, officer, board, or body executive, legislative, or judicial”, and the word “official” is substituted for “officer or person having the approval of any bond”, to eliminate unnecessary words and for clarity and consistency.

§ 9305. Authority and revocation of authority of surety corporations

(a) Before becoming a surety under section 9304 of this title, a surety corporation must file with the Secretary of the Treasury—

- (1) a copy of the articles of incorporation of the corporation; and
- (2) a statement of the assets and liabilities of the corporation signed and sworn to by the president and secretary of the corporation.

(b) The Secretary may authorize in writing a surety corporation to provide surety bonds

under section 9304 of this title if the Secretary decides that—

- (1) the articles of incorporation of the corporation authorize the corporation to do business described in section 9304(a)(2) of this title;
- (2) the corporation has paid-up capital of at least \$250,000 in cash or its equivalent; and
- (3) the corporation is able to carry out its contracts.

(c) A surety corporation authorized under subsection (b) of this section to provide surety bonds shall file with the Secretary each January, April, July, and October a statement of the assets and liabilities of the corporation signed and sworn to by the president and secretary of the corporation.

(d) The Secretary—

- (1) shall revoke the authority of a surety corporation to do new business if the Secretary decides the corporation is insolvent or is in violation of this section or section 9304 or 9306 of this title;
- (2) may investigate the solvency of a surety corporation at any time; and
- (3) may require additional security from the person required to provide a surety bond if the Secretary decides that a surety corporation no longer is sufficient security.

(e) A surety corporation providing a surety bond under section 9304 of this title may not provide any additional bond under that section if—

- (1) the corporation does not pay a final judgment or order against it on the bond; and
- (2) no appeal or stay of the judgment or order is pending 30 days after the judgment or order is entered.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 1047.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|----------------------------|
| 9305(a), (b). | 6:8. | |
| 9305(c), (d). | 6:9. | |
| 9305(e) | 6:11. | |

In subsection (a), before clause (1), the words “Before becoming a surety under section 9304 of this title, a surety corporation must file” are substituted for “Every company, before transacting any business under sections 6 to 13 of this title, shall deposit” for consistency and as being more precise. In clause (1), the words “charter or” are omitted as being included in “articles of incorporation”.

Subsection (b) is substituted for 6:8(2d sentence) for clarity and consistency and because of the restatement.

In subsection (c), the words “A surety corporation authorized under subsection (b) of this section to provide surety bonds” are substituted for “Every such company” for clarity. The words “as is required by section 8 of this title” are omitted as unnecessary because of the restatement.

In subsection (d)(1), the word “shall” is substituted for “shall have the power, and it shall be his duty, to” to eliminate unnecessary words. The words “under sections 6 to 13 of this title” are omitted as unnecessary because of the restatement. The words “conducting its business” are omitted as surplus. In clause (3), the words “that . . . be given at any time” are omitted as surplus. The words “from the person required to provide a surety bond” are substituted for “by any principal” for clarity.