

1 SB354
2 127640-1
3 By Senators Brooks and Glover
4 RFD: Judiciary
5 First Read: 06-APR-11

SYNOPSIS: Under existing law, material or fraudulent misrepresentations, omissions, concealment of facts, and incorrect statements in insurance transactions are prohibited and an insurance producer who violates these prohibitions may have his or her license revoked.

This bill would specifically define insurance fraud by a person, an insurer, a reinsurer, a broker, or their respective agents. This bill would authorize the Department of Insurance to investigate suspected insurance fraud and would also allow the reporting to certain public officers of suspected insurance fraud.

This bill would also offer civil immunity for certain persons reporting and investigating suspected insurance fraud and would require confidentiality of information and files.

This bill would create the Insurance Fraud Unit within the office of the Department of Insurance to investigate suspected insurance fraud

1 and would provide powers and remedies in enforcing
2 this bill.

3 The bill would provide for assessments on
4 insurers to fund the unit, for the establishment of
5 the Insurance Fraud Unit Fund, and would make
6 appropriations from the fund for the fiscal years
7 ending September 30, 2011, and September 30, 2012.

8 This bill would provide civil penalties up
9 to \$5,000 per violation or suspension of license or
10 certificate of authority. This bill would also
11 provide for civil and criminal penalties in
12 addition to restitution to the aggrieved party and
13 would limit the filing of a cause of action to six
14 years.

15 The bill would also authorize the
16 Commissioner of Insurance to promulgate rules to
17 administer this act.

18 The bill would also specify that health
19 maintenance organizations would be subject to rules
20 of the commissioner adopted pursuant to Sections
21 27-7-43 and 27-7-44, Code of Alabama 1975, relating
22 to licensing and privacy.

23 Amendment 621 of the Constitution of Alabama
24 of 1901, now appearing as Section 111.05 of the
25 Official Recompilation of the Constitution of
26 Alabama of 1901, as amended, prohibits a general
27 law whose purpose or effect would be to require a

1 new or increased expenditure of local funds from
2 becoming effective with regard to a local
3 governmental entity without enactment by a 2/3 vote
4 unless: it comes within one of a number of
5 specified exceptions; it is approved by the
6 affected entity; or the Legislature appropriates
7 funds, or provides a local source of revenue, to
8 the entity for the purpose.

9 The purpose or effect of this bill would be
10 to require a new or increased expenditure of local
11 funds within the meaning of the amendment. However,
12 the bill does not require approval of a local
13 governmental entity or enactment by a 2/3 vote to
14 become effective because it comes within one of the
15 specified exceptions contained in the amendment.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 Relating to the Department of Insurance; to define
22 insurance fraud; to authorize the department to oversee and
23 investigate suspected insurance fraud; to provide for
24 confidentiality of information and files; to create the
25 Insurance Fraud Unit within the department; to provide for
26 assessments on insurer, to establish the Insurance Fraud Unit
27 Fund, and to make appropriations from the fund for the fiscal

1 years ending September 30, 2011, and September 30, 2012, for
2 the operation of the Insurance Fraud Unit; to provide certain
3 immunity from civil liability for certain persons reporting
4 and investigating suspected insurance fraud; to provide civil
5 and criminal penalties; to authorize the Commissioner of
6 Insurance to promulgate rules necessary to implement and
7 administer this act; for this purpose to amend Section
8 10-4-115, Code of Alabama 1975, relating to health care
9 service plans, and Section 27-21A-23, Code of Alabama 1975,
10 relating to health maintenance organizations; and in
11 connection therewith would have as its purpose or effect the
12 requirement of a new or increased expenditure of local funds
13 within the meaning of Amendment 621 of the Constitution of
14 Alabama of 1901, now appearing as Section 111.05 of the
15 Official Recompilation of the Constitution of Alabama of 1901,
16 as amended.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. The Legislature finds that the business
19 of insurance involves many transactions that have potential
20 for fraud, abuse, and other illegal activities. This act is
21 intended to permit full utilization of the expertise of the
22 Department of Insurance to investigate, discover, and
23 prosecute insurance fraud and assist and receive assistance
24 from state, local, and federal law enforcement and regulatory
25 agencies in enforcing laws prohibiting insurance fraud.

26 Section 2. Chapter 12A is added to Title 27, Code of
27 Alabama 1975, to read as follows:

1 CHAPTER 12A.

2 INSURANCE FRAUD INVESTIGATION UNIT AND CRIME PREVENTION ACT.

3 ARTICLE 1.

4 DEFINITIONS AND CRIME OF INSURANCE FRAUD.

5 Section 27-12A-1. Definitions.

6 As used in this chapter, the following terms shall
7 have the following meanings:

8 (1) COMMISSIONER. The Alabama Commissioner of
9 Insurance or his or her designee.

10 (2) DEPARTMENT. The Alabama Department of Insurance.

11 (3) INSURANCE. As defined in Section 27-1-2, Code of
12 Alabama 1975, and specifically including any contract,
13 arrangement, or agreement, in which one undertakes to do any
14 one of the following:

15 a. Pay or indemnify another as to loss from certain
16 contingencies called risks.

17 b. Pay or grant a specified amount or determinable
18 benefit to another in connection with ascertainable risk
19 contingencies.

20 c. Pay an annuity to another.

21 d. Act as surety.

22 For the purposes of this chapter "insurance" also
23 includes any health benefit plan as defined in Section
24 27-53-1, Code of Alabama 1975.

1 (4) INSURANCE PRODUCER or PRODUCER. As defined in
2 Section 27-7-1.

3 (5) INSURER. A person entering into agreements,
4 contracts of insurance, arrangements, or reinsurance, or a
5 health benefit plan, or a group health plan as defined in
6 Section 607(1) of the Employee Retirement Income Security Act
7 of 1974, or any entity offering a service benefit plan, and
8 who agrees to perform any of the acts set forth in subdivision
9 (4), including but not limited to, fraternal benefit
10 societies, mutual aid associations, health maintenance
11 organizations, and health care service plans, regardless of
12 whether the person is acting in violation of laws requiring a
13 certificate of authority or regardless of whether the person
14 denies being an insurer.

15 (6) NAIC. The National Association of Insurance
16 Commissioners or its successor in interest.

17 (7) NICB. The National Insurance Crime Bureau or its
18 successor in interest.

19 (8) PERSON. An individual, corporation, partnership,
20 association, joint stock company, trust, unincorporated
21 organization, or any similar entity or any combination of the
22 foregoing.

23 (9) POLICY. An individual or group insurance policy,
24 agreement, group certificate, contract, evidence of insurance,
25 or arrangement of insurance affecting the rights of a resident
26 of this state or bearing a reasonable relation to this state,
27 regardless if delivered or issued for delivery in this state.

1 (10) PRACTITIONER. A person licensed in this state
2 authorized to practice medicine and surgery, psychology,
3 chiropractic, dentistry, optometry, pharmacy, nursing,
4 physical therapy or law, or any other licensee of the state or
5 person required to be licensed in this state.

6 (11) REINSURANCE. A contract, binder of coverage,
7 including placement slip, or arrangement under which an
8 insurer procures insurance for itself in another insurer as to
9 all or part of an insurance risk of the originating insurer.

10 (12) TRANSACT or TRANSACTION. As defined in Section
11 27-1-2.

12 (13) UNIT. The Insurance Fraud Unit of the Alabama
13 Department of Insurance.

14 Section 27-12A-2. Insurance fraud; Definition.

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 renewal
20 insurance risks on behalf of an insurer, reinsurer, or other
21 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) The transaction of the business of insurance in
15 violation of laws requiring a license, certificate of
16 authority, or other legal authority for the transaction of the
17 business of insurance.

18 (5) Presenting, causing to be presented, or
19 preparing with knowledge or belief that it will be presented
20 to or by an insurer, reinsurer, producer, or any of their
21 respective agents, false information as part of, in support
22 of, or concerning a fact material to, one or more of the
23 following:

24 a. An application for the issuance or renewal of an
25 insurance policy or reinsurance agreement.

26 b. The rating of an insurance policy or reinsurance
27 agreement.

1 c. A claim for payment or benefit pursuant to an
2 insurance policy or reinsurance agreement.

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

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

9 2. The good or service is paid for by the consumer
10 from proceeds of a property or casualty insurance policy; and

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

17 e. Premiums paid on an insurance policy or
18 reinsurance agreement.

19 f. Payments made in accordance with the terms of an
20 insurance policy or reinsurance agreement.

21 g. A document filed with the commissioner.

22 i. Audit information submitted to the commissioner
23 or an insurer.

24 j. The formation, acquisition, merger,
25 reconsolidation, or dissolution of one or more insurance
26 entities, or the withdrawal from one or more lines of

1 insurance in all or part of this state by an insurer or
2 reinsurer.

3 k. The issuance of written evidence of insurance.

4 l. The reinstatement of an insurance policy.

5 m. Issuance, acceptance, change, endorsement, or
6 continuance of an insurance policy or reinsurance agreement.

7 n. A construction or structure mitigation inspection
8 report provided for the issuance or renewal of an insurance
9 policy or discounts or credits related to an insurance policy.

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

15 Section 27-12A-3. Insurance fraud in the first
16 degree.

17 (a) An act prohibited by subdivisions (1), (2), (3),
18 or (5) of Section 27-12A-2, in cases where the loss or
19 potential loss exceeds one thousand dollars (\$1,000),
20 constitutes insurance fraud in the first degree.

21 (b) Insurance fraud in the first degree is a Class B
22 felony.

23 Section 27-12A-4. Insurance fraud in the second
24 degree.

25 (a) An act prohibited by subdivisions (1), (2), (3),
26 or (5) of Section 27-12A-2, in cases where the loss or

1 potential loss does not exceed one thousand dollars (\$1,000),
2 constitutes insurance fraud in the second degree.

3 (b) Insurance fraud in the second degree is a Class
4 C felony.

5 Section 27-12A-5. Insurance fraud in the third
6 degree.

7 (a) An act prohibited by subdivision (4) of Section
8 27-12A-2, constitutes insurance fraud in the third degree.

9 (b) Insurance fraud in the third degree is a Class A
10 misdemeanor.

11 Section 27-12A-6. General.

12 (a) No prosecution may be commenced under this
13 article more than six years after the alleged violation was
14 deleted.

15 (b) An individual who has been convicted of
16 insurance fraud in the first degree or insurance fraud in the
17 second degree shall be disqualified from engaging in the
18 business of insurance in this state.

19 (c) A person may not willfully permit another person
20 who has been convicted of insurance fraud in the first degree
21 or insurance fraud in the second degree to transact in the
22 business of insurance in this state.

23 (d) For the purposes of Article 4A of Chapter 18 of
24 Title 15, insurance fraud shall be considered criminal
25 activity.

26 Section 27-12A-7. Enforcement.

1 (a) The enforcement of this chapter shall be vested
2 in the Department of Insurance. It shall be the duty of the
3 department to see that the provisions of this chapter are at
4 all times obeyed and to take such measures and to make such
5 investigations as will prevent or detect the violation of any
6 provision thereof. The department may present to the Attorney
7 General any credible evidence of criminality coming to its
8 knowledge.

9 (b) Nothing in this article limits the power of the
10 state to punish any person for any conduct which constitutes a
11 crime by statute or at common law.

12 (c) Nothing in this chapter shall be construed as
13 state regulation of self-insured employee welfare benefit
14 plans as defined in the Employee Retirement Income Security
15 Act of 1974, 29 U.S.C. § 1001 et seq.

16 Section 27-12A-8. Licensing penalties for insurance
17 fraud.

18 (a) A producer who violates this chapter may be
19 subject to the suspension or revocation of any insurance
20 license held by the producer or civil penalties of up to five
21 thousand dollars (\$5,000) per violation, or both. Suspension
22 or revocation of an insurance license or certificate of
23 authority and the imposition of civil penalties shall be
24 pursuant to action brought before the commissioner. Suspension
25 or revocation of any insurance licenses and the imposition of
26 civil penalties shall be pursuant to action brought before the
27 commissioner in accordance with this title.

1 (b) An insurer who, with such frequency as to
2 indicate its general business practice in this state, is in
3 violation of this chapter may be subject to the suspension or
4 revocation of any certificate of authority held by insurer or
5 civil penalties of up to five thousand dollars (\$5,000) per
6 violation, or both. Suspension or revocation of a certificate
7 of authority and the imposition of civil penalties shall be
8 pursuant to action brought before the commissioner in
9 accordance with Section 27-3-21 and subject to the right of
10 appeal in accordance with Section 27-2-32.

11 (c) The commissioner shall also notify the proper
12 licensing authority of a practitioner for the appropriate dis-
13 ciplinary action including the revocation or suspension of any
14 professional license when a practitioner is convicted of a
15 violation of this chapter and whose services are compensated
16 in whole or in part, directly or indirectly, by insurance pro-
17 ceeds.

18 ARTICLE 2.

19 INSURANCE FRAUD PREVENTION.

20 Section 27-12A-20. Fraud warning.

21 (a) A fraud warning shall be included on at least
22 one of the following: Claim release forms, applications,
23 reinstatements for insurance, participation agreements,
24 declaration pages, and claim documents, regardless of the

1 method or form of transmission and shall contain the following
2 statement or a substantially similar statement:

3 "Any person who knowingly presents a false or
4 fraudulent claim for payment of a loss or benefit or who
5 knowingly presents false information in an application for
6 insurance is guilty of a crime and may be subject to
7 restitution fines or confinement in prison, or any combination
8 thereof."

9 (b) The lack of a statement required by subsection
10 (a) shall not constitute a defense in any prosecution for
11 insurance fraud.

12 (c) Policies issued by unauthorized insurers shall
13 contain a statement disclosing the status of the insurer to do
14 business in the state where the policy is delivered or issued
15 for delivery or the state where coverage is in force.

16 (d) Insurers shall comply with subsection (a) not
17 later than the first day of the sixth month after the
18 effective date of this chapter.

19 (e) This section does not require notice to persons
20 insured under existing policies, except to the extent the
21 persons receive, after the effective date of this chapter, a
22 document listed in subsection (a) which has been selected by
23 the insurer to contain the "Fraud Warning."

24 (f) None of the requirements of this section shall
25 be deemed to apply to reinsurers, reinsurance contracts,
26 reinsurance agreements, or reinsurance claims transacted.

1 (g) As used in this section, "insurer" refers only
2 to those entities defined in Section 27-12A-1(5) which hold a
3 certificate of authority from the commissioner, and
4 "unauthorized insurers" refers only to those entities
5 operating pursuant to Article 2, beginning with Section
6 27-10-20, of Chapter 10.

7 Section 27-12A-21. Mandatory reporting requirements.

8 (a) Persons engaged in the business of insurance,
9 having knowledge or a reasonable belief that insurance fraud
10 is being, will be, or has been committed, shall provide to the
11 department such information that is required by, and in a
12 manner prescribed by, the department. As used in this section,
13 "persons engaged in the business of insurance" refers only to
14 those entities defined in Section 27-12A-1(5) which hold a
15 certificate of authority from the commissioner.

16 (b) A person other than an insurer having knowledge
17 or having a reasonable belief that insurance fraud is being,
18 will be, or has been committed may provide the information to
19 the Attorney General, the department, or both.

20 Section 27-12A-22. Immunity from liability.

21 (a) Except as otherwise provided in subsection (b),
22 there shall be no civil liability imposed on and no cause of
23 action shall arise against a person for furnishing or
24 receiving information concerning suspected, anticipated, or
25 completed insurance fraud. This shall not abrogate or modify
26 common law or statutory privileges or immunities enjoyed by a
27 person, and the limit on civil liability applies only to the

1 act of reporting and does not limit civil liability against a
2 person for committing fraud or other tortuous conduct.

3 (b) Subsection (a) shall not apply to false
4 statements made with actual malice by a person furnishing or
5 receiving information concerning suspected, anticipated, or
6 completed insurance fraud. In any action brought against a
7 person for filing a report or furnishing other information
8 concerning insurance fraud, the party bringing the action
9 shall plead specifically any allegations that subsection (a)
10 shall not apply because the person filing the report or
11 furnishing the information did so with actual malice.

12 Section 27-12A-23. Confidentiality.

13 (a) Documents and evidence provided pursuant to
14 Section 27-12A-21 or obtained by the department in an
15 investigation of suspected or actual insurance fraud shall be
16 privileged and confidential, shall not be a public record, and
17 shall not be subject to discovery or subpoena in a civil or
18 criminal action.

19 (b) Notwithstanding subsection (a), the department
20 may release documents and evidence obtained by the unit in an
21 investigation of suspected or actual insurance fraud pursuant
22 to any of the following:

23 (1) Administrative or judicial bodies hearing
24 proceedings to enforce laws administered by the department.

25 (2) Federal, state, or local law enforcement or
26 regulatory agencies, including, but not limited to, the

1 Attorney General and the Chief Examiner of Public Accounts;
2 the NICB; or the NAIC.

3 (3) At the discretion of the commissioner, a person
4 in the transaction of the business of insurance that is
5 aggrieved by the insurance fraud.

6 (c) Release of documents and evidence under
7 subsection (b) shall not abrogate or modify the privilege
8 granted in subsection (a).

9 (d) The confidentiality of records imposed by this
10 section shall not extend to any documents or evidence
11 submitted as part of an investigative report that are public
12 documents. A document that is a public record pursuant to any
13 other statute shall not be affected by this section.

14 (e) Employees, directors, agents, servants, staff
15 investigators, staff attorneys, and others engaged by or on
16 behalf of the State of Alabama for the purpose of implementing
17 or performing the duties, obligations, and responsibilities
18 under this chapter, shall not be subject to subpoena in civil
19 actions by any court in this state to testify concerning any
20 matter of which they have knowledge that arises out of or is
21 related to a pending or continuing insurance fraud
22 investigation being conducted by the unit.

23 (f) With the exception of those documents created by
24 or at the request of a company specifically in connection with
25 the investigation of suspected or actual insurance fraud,
26 subsection (a) shall not be construed to prevent the discovery
27 of documents otherwise subject to discovery in a civil matter

1 from the insurer or producer. Copies of all documents,
2 materials, and information furnished to the department by an
3 insurer, producer, or an employee or agent on behalf of an
4 insurer or producer, shall be retained in their ordinary and
5 customary location by the insurer or producer for the period
6 provided by law.

7 Section 27-12A-24. Other law enforcement or
8 regulatory authority.

9 This chapter shall not be construed to do any of the
10 following:

11 (1) Preempt the authority or relieve other law
12 enforcement or regulatory agencies of the duty to investigate,
13 examine, and prosecute suspected violations of law.

14 (2) Prevent or prohibit a person from voluntarily
15 disclosing information concerning insurance fraud to a law
16 enforcement or regulatory agency other than the unit.

17 (3) Limit the powers granted by law to the Attorney
18 General, the commissioner, the department, or the unit to
19 investigate and examine possible violations of law and to take
20 appropriate action against wrongdoers.

21 (4) Create a private cause of action.

22 ARTICLE 3.

23 INSURANCE FRAUD UNIT.

24 Section 27-12A-40. Creation of Insurance Fraud Unit.

1 (a) There is hereby established within the
2 department the Insurance Fraud Unit. The commissioner shall
3 appoint the necessary full-time supervisory and investigative
4 personnel of the unit who shall be qualified by training and
5 experience to perform the duties of their positions. The
6 commissioner shall furnish offices, equipment, operating
7 expenses, and necessary personnel to maintain and operate the
8 unit.

9 (b) The unit shall perform all of the following
10 duties:

11 (1) Initiate independent inquiries and conduct
12 independent investigations when the unit has cause to believe
13 that any insurance fraud may be, is being, or has been,
14 committed.

15 (2) Review reports or complaints of alleged
16 insurance fraud from federal, state, and local law enforcement
17 and regulatory agencies, persons engaged in the business of
18 insurance, and the public to determine whether the reports or
19 complaints require further investigation and, if so, to
20 conduct these investigations.

21 (3) Conduct independent examinations of alleged
22 insurance fraud and undertake independent studies to determine
23 the extent of insurance fraud.

24 (c) In performing its duties, the unit shall have
25 the powers to do all of the following:

26 (1) Inspect, copy, or collect records and evidence.

27 (2) Issue and serve subpoenas.

1 (3) Administer oaths and affirmations.

2 (4) Share records and evidence with federal, state,
3 or local law enforcement and regulatory agencies.

4 (5) Execute arrest warrants for criminal violations
5 of this chapter.

6 (6) Arrest upon probable cause without warrant a
7 person found in the act of violating or attempting to violate
8 this chapter.

9 (7) Make criminal referrals to the Attorney General.

10 (8) Conduct investigations outside of this state. If
11 the information the unit seeks to obtain is located outside of
12 this state, the person from whom the information is sought may
13 make the information available to the unit to examine at the
14 place where the information is located. The unit may designate
15 representatives, including officials of the state in which the
16 matter is located, to inspect the information on behalf of the
17 unit, and the unit may respond to similar requests from
18 officials of other states.

19 (d) Investigators of the unit shall have all the
20 powers vested in law enforcement officers of the State of
21 Alabama, including, but not limited to, the powers of arrest
22 and the power to serve process, but only as necessary to
23 enforce this chapter, and shall perform the duties,
24 responsibilities, and functions as may be required for the
25 unit to carry out its duties and responsibilities pursuant to
26 this chapter. No person shall serve as investigator of the
27 unit who has not met the minimum standards established for law

1 enforcement officers by the Alabama Peace Officers' Standards
2 and Training Commission, or other standards as may be provided
3 hereafter by law.

4 (e) Information relating to criminal activity
5 discovered in the course of an investigation by the unit shall
6 be provided to the Department of Public Safety.

7 Section 27-12A-41. Assessments.

8 (a) The commissioner shall assess each insurer
9 authorized to write insurance in the State of Alabama two
10 hundred dollars (\$200) per year in order to fund the
11 operations of the unit.

12 (b) Assessments shall be due not less than 30 days
13 after prior written notice to the insurer and shall accrue
14 interest at six percent per annum on and after the due date.
15 Failure to remit payment of an assessment shall warrant the
16 suspension or revocation of an insurer's certificate of
17 authority.

18 (c) As used in this section "insurer authorized to
19 write insurance in the State of Alabama" refers only to those
20 entities defined in subdivision (5) of Section 27-12A-1 which
21 hold a certificate of authority from the commissioner.

22 Section 27-12A-42. Creation of Insurance Fraud Unit
23 Fund.

24 (a) There is created a fund in the State Treasury
25 designated the Insurance Fraud Unit Fund. The expenses
26 incurred by the department in operating the unit, including
27 expenses incurred by the department for providing

1 administrative personnel, legal counsel, litigation support,
2 expert witness, and costs of investigations, shall be paid
3 from the fund. The department may not hire, contract, or
4 otherwise engage the services of private attorneys to
5 administer or implement this chapter.

6 No funds shall be withdrawn or expended from this
7 fund except as budgeted and allotted according to Article 4 of
8 Chapter 4 of Title 41 and Sections 41-19-1 to 41-19-12, Code
9 of Alabama 1975, inclusive, and only in amounts as stipulated
10 in the general appropriations act, other appropriation acts,
11 or Sections 3 and 4 of this act.

12 (b) The department shall deposit the funds received
13 pursuant to Section 27-12A-41 into the State Treasury to the
14 credit of the Insurance Fraud Unit Fund.

15 (c) The department may file a claim for restitution
16 for any expenses incurred by the department in investigating
17 and prosecuting a person convicted of insurance fraud. This
18 restitution shall be payable to the State Treasury to the
19 credit of the Insurance Fraud Unit Fund as a refund against
20 disbursements.

21 (d) Monies not used during a fiscal year shall be
22 carried over in the Insurance Fraud Unit Fund and shall not
23 revert to the State General Fund.

24 Section 3. There is appropriated from the Insurance
25 Fraud Unit Fund established pursuant to this act to the
26 Department of Insurance an amount of three hundred twenty

1 thousand dollars (\$320,000) for the fiscal year ending
2 September 30, 2011.

3 Section 4. There is appropriated from the Insurance
4 Fraud Unit Fund established pursuant to this act to the
5 Department of Insurance an amount of three hundred twenty
6 thousand dollars (\$320,000) for the fiscal year ending
7 September 30, 2012.

8 Section 5. The Commissioner of Insurance may adopt
9 reasonable rules for the implementation and administration of
10 this act.

11 Section 6. Sections 10-4-115 and 27-21A-23, Code of
12 Alabama 1975, are amended to read as follows:

13 "§10-4-115.

14 "(a) No statute of this state applying to insurance
15 companies shall be applicable to any corporation organized
16 under the provisions of this article and amendments thereto or
17 to any contract made by the corporation unless expressly
18 mentioned in this article and made applicable; except as
19 follows:

20 "(1) The corporation shall be subject to the
21 provisions regarding annual premium tax to be paid by insurers
22 on insurance premiums.

23 "(2) The corporation shall be subject to the
24 provisions of Chapter 55, Title 27, regarding the prohibition
25 of unfair discriminatory acts by insurers on the basis of an
26 applicant's or insured's abuse status.

1 "(3) The corporation shall be subject to the
2 provisions regarding Medicare Supplement Minimum Standards set
3 forth in Article 2 of Chapter 19 of Title 27, and Long-Term
4 Care Insurance Policy Minimum Standards set forth in Article 3
5 of Chapter 19 of Title 27.

6 "(4) The corporation shall be subject to Section
7 27-1-17, requiring insurers and health plans to pay health
8 care providers in a timely manner.

9 "(5) The corporation shall be subject to the
10 provisions of Chapter 56 of Title 27, regarding the Access to
11 Eye Care Act.

12 "(6) The corporation shall be subject to the
13 regulations promulgated by the Commissioner of Insurance
14 pursuant to Sections 27-7-43 and 27-7-44.

15 "(7) The corporation shall be subject to the
16 provisions of Chapter 54 of Title 27.

17 "(8) The corporation shall be subject to the
18 provisions of Chapter 57 of Title 27, requiring coverage to be
19 offered for the payment of colorectal cancer examinations for
20 covered persons who are 50 years of age or older, or for
21 covered persons who are less than 50 years of age and at high
22 risk for colorectal cancer according to current American
23 Cancer Society colorectal cancer screening guidelines.

24 "(9) The corporation shall be subject to Chapter 58
25 of Title 27, requiring that policies and contracts including
26 coverage for prostate cancer early detection be offered,
27 together with identification of associated costs.

1 "(10) The corporation shall be subject to Chapter 59
2 of Title 27 requiring that policies and contracts including
3 coverage for chiropractic be offered, together with
4 identification of associated costs.

5 "(11) The corporation shall be subject to Chapter
6 12A of Title 27.

7 "(b) The provisions in subsection (a) that require
8 specific types of coverage to be offered or provided shall not
9 apply when the corporation is administering a self-funded
10 benefit plan or similar plan, fund, or program that it does
11 not insure.

12 "§27-21A-23.

13 "(a) Except as otherwise provided in this chapter,
14 provisions of the insurance law and provisions of health care
15 service plan laws shall not be applicable to any health
16 maintenance organization granted a certificate of authority
17 under this chapter. This provision shall not apply to an
18 insurer or health care service plan licensed and regulated
19 pursuant to the insurance law or the health care service plan
20 laws of this state except with respect to its health
21 maintenance organization activities authorized and regulated
22 pursuant to this chapter.

23 "(b) Solicitation of enrollees by a health
24 maintenance organization granted a certificate of authority
25 shall not be construed to violate any provision of law
26 relating to solicitation or advertising by health
27 professionals.

1 "(c) Any health maintenance organization authorized
2 under this chapter shall not be deemed to be practicing
3 medicine and shall be exempt from the provisions of Section
4 34-24-310, et seq., relating to the practice of medicine.

5 "(d) No person participating in the arrangements of
6 a health maintenance organization other than the actual
7 provider of health care services or supplies directly to
8 enrollees and their families shall be liable for negligence,
9 misfeasance, nonfeasance, or malpractice in connection with
10 the furnishing of such services and supplies.

11 "(e) Nothing in this chapter shall be construed in
12 any way to repeal or conflict with any provision of the
13 certificate of need law.

14 "(f) Notwithstanding the provisions of subsection
15 (a), a health maintenance organization shall be subject to
16 Section 27-1-17.

17 "(g) Notwithstanding the provisions of subsection
18 (a), a health maintenance organization shall be subject to the
19 provisions of Chapter 56 of this title, regarding the Access
20 to Eye Care Act.

21 "(h) Notwithstanding the provisions of subsection
22 (a), a health maintenance organization shall be subject to the
23 provisions of Chapter 54 of this title.

24 "(i) Notwithstanding the provisions of subsection
25 (a), a health maintenance organization shall be subject to the
26 provisions of Chapter 57 of this title, requiring coverage to
27 be offered for the payment of colorectal cancer examinations

1 for covered persons who are 50 years of age or older, or for
2 covered persons who are less than 50 years of age and at high
3 risk for colorectal cancer according to current American
4 Cancer Society colorectal cancer screening guidelines.

5 "(j) Notwithstanding the provisions of subsection
6 (a), a health maintenance organization shall be subject to
7 Chapter 58 of Title 27, requiring that policies and contracts
8 including coverage for prostate cancer early detection be
9 offered, together with identification of associated costs.

10 "(k) Notwithstanding the provisions of subsection
11 (a), a health maintenance organization shall be subject to
12 Chapter 59 of this title, requiring that policies and
13 contracts including coverage for chiropractic be offered,
14 together with identification of associated costs.

15 "(l) Notwithstanding the provisions of subsection
16 (a), a health maintenance organization shall be subject to
17 regulations promulgated by the Commissioner of Insurance
18 pursuant to Sections 27-7-43 and 27-7-44.

19 "(m) Notwithstanding the provisions of subsection
20 (a), a health maintenance organization shall be subject to
21 Chapter 12A."

22 Section 7. Although this bill would have as its
23 purpose or effect the requirement of a new or increased
24 expenditure of local funds, the bill is excluded from further
25 requirements and application under Amendment 621, now
26 appearing as Section 111.05 of the Official Recompile of
27 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 8. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.