

1 SB164  
2 135931-4  
3 By Senators Blackwell, Whatley and Scofield  
4 RFD: Banking and Insurance  
5 First Read: 07-FEB-12

1 SB164

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 27-27-26, 27-27-29, 27-41-5, and  
12 27-41-27, Code of Alabama 1975, to provide certain exemptions  
13 to certain officers or directors, members of a committee, or  
14 employees of a domestic insurer who are charged with the duty  
15 of handling the funds of the insurer; to require domestic  
16 insurers to maintain its assets in financial institutions  
17 conducting business in this state; to allow domestic insurers  
18 to deposit assets outside this state for purposes of  
19 safekeeping or for the convenient operation of the insurer; to  
20 allow securities of an insurer to be segregated or commingled  
21 with securities owned by other insurers if the arrangement is  
22 approved by the Commissioner of the Department of Insurance;  
23 to allow a domestic insurer to invest in securities or other  
24 investments located in countries other than the United States  
25 or Canada; and to limit investments or loans relating to an  
26 insurer's admitted assets.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 27-27-26, 27-27-29, 27-41-5, and  
3 27-41-27, Code of Alabama 1975, are amended to read as  
4 follows:

5 "§27-27-26.

6 "~~(a) Any officer, or director, or any member of any~~  
7 ~~committee or any employee of a domestic insurer who is charged~~  
8 ~~with the duty of investing or handling the insurer's funds~~  
9 ~~shall not~~

10 "(a) No officer or director of a domestic insurer,  
11 and no member of any committee or employee of a domestic  
12 insurer who is charged with the duty of investing or handling  
13 the funds of the insurer, shall do any of the following:

14 "(1) Deposit ~~deposit~~ or invest ~~such the~~ funds except  
15 in the ~~insurer's~~ corporate name of the insurer; except, that  
16 ~~such the~~ insurer may for its convenience hold any equity  
17 investment in a street name or in the name of a nominee~~7~~.

18 "(2) Borrow ~~shall not borrow~~ the funds of ~~such the~~  
19 insurer~~7~~.

20 "(3) Be ~~shall not be~~ pecuniarily interested in any  
21 loan, pledge or deposit, security, investment, sale, purchase,  
22 exchange, reinsurance, or other similar transaction or  
23 property of ~~such the~~ insurer except as follows:

24 "a. As a stockholder or member of the insurer.

1           "b. As a holder or owner of common stock or  
2 equity-like preferred stock in any corporation or business  
3 entity trading on a national or international stock exchange.

4           "c. As a holder or owner of shares of mutual funds,  
5 bond funds, or private equity funds registered with the United  
6 States Securities and Exchange Commission.

7           "d. As a holder or owner of bonds and other  
8 evidences of indebtedness of governmental units in the United  
9 States or Canada or private business entities domiciled in the  
10 United States or Canada.

11           "e. As a holder or owner of bonds and other  
12 evidences of indebtedness of international development  
13 organizations of which the United States is a member.

14           "(4) Take from a stockholder or member and ~~shall not~~  
15 ~~take or~~ receive to his or her own use any fee, brokerage,  
16 commission, gift, or other consideration for, or on account  
17 of, any such transaction made by, or on behalf of, ~~such~~ the  
18 insurer.

19           "(b) No insurer shall guarantee any financial  
20 obligation of any of its officers or directors.

21           "(c) This section shall not prohibit such a  
22 director, or officer, or member of a committee or employee  
23 from becoming a policyholder of the insurer and enjoying the  
24 usual rights so provided for its policyholders, nor shall it  
25 prohibit any ~~such~~ officer, director, or member of a committee  
26 or employee from participating as beneficiary in any pension

1 trust, deferred compensation plan, profit-sharing plan, or  
2 stock option plan authorized by the insurer and to which he or  
3 she may be eligible, nor shall it prohibit any director or  
4 member of a committee from receiving a reasonable fee for  
5 legal services actually rendered to ~~such~~ the insurer.

6 "(d) The commissioner may, by regulations from time  
7 to time, define and permit additional exceptions to the  
8 prohibition contained in subsection (a) of this section solely  
9 to enable payment of reasonable compensation to a director who  
10 is not otherwise an officer or employee of the insurer, or to  
11 a corporation or firm in which a director is interested, for  
12 necessary services performed or sales or purchases made to, or  
13 for, the insurer in the ordinary course of the ~~insurer's~~  
14 business of the insurer and in the usual private professional  
15 or business capacity of ~~such~~ the director or ~~such~~ the  
16 corporation or firm.

17 "§27-27-29.

18 "(a) Every domestic insurer shall have, and  
19 maintain, its principal place of business and home office in  
20 this state and shall keep ~~therein~~ in this state complete  
21 records of its assets, transactions, and affairs in accordance  
22 with such methods and systems as are customary or suitable as  
23 to the kind, or kinds, of insurance transacted.

24 "(b) Every domestic insurer shall have, and  
25 maintain, its assets in this state, or in a financial  
26 institution conducting business in this state except as to:

1           "(1) Real property and personal property appurtenant  
2 ~~thereto~~ to the real property lawfully owned by the insurer and  
3 located outside this state; ~~and.~~

4           "(2) ~~Such~~ The property of the insurer as may be  
5 customary, necessary, and convenient to enable and facilitate  
6 the operation of its branch offices and regional home offices  
7 located outside this state as referred to in subsection (d).

8           "(3) Having, depositing, or transmitting funds and  
9 assets of the insurer in, or to, a jurisdiction outside of  
10 this state as required by the law of the jurisdiction or as  
11 reasonably required in the course of its business, including  
12 the retention of funds, assets, personal property, or  
13 securities in a depository outside the State of Alabama for  
14 purposes of safekeeping or for the convenient operation of the  
15 insurer.

16           "(c) Removal of all, or a material part of, the  
17 records or assets of a domestic insurer from this state except  
18 pursuant to a plan of merger or consolidation approved by the  
19 commissioner under this title, or for such reasonable purposes  
20 and periods of time as may be approved by the commissioner in  
21 writing in advance of ~~such~~ the removal, or concealment of ~~such~~  
22 the records or assets, or material part ~~thereof~~ of the records  
23 or assets, from the commissioner is prohibited. Any person who  
24 removes, or attempts to remove, such records or assets, or  
25 such material part ~~thereof~~ of the records or assets, from the  
26 home office or other place of business or of safekeeping of

1 the insurer in this state with the intent to remove the ~~same~~  
2 records or assets from this state or who conceals or attempts  
3 to conceal the ~~same~~ records or assets from the commissioner,  
4 in violation of this section, shall, upon conviction ~~thereof~~,  
5 be guilty of a felony, punishable by a fine of not more than  
6 ten thousand dollars (\$10,000), or by imprisonment in the  
7 penitentiary for not more than five years, or by both ~~such the~~  
8 fine and imprisonment in the discretion of the court. Upon any  
9 removal or attempted removal of ~~such the~~ records or assets or  
10 upon retention of ~~such the~~ records or assets, or material part  
11 thereof, outside this state beyond the period therefor  
12 specified in the ~~commissioner's~~ consent of the commissioner  
13 under which the records were so removed thereat or upon  
14 concealment of, or attempt to conceal, records or assets in  
15 violation of this section, the commissioner may institute  
16 delinquency proceedings against the insurer pursuant to the  
17 provisions of Chapter 32 of this title.

18 "(d) This section ~~shall~~ may not be deemed to  
19 prohibit or prevent an insurer from:

20 "(1) Establishing and maintaining branch offices or  
21 regional home offices in other states where necessary or  
22 convenient for the transaction of its business and keeping  
23 therein the detailed records and assets customary and  
24 necessary for the servicing of its insurance in force and  
25 affairs in the territory served by such an office, as long as  
26 such records and assets are made readily available at ~~such the~~

1 office for examination by the commissioner or at the  
2 commissioner's his or her request; ~~or.~~

3 ~~"(2) Having, depositing, or transmitting funds and~~  
4 ~~assets of the insurer in, or to, jurisdictions outside of this~~  
5 ~~state required by the law of such jurisdiction or as~~  
6 ~~reasonably and customarily required in the regular course of~~  
7 ~~its business, including the retention of personal property or~~  
8 ~~securities in a depository outside the State of Alabama for~~  
9 ~~purposes of safekeeping or for the convenient operation of the~~  
10 ~~insurer.~~

11 "(2) Using custodial arrangements for the holding of  
12 securities owned by the insurer, either in or outside of this  
13 state, and either segregated from or commingled with  
14 securities owned by others, if the arrangements conform to  
15 rules adopted by the commissioner for safeguarding the assets  
16 and facilitating the examination by the commissioner of  
17 insurers using the custodial arrangements.

18 "(e) With the written permission of the  
19 commissioner, a domestic insurer may maintain its executive  
20 offices outside the State of Alabama and keep there complete  
21 records of its assets, transactions, and affairs in accordance  
22 with the methods and systems as are customary or suitable for  
23 the kind or kinds of insurance transacted. All records kept at  
24 the executive offices outside Alabama shall be made available  
25 to the commissioner of Alabama upon reasonable notice by the  
26 commissioner.



1           "(f) This section shall not apply to those actions  
2 taken by insurance companies prior to January 1, 1972, but  
3 only applies to future actions of domestic insurance  
4 companies.

5           "(g) Notwithstanding any other provision of this  
6 section, any company may evidence ownership of its assets by  
7 use of a clearing corporation or book-entry deposit system.

8           "§27-41-5.

9           "An insurer shall not make any investment or loan  
10 exceeding 10 percent of the admitted assets of the insurer,  
11 other than loans on policies or annuity contracts, unless ~~the~~  
12 ~~same be~~ authorized, approved or ratified by the board of  
13 directors of the insurer or by ~~such~~ the committee or person as  
14 the board of directors shall expressly authorize. The action  
15 of the board of directors, the committee, or other persons so  
16 authorized shall be recorded and regular reports thereof shall  
17 be submitted to the board of directors. This requisite shall  
18 not apply to funeral supplies authorized for mutual aid  
19 associations under Section 27-41-38 which are purchased in the  
20 regular course of business under the general supervision of  
21 the association's board of directors.

22           "§27-41-27.

23           ~~"An insurer authorized to transact insurance in a~~  
24 ~~foreign country may make investments, in an aggregate amount~~  
25 ~~not exceeding its obligations incurred in such country, in~~  
26 ~~securities of or in such country possessing characteristics~~

1 ~~similar to like investments required pursuant to this chapter~~  
2 ~~for investments in the United States of America. Canadian~~  
3 ~~securities eligible for investment under other provisions of~~  
4 ~~this chapter are not subject to this section.~~

5 "(a) An insurer may invest in securities or other  
6 investments (1) issued in, (2) located in, (3) denominated in  
7 the currency of, (4) whose ultimate payment amounts of  
8 principal or interest are subject to fluctuations in the  
9 currency of, or (5) whose obligors are domiciled in countries  
10 other than the United States or Canada, which are  
11 substantially of the same kinds and classes as those  
12 authorized for investment under this chapter.

13 "(b) Subject to the limitations in subsection (c) of  
14 this section.

15 "(1) An investment of an insurer authorized under  
16 subsection (a) of this section in any one foreign jurisdiction  
17 whose sovereign debt has a 1 designation from the Securities  
18 Valuation Office shall not exceed 10 percent of the admitted  
19 assets of the insurer.

20 "(2) An investment of an insurer authorized under  
21 subsection (a) of this section in any one foreign jurisdiction  
22 whose sovereign debt has a 2 or 3 designation from the  
23 Securities Valuation Office may not exceed five percent of the  
24 admitted assets of the insurer.

25 "(3) An investment of an insurer authorized under  
26 subsection (a) of this section in any one foreign jurisdiction

1 whose sovereign debt has a 4, 5, or 6 designation from the  
2 Securities Valuation Office may not exceed three percent of  
3 the admitted assets of the insurer.

4 "(4) An investment of an insurer authorized under  
5 subsection (a) of this section denominated in any one foreign  
6 currency may not exceed two percent of the admitted assets of  
7 the insurer.

8 "(5) An investment of an insurer authorized under  
9 subsection (a) of this section denominated in foreign  
10 currencies may not exceed, in the aggregate, five percent of  
11 the admitted assets of the insurer.

12 "(6) An investment of an insurer authorized under  
13 subsection (a) of this section may not be considered  
14 denominated in a foreign currency if the acquiring insurer  
15 enters into one or more contracts in permitted transactions to  
16 exchange all payments made on the foreign currency denominated  
17 investment for United States currency at a rate which  
18 effectively insulates the investment cash flow against future  
19 changes in currency exchange rates during the period the  
20 contract or contracts are in effect.

21 "(c) An investment of an insurer authorized under  
22 subsection (a) of this section may not exceed, in the  
23 aggregate, 20 percent of its admitted assets.

24 "(7) The Securities Valuation Office (SVO) or its  
25 successor or interest means the National Association of  
26 Insurance Commissioners office that is responsible for the

1 day-to-day credit quality assessment and valuation of  
2 securities owned by state regulated insurance companies.

3 "(d) An insurer which is authorized to do business  
4 in a foreign country or which has outstanding insurance,  
5 annuity, or reinsurance contracts on lives or risks resident  
6 in or located in a foreign country may, in addition to the  
7 investments authorized by subsection (a) of this section,  
8 invest securities and investments (1) issued in, (2) located  
9 in, (3) denominated in the currency of, (4) whose ultimate  
10 payment amounts of principal and interest are subject to  
11 fluctuations in the currency of, or (5) whose obligors are  
12 domiciled in the foreign countries which are substantially of  
13 the same kinds and classes as those authorized for investment  
14 under this chapter.

15 "(e) An investment of an insurer authorized under  
16 subsection (d) of this section and cash in the currency of the  
17 country which is at any time held by the insurer, may not  
18 exceed, in the aggregate, the greater of (1) one and one-half  
19 times the amount of its reserves and other obligations under  
20 the contracts or (2) the amount which the insurer is required  
21 by law to invest in the country."

22 Section 2. This act shall become effective  
23 immediately following its passage and approval by the  
24 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Banking and Insurance..... 07-FEB-12

Read for the second time and placed on the calen-  
dar 1 amendment..... 21-FEB-12

Read for the third time and passed as amended .... 24-APR-12

Yeas 26  
Nays 0  
Abstaining 4

Patrick Harris  
Secretary