

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

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8 SYNOPSIS: Under existing law, a domestic insurer may
9 not be pecuniarily interested in certain investment
10 activities, and may maintain its principal place of
11 business outside of this state if it maintains a
12 complete duplicate set of records and keeps an
13 office in this state managed by one or more
14 officers of the insurer in this state.

15 This bill would provide certain exemptions
16 from pecuniary interests to certain officers or
17 directors, or members of a committee or employees
18 of a domestic insurer who are charged with the duty
19 of investing or handling the funds of the insurer.

20 This bill would require a domestic insurer
21 to maintain its assets in a financial institution
22 conducting business in this state.

23 This bill would allow domestic insurers to
24 deposit assets of the insurer outside this state
25 for purposes of safekeeping or for the convenient
26 operation of the insurer.

1 This bill would allow securities of an
2 insurer to be segregated or commingled with
3 securities owned by other insurers if the
4 arrangement is approved by the Commissioner of the
5 Department of Insurance.

6 This bill would allow a domestic insurer to
7 invest in securities or other investments located
8 in countries other than the United States or
9 Canada.

10 This bill would limit investments or loans
11 relating to an insurer's admitted assets.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT

16
17 To amend Sections 27-27-26, 27-27-29, 27-41-5, and
18 27-41-27, Code of Alabama 1975, to provide certain exemptions
19 to certain officers or directors, members of a committee, or
20 employees of a domestic insurer who are charged with the duty
21 of handling the funds of the insurer; to require domestic
22 insurers to maintain its assets in financial institutions
23 conducting business in this state; to allow domestic insurers
24 to deposit assets outside this state for purposes of
25 safekeeping or for the convenient operation of the insurer; to
26 allow securities of an insurer to be segregated or commingled

1 with securities owned by other insurers if the arrangement is
2 approved by the Commissioner of the Department of Insurance;
3 to allow a domestic insurer to invest in securities or other
4 investments located in countries other than the United States
5 or Canada; and to limit investments or loans relating to an
6 insurer's admitted assets.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 27-27-26, 27-27-29, 27-41-5, and
9 27-41-27, Code of Alabama 1975, are amended to read as
10 follows:

11 "§27-27-26.

12 "(a) Any officer, or director, or any member of any
13 committee or any employee of a domestic insurer who is charged
14 with the duty of investing or handling the ~~insurer's~~ funds of
15 an insurer shall not do any of the following:

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

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

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

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

4 "b. 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 "c. A holder or owner of bonds and other evidences
8 of indebtedness of governmental units in the United States or
9 Canada or private business entities domiciled in the United
10 States or Canada.

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

14 "e. A ~~a~~ stockholder or member and shall not take or
15 receive to his own use any fee, brokerage, commission, gift,
16 or other consideration for, or on account of, any such
17 transaction made by, or on behalf of, such insurer.

18 "(b) ~~No~~ An insurer ~~shall~~ may guarantee any financial
19 obligation of any of its officers or directors.

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

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

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

16 "§27-27-29.

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

23 "(b) Every domestic insurer shall have, and
24 maintain, its assets in this state, or in a financial
25 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.