

## HB58 INTRODUCED



1 QNJ851-1  
2 By Representative Ellis  
3 RFD: Insurance  
4 First Read: 07-Mar-23  
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SYNOPSIS:

Under existing law, insurance placed by lenders on real property is subject to the general laws applicable to property insurance.

This bill would provide a specific framework for regulating lender-placed insurance on real property in order to help maintain the separation between lenders and insurers and minimize unfair competitive practices in the sale, placement, solicitation, and negotiation of lender-placed insurance. The bill is based on a model act adopted by the National Association of Insurance Commissioners (NAIC).

This bill would further define the term of the lender-placed insurance on real property and would provide for the calculation of coverage and payment of premium.

This bill would further provide for prohibited practices in the issuance of lender-placed insurance on real property, would require certain details of the insurance to be set forth in the policy or certificate of insurance, and would require for the filing and approval of the forms and rates to be charged for the insurance.

This bill would further provide for the enforcement of the act, penalties for violations of the



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29 act, and for judicial review of orders by the  
30 Commissioner of Insurance.

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A BILL

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TO BE ENTITLED

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AN ACT

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37 Relating to insurance; to define lender-placed  
38 insurance on real property and provide a framework for  
39 regulating lender-placed insurance; to require separation  
40 between lenders and insurers and define unfair competitive  
41 practices in the sale, placement, solicitation, and  
42 negotiation of lender-placed insurance; to further provide for  
43 the term of the lender-placed insurance on real property and  
44 for the calculation of coverage and payment of premium; to  
45 provide for prohibited practices in the issuance of  
46 lender-placed insurance on real property; to require certain  
47 details of the insurance to be set forth in the policy or  
48 certificate of insurance; to require for the filing and  
49 approval by the Department of Insurance of the forms and rates  
50 to be charged for the insurance; to provide for the  
51 enforcement of the act and penalties for violations of the  
52 act; and to provide for judicial review of orders of the  
53 Commissioner of Insurance.

54 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

55 Section 1. The purposes of this act are to:

56 (1) Promote the public welfare by regulating



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57 lender-placed insurance on real property.

58 (2) Create a legal framework within which lender-placed  
59 insurance on real property may be written in this state.

60 (3) Help maintain separation between a lender or  
61 servicer and an insurer or insurance producer.

62 (4) Minimize the possibilities of unfair competitive  
63 practices in the sale, placement, solicitation, and  
64 negotiation of lender-placed insurance.

65 Section 2. (a) This act applies to insurers and  
66 insurance producers engaged in any transaction involving  
67 lender-placed insurance on real property as defined in this  
68 act.

69 (b) All lender-placed insurance written in connection  
70 with mortgaged real property, including manufactured and  
71 mobile homes, is subject to this act, except for the  
72 following:

73 (1) Transactions involving extensions of credit  
74 primarily for business, commercial, or agricultural purposes.

75 (2) Insurance offered by the lender or servicer and  
76 elected by the mortgagor at the mortgagor's option.

77 (3) Insurance purchased by a lender or servicer on real  
78 property owned by the lender or servicer.

79 (4) Insurance for which no specific charge is made to  
80 the mortgagor or the mortgagor's account.

81 (c) Nothing in this act shall be construed to create or  
82 imply a private cause of action for violation of this act.

83 (d) Nothing in this act shall be construed to  
84 extinguish any rights of a mortgagor available under common



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85 law or other state statutes.

86 (e) The Commissioner of Insurance may enforce this act  
87 subject to the laws of this state.

88 Section 3. For purposes of this act, the following  
89 definitions shall apply:

90 (1) AFFILIATE. A person that directly, or indirectly  
91 through one or more intermediaries, controls or is controlled  
92 by, or is under common control with, the person specified.

93 (2) COMMISSIONER. The Commissioner of the Department of  
94 Insurance.

95 (3) INDIVIDUAL LENDER-PLACED INSURANCE. Coverage for  
96 individual real property evidenced by a certificate of  
97 coverage under a master lender-placed insurance policy or a  
98 lender-placed insurance policy for individual real property.

99 (4) INSURANCE PRODUCER. A person or its affiliates  
100 required to be licensed under the laws of this state to sell,  
101 solicit, or negotiate insurance.

102 (5) INSURER. An insurance company, association, or  
103 exchange authorized to issue lender-placed insurance in this  
104 state, or its affiliates.

105 (6) INVESTOR. A person and its affiliates holding a  
106 beneficial interest in loans secured by real property.

107 (7) LAPSE. The moment in time in which a mortgagor has  
108 failed to secure or maintain valid or sufficient insurance  
109 upon mortgaged real property as required by a mortgage  
110 agreement.

111 (8) LENDER. A person and its affiliates making loans  
112 secured by an interest in real property.



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113           (9) LENDER-PLACED INSURANCE. Insurance obtained by a  
114 lender or servicer when a mortgagor does not maintain valid or  
115 sufficient insurance on mortgaged real property as required by  
116 the terms of the mortgage agreement. Lender-placed insurance  
117 may be purchased unilaterally by the lender or servicer who is  
118 the named insured subsequent to the date of the credit  
119 transaction, providing coverage against loss, expense, or  
120 damage to collateralized property as a result of fire, theft,  
121 collision, or other risks of loss that would either impair a  
122 lender, servicer, or investor's interest or adversely affect  
123 the value of collateral covered by limited dual interest  
124 insurance. The insurance is purchased according to the terms  
125 of the mortgage agreement when the mortgagor fails to provide  
126 evidence of required insurance.

127           (10) LOSS RATIO. The ratio of incurred losses to earned  
128 premium.

129           (11) MASTER LENDER-PLACED INSURANCE POLICY. A group  
130 policy issued to a lender or servicer providing coverage for  
131 all loans in the lender or servicer's loan portfolio as  
132 needed.

133           (12) MORTGAGE AGREEMENT. The written document that sets  
134 forth an obligation or a liability of any kind secured by a  
135 lien on real property and due from, owing, or incurred by a  
136 mortgagor to a lender on account of a mortgage loan, including  
137 the security agreement, deed of trust, and any other document  
138 of similar effect, and any other documents incorporated by  
139 reference.

140           (13) MORTGAGE LOAN. A loan, advance, guarantee, or



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141 other extension of credit from a lender to a mortgagor.

142 (14) MORTGAGE TRANSACTION. A transaction by the terms  
143 of which the repayment of money loaned or payment of real  
144 property sold is to be made at a future date or dates.

145 (15) MORTGAGEE. The person who holds mortgaged real  
146 property as security for repayment of a mortgage agreement.

147 (16) MORTGAGOR. The person who is obligated on a  
148 mortgage loan pursuant to a mortgage agreement.

149 (17) PERSON. An individual or entity.

150 (18) REAL ESTATE OWNED PROPERTY. Property owned or held  
151 by a lender or servicer following foreclosure under the  
152 related mortgage agreement or the acceptance of a deed in lieu  
153 of foreclosure.

154 (19) REPLACEMENT COST VALUE (RCV). The estimated cost  
155 to replace covered property at the time of loss or damage  
156 without deduction for depreciation. RCV is not market value,  
157 but it is instead the cost to replace covered property to its  
158 pre-loss condition.

159 (20) SERVICER. A person and its affiliates  
160 contractually obligated to service one or more mortgage loans  
161 for a lender or investor. The term includes entities involved  
162 in subservicing arrangements.

163 Section 4. (a) Lender-placed insurance shall become  
164 effective no earlier than the date of lapse of insurance upon  
165 mortgaged real property subject to the terms of a mortgage  
166 agreement or any other state or federal law requiring the  
167 same.

168 (b) Individual lender-placed insurance shall terminate



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169 on the earliest of the following dates:

170 (1) The date insurance that is acceptable under the  
171 mortgage agreement becomes effective, subject to the mortgagor  
172 providing sufficient evidence of the acceptable insurance.

173 (2) The date the applicable real property no longer  
174 serves as collateral for a mortgage loan pursuant to a  
175 mortgage agreement.

176 (3) Any other date specified by the individual policy  
177 or certificate of insurance.

178 (4) Any other date specified by the lender or servicer.

179 (5) The termination date of the policy.

180 (c) An insurance charge shall not be made to a  
181 mortgagor for lender-placed insurance for a term longer than  
182 the scheduled term of the lender-placed insurance, nor may an  
183 insurance charge be made to the mortgagor for lender-placed  
184 insurance before the effective date of the lender-placed  
185 insurance.

186 Section 5. (a) Any lender-placed insurance coverage and  
187 subsequent calculation of premium should be based on the  
188 replacement cost value of the property as best determined as  
189 follows:

190 (1) The dwelling coverage amount set forth in the most  
191 recent evidence of insurance coverage provided by the last  
192 known coverage amount (LKCA) of the mortgagee, if known to the  
193 lender or servicer.

194 (2) The insurer shall inquire of the insured, at least  
195 once, as to the LKCA on the property. If the insurer is not  
196 able to obtain the LKCA from the insured or in another manner,





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197 the insurer may proceed as provided in this section.

198 (3) If the LKCA is unknown, the replacement cost of the  
199 property serving as collateral as calculated by the insurer,  
200 unless the use of replacement cost for this purpose is  
201 prohibited by other state or federal law.

202 (4) If the LKCA is unknown and the replacement cost is  
203 not available or its use is prohibited, the unpaid principal  
204 balance of the mortgage loan.

205 (b) In the event of a covered loss, any replacement  
206 cost coverage provided by an insurer in excess of the unpaid  
207 principal balance of the mortgage loan shall be paid to the  
208 mortgagor.

209 (c) An insurer shall not write lender-placed insurance  
210 for which the premium rate differs from that determined by the  
211 schedules of the insurer on file with the commissioner as of  
212 the effective date of the policy.

213 Section 6. (a) An insurer or insurance producer shall  
214 not issue lender-placed insurance on mortgaged property that  
215 the insurer or insurance producer, or an affiliate of the  
216 insurer or insurance producer owns, performs the servicing  
217 for, or owns the servicing right to the mortgaged property.

218 (b) An insurer or insurance producer shall not  
219 compensate a lender, insurer, investor, or servicer, including  
220 through the payment of commissions, on policies issued by the  
221 insurer for lender-placed insurance.

222 (c) An insurer or insurance producer shall not share  
223 lender-placed insurance premium or risk with the lender,  
224 investor, or servicer that obtained the lender-placed



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225 insurance.

226 (d) An insurer or insurance producer shall not offer  
227 contingent commissions, profit sharing, or other payments  
228 dependent on profitability or loss ratios to any person  
229 affiliated with a servicer or the insurer in connection with  
230 lender-placed insurance.

231 (e) An insurer shall not provide free or below-cost  
232 outsourced services to lenders, investors, or servicers, and  
233 an insurer will not outsource its own functions to lenders,  
234 insurance producers, investors, or servicers on an above-cost  
235 basis.

236 (f) An insurer or insurance producer shall not make any  
237 payments, including, but not limited to, the payment of  
238 expenses to a lender, insurer, investor, or servicer, for the  
239 purpose of securing lender-placed insurance business or  
240 related outsourced services.

241 Section 7. Nothing in this act shall be construed to  
242 allow an insurance producer or an insurer solely underwriting  
243 lender-placed insurance to circumvent the requirements set  
244 forth in this act. Any part of any requirement, limitation, or  
245 exclusion provided in this act shall apply to any insurer or  
246 insurance producer involved in lender-placed insurance.

247 Section 8. Lender-placed insurance shall be set forth  
248 in an individual policy or certificate of insurance. A copy of  
249 the individual policy, certificate of insurance, or other  
250 evidence of insurance coverage shall be mailed, first class  
251 mailed, or delivered in person to the last known address of  
252 the mortgagor, or delivered in accordance with the Alabama



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253 Uniform Electronic Transactions Act, Chapter 1A of Title 8,  
254 Code of Alabama 1975. Notwithstanding any other statutory or  
255 regulatory required information, the individual policy or  
256 certificate of insurance coverage shall include the following  
257 information:

258 (1) The address and identification of the insured  
259 property.

260 (2) The coverage amount or amounts if multiple  
261 coverages are provided.

262 (3) The effective date of the coverage.

263 (4) The term of coverage.

264 (5) The premium charge for the coverage.

265 (6) Contact information for filing a claim.

266 (7) A complete description of the coverage provided.

267 Section 9. (a) All policy forms and certificates of  
268 insurance to be delivered or issued for delivery in this state  
269 and the schedules of premium rates pertaining thereto shall be  
270 filed with the Commissioner of Insurance.

271 (b) The commissioner shall review the rates to  
272 determine whether the rates are excessive, inadequate, or  
273 unfairly discriminatory. This review shall include a  
274 determination as to whether expenses included by the insurer  
275 in the rate are appropriate.

276 (c) All insurers shall refile lender-placed property  
277 insurance rates at least once every four years.

278 (d) All insurers writing lender-placed insurance shall  
279 have separate rates for lender-placed insurance and voluntary  
280 insurance obtained by a mortgage servicer on real estate owned



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281 property.

282 (e) Upon the introduction of a new lender-placed  
283 insurance program, the insurer shall reference its experience  
284 in existing programs in the associated filings. Nothing in  
285 this act shall limit an insurer's discretion, as actuarially  
286 appropriate, to distinguish different terms, conditions,  
287 exclusions, eligibility criteria, or other unique or different  
288 characteristics. Moreover, an insurer, where actuarially  
289 acceptable, may rely upon models or, in the case of flood  
290 filings where applicable experience is not credible, on  
291 Federal Emergency Management Agency (FEMA) National Flood  
292 Insurance Program (NFIP) data.

293 (f) (1) Not later than April 1 of each year, each  
294 insurer with at least one hundred thousand dollars (\$100,000)  
295 in direct written premium for lender-placed insurance in this  
296 state during the prior calendar year shall report to the  
297 commissioner the following information for the prior calendar  
298 year:

299 a. Actual loss ratio.

300 b. Earned premium.

301 c. Any aggregate schedule rating debit or credit to  
302 earned premium.

303 d. Itemized expenses.

304 e. Paid losses.

305 f. Loss reserves, including case reserves and reserves  
306 for incurred but not reported losses.

307 (2) The report shall be separately produced for each  
308 lender-placed program and presented on both an individual



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309 jurisdiction and countrywide basis.

310 (g) Except in the case of lender-placed flood insurance  
311 to which this subsection does not apply, if an insurer  
312 experiences an annual loss ratio of less than 35 percent in  
313 any lender-placed program for two consecutive years, it shall  
314 submit a rate filing, either adjusting its rates or supporting  
315 their continuance, to the commissioner no more than 90 days  
316 after the submission of the report required in subsection (f).  
317 The 35 percent trigger for refiling rates is not intended to  
318 be, nor should be construed as, a loss ratio standard for  
319 determining whether rates are excessive or inadequate. The  
320 loss ratio standard in this section is solely directed to  
321 prompt a refiling of rates by the insurer.

322 (h) Except as specifically set forth in this section,  
323 rate and form filing requirements shall be subject to the  
324 insurance laws of this state.

325 Section 10. (a) The commissioner shall have all rights  
326 and powers to enforce this act as provided in Chapter 2 of  
327 Title 27, Code of Alabama 1975.

328 (b) The commissioner may adopt reasonable rules to  
329 carry out and effectuate this act.

330 Section 11. (a) A person subject to an order or final  
331 determination of the commissioner under Section 8 or Section  
332 12 may obtain a review of the order or final determination by  
333 filing in the Circuit Court of Montgomery County in accordance  
334 with Section 27-2-32, Code of Alabama 1975.

335 (b) To the extent that the order or final determination  
336 of the commissioner is affirmed, the court shall issue its own



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337 order requiring compliance with the terms of the order or  
338 final determination of the commissioner. If either party  
339 applies to the court for leave to produce additional evidence  
340 and shows to the satisfaction of the court that the additional  
341 evidence is material and that there were reasonable grounds  
342 for the failure to produce the evidence in the proceeding  
343 before the commissioner, the court may order the additional  
344 evidence to be taken before the commissioner and be presented  
345 on the hearing in the manner on the terms and conditions the  
346 court may deem proper. The commissioner may modify the  
347 findings of fact or make new findings based on the additional  
348 evidence and may file additional or modified findings that are  
349 supported by the evidence with a recommendation for the  
350 modification or setting aside of the original order or final  
351 determination based on the additional evidence.

352 (c) An order issued by the commissioner under Section  
353 12 shall become final:

354 (1) Upon the expiration of the time allowed for filing  
355 a petition for review if no petition has been duly filed  
356 within that time, except that the commissioner may thereafter  
357 modify or set aside the order to the extent provided in  
358 Section 12.

359 (2) Upon the final decision of the court if the court  
360 directs that the order of the commissioner be affirmed or the  
361 petition for review be dismissed.

362 (d) No order of the commissioner under this act or  
363 order of a court to enforce the same shall relieve or absolve  
364 any person affected by the order from liability under any



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365 other laws of this state.

366 Section 12. An insurer that violates an order of the  
367 commissioner while the order is in effect, after notice and  
368 hearing and upon order of the commissioner, may be subject, at  
369 the discretion of the commissioner, to either or both of the  
370 following:

371 (1) Payment of a monetary penalty of not more than one  
372 thousand dollars (\$1,000) for each violation, but not to  
373 exceed an aggregate penalty of one hundred thousand dollars  
374 (\$100,000), unless the commissioner determines the violation  
375 was committed flagrantly in a conscious disregard of this act,  
376 in which case the penalty shall not be more than twenty-five  
377 thousand dollars (\$25,000) for each violation, but not to  
378 exceed an aggregate penalty of two hundred fifty thousand  
379 dollars (\$250,000).

380 (2) Suspension or revocation of the insurer's license.

381 Section 13. This act shall become effective on the  
382 first day of January next following its passage and approval  
383 by the Governor, or its otherwise becoming law.