

1 HB142  
2 147262-1  
3 By Representative Hill  
4 RFD: Insurance  
5 First Read: 05-FEB-13

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8 SYNOPSIS: In the 2012 Regular Session, the Legislature  
9 enacted Act 2012-370, relating to investments by  
10 domestic insurers, and Act 2012-429, relating to  
11 insurance fraud.

12 The purpose of this bill is to enact  
13 technical amendments to the above acts to clarify  
14 and give effect to the language in two sections of  
15 the Code of Alabama 1975.

16 The bill would amend Section 27-12A-2, Code  
17 of Alabama 1975, as enacted by Act 2012-429,  
18 providing the definition of insurance fraud, to  
19 delete certain language that is not applicable to  
20 the code section.

21 This bill would amend Section 27-27-26, Code  
22 of Alabama 1975, as amended by Act 2012-370,  
23 relating to domestic insurers, to delete and  
24 clarify certain language to correct an error in an  
25 amendment.

26  
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3  
4 Relating to insurance; to amend Sections 27-12A-2,  
5 Code of Alabama 1975, providing the definition of insurance  
6 fraud, to delete certain language that is not applicable to  
7 the code section; and to amend Section 27-27-26, Code of  
8 Alabama 1975, relating to domestic insurers, to delete and  
9 clarify certain language to correct an error in an amendment.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 27-12A-2, as enacted by Act  
12 2012-429, and 27-27-26, Code of Alabama 1975, as amended by  
13 Act 2012-370, are amended to read as follows:

14 "§27-12A-2.

15 "A person commits the crime of insurance fraud if,  
16 knowingly and with intent to defraud, he or she commits, or  
17 conceals any material information concerning, one or more of  
18 the following acts:

19 "(1) The solicitation or acceptance of new or  
20 renewal insurance risks on behalf of an insurer, reinsurer, or  
21 other person engaged in the transaction of the business of  
22 insurance, by a person who knows the insurer, reinsurer, or  
23 other person responsible for the risk is financially unable to  
24 pay its claims at the time of the transaction.

25 "(2) The removal, concealment, alteration, or  
26 destruction of the assets or records relating to the  
27 transaction of the business of insurance of an insurer,

1 reinsurer, or other person engaged in the transaction of the  
2 business of insurance. This section does not prohibit an  
3 insurer, reinsurer, or other person engaged in the transaction  
4 of the business of insurance from destroying records or  
5 documents relating to the transaction of the business of  
6 insurance in accordance with record retention and destruction  
7 standards set forth in state or federal law or the record  
8 retention policy of the insurer, reinsurer, or other person.

9 "(3) The embezzlement, abstraction, theft, or  
10 conversion of monies, funds, premiums, credits, or other  
11 property relating to the transaction of the business of  
12 insurance of an insurer, reinsurer, or other person engaged in  
13 the transaction of the business of insurance.

14 "(4) Presenting, causing to be presented, or  
15 preparing with knowledge or belief that it will be presented  
16 to or by an insurer, reinsurer, producer, or any of their  
17 respective agents, false information as part of, in support  
18 of, or concerning a fact material to, one or more of the  
19 following:

20 "a. An application for the issuance or renewal of an  
21 insurance policy or reinsurance agreement.

22 "b. The rating of an insurance policy or reinsurance  
23 agreement.

24 "c. A claim for payment or benefit pursuant to an  
25 insurance policy or reinsurance agreement.

1            "d. A claim for payment or benefit based on an  
2 advertisement or promises to provide a good or service under  
3 an insurance policy.

4            ~~"1. To pay or fail to collect all or part of any  
5 applicable insurance deductible or a rebate in an amount equal  
6 to all or part of any applicable insurance deductible; and~~

7            ~~"2. The good or service is paid for by the consumer  
8 from proceeds of a property or casualty insurance policy; and~~

9            ~~"3. The person knowingly charges an amount for the  
10 good or service that exceeds the usual and customary charge by  
11 the person for the good or service by an amount equal to or  
12 greater than all or part of the applicable insurance  
13 deductible paid by the person to an insurer on behalf of an  
14 insured or remitted to an insured by the person as a rebate.~~

15            "e. Premiums paid on an insurance policy or  
16 reinsurance agreement.

17            "f. Payments made in accordance with the terms of an  
18 insurance policy or reinsurance agreement.

19            "g. A document filed with the commissioner.

20            "i. Audit information submitted to the commissioner  
21 or an insurer.

22            "j. The formation, acquisition, merger,  
23 reconsolidation, or dissolution of one or more insurance  
24 entities, or the withdrawal from one or more lines of  
25 insurance in all or part of this state by an insurer or  
26 reinsurer.

27            "k. The issuance of written evidence of insurance.

1           "l. The reinstatement of an insurance policy.

2           "m. Issuance, acceptance, change, endorsement, or  
3           continuance of an insurance policy or reinsurance agreement.

4           "n. A construction or structure mitigation  
5           inspection report provided for the issuance or renewal of an  
6           insurance policy or discounts or credits related to an  
7           insurance policy.

8           "(5) The failure to decline or refusal to return an  
9           insurance payment for a loss or a recovery to which the person  
10          is not entitled by reason of an insurer's mistake or other  
11          facts or circumstances connected with the person's claim or  
12          the coverage provided by an applicable insurance policy.

13          "§27-27-26.

14          "(a) No officer or director of a domestic insurer,  
15          and no member of any committee or employee of a domestic  
16          insurer who is charged with the duty of investing or handling  
17          the funds of the insurer, shall do any of the following:

18                 "(1) Deposit or invest the funds except in the  
19                 corporate name of the insurer; except, that the insurer may  
20                 for its convenience hold any equity investment in a street  
21                 name or in the name of a nominee.

22                 "(2) Borrow the funds of the insurer.

23                 "(3) Be pecuniarily interested in any loan, pledge  
24                 or deposit, security, investment, sale, purchase, exchange,  
25                 reinsurance, or other similar transaction or property of the  
26                 insurer except as follows:

27                         "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~~ or  
15 receive to his or her own use any fee, brokerage, commission,  
16 gift, or other consideration for, or on account of, any such  
17 transaction made by, or on behalf of, the insurer.

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

20           "(c) This section shall not prohibit such a  
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 officer, director, or member of a committee or  
25 employee from participating as beneficiary in any pension  
26 trust, deferred compensation plan, profit-sharing plan, or  
27 stock option plan authorized by the insurer and to which he or

1 she may be eligible, nor shall it prohibit any director or  
2 member of a committee from receiving a reasonable fee for  
3 legal services actually rendered to the insurer.

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

14 Section 2. This act shall become effective  
15 immediately following its passage and approval by the  
16 Governor, or its otherwise becoming law.