

1 HB323
2 141597-4
3 By Representatives McMillan, Hill, Fincher, Ison, McClurkin,
4 Buskey and Kennedy
5 RFD: Insurance
6 First Read: 14-FEB-12

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to the Department of Insurance; to define insurance fraud; to authorize the department to oversee and investigate suspected insurance fraud; to provide for confidentiality of information and files; to create the Insurance Fraud Unit within the department; to provide for assessments on insurer, to establish the Insurance Fraud Unit Fund, and to make appropriations from the fund for the fiscal years ending September 30, 2012, and September 30, 2013, for the operation of the Insurance Fraud Unit; to provide certain immunity from civil liability for certain persons reporting and investigating suspected insurance fraud; to provide civil and criminal penalties; to authorize the Commissioner of Insurance to promulgate rules necessary to implement and administer this act; for this purpose to amend Section 10A-20-6.16, Code of Alabama 1975, relating to health care service plans, and Section 27-21A-23, Code of Alabama 1975, relating to health maintenance organizations; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of

1 Alabama of 1901, now appearing as Section 111.05 of the
2 Official Recompile of the Constitution of Alabama of 1901,
3 as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. The Legislature finds that the business
6 of insurance involves many transactions that have potential
7 for fraud, abuse, and other illegal activities. This act is
8 intended to permit full utilization of the expertise of the
9 Department of Insurance to investigate, discover, and
10 prosecute insurance fraud and assist and receive assistance
11 from state, local, and federal law enforcement and regulatory
12 agencies in enforcing laws prohibiting insurance fraud.

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

15 CHAPTER 12A.

16 INSURANCE FRAUD INVESTIGATION UNIT AND CRIME PREVENTION ACT.

17 ARTICLE 1.

18 DEFINITIONS AND CRIME OF INSURANCE FRAUD.

19 Section 27-12A-1. Definitions.

20 As used in this chapter, the following terms shall
21 have the following meanings:

22 (1) COMMISSIONER. The Alabama Commissioner of
23 Insurance or his or her designee.

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

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

5 a. Pay or indemnify another as to loss from certain
6 contingencies called risks.

7 b. Pay or grant a specified amount or determinable
8 benefit to another in connection with ascertainable risk
9 contingencies.

10 c. Pay an annuity to another.

11 d. Act as surety.

12 For the purposes of this chapter "insurance" also
13 includes any health benefit plan as defined in Section
14 27-53-1, Code of Alabama 1975.

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

17 (5) INSURER. A person entering into agreements,
18 contracts of insurance, arrangements, or reinsurance, or a
19 health benefit plan, or a group health plan as defined in
20 Section 607(1) of the Employee Retirement Income Security Act
21 of 1974, or any entity offering a service benefit plan, and
22 who agrees to perform any of the acts set forth in subdivision
23 (3), including but not limited to, fraternal benefit
24 societies, mutual aid associations, health maintenance
25 organizations, and health care service plans, regardless of
26 whether the person is acting in violation of laws requiring a

1 certificate of authority or regardless of whether the person
2 denies being an insurer.

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

5 (7) NICB. The National Insurance Crime Bureau or its
6 successor in interest.

7 (8) PERSON. An individual, corporation, partnership,
8 association, joint stock company, trust, unincorporated
9 organization, or any similar entity or any combination of the
10 foregoing.

11 (9) POLICY. An individual or group insurance policy,
12 agreement, group certificate, contract, evidence of insurance,
13 or arrangement of insurance affecting the rights of a resident
14 of this state or bearing a reasonable relation to this state,
15 regardless if delivered or issued for delivery in this state.

16 (10) PRACTITIONER. A person licensed in this state
17 authorized to practice medicine and surgery, psychology,
18 chiropractic, dentistry, optometry, pharmacy, nursing,
19 physical therapy or law, or any other licensee of the state or
20 person required to be licensed in this state.

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

25 (12) TRANSACT or TRANSACTION. As defined in Section
26 27-1-2.

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

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

4 A person commits the crime of insurance fraud if,
5 knowingly and with intent to defraud, he or she commits, or
6 conceals any material information concerning, one or more of
7 the following acts:

8 (1) The solicitation or acceptance of new or renewal
9 insurance risks on behalf of an insurer, reinsurer, or other
10 person engaged in the transaction of the business of
11 insurance, by a person who knows the insurer, reinsurer, or
12 other person responsible for the risk is financially unable to
13 pay its claims at the time of the transaction.

14 (2) The removal, concealment, alteration, or
15 destruction of the assets or records relating to the
16 transaction of the business of insurance of an insurer,
17 reinsurer, or other person engaged in the transaction of the
18 business of insurance. This section does not prohibit an
19 insurer, reinsurer, or other person engaged in the transaction
20 of the business of insurance from destroying records or
21 documents relating to the transaction of the business of
22 insurance in accordance with record retention and destruction
23 standards set forth in state or federal law or the record
24 retention policy of the insurer, reinsurer, or other person.

25 (3) The embezzlement, abstraction, theft, or
26 conversion of monies, funds, premiums, credits, or other
27 property relating to the transaction of the business of

1 insurance of an insurer, reinsurer, or other person engaged in
2 the transaction of the business of insurance.

3 (4) Presenting, causing to be presented, or
4 preparing with knowledge or belief that it will be presented
5 to or by an insurer, reinsurer, producer, or any of their
6 respective agents, false information as part of, in support
7 of, or concerning a fact material to, one or more of the
8 following:

9 a. An application for the issuance or renewal of an
10 insurance policy or reinsurance agreement.

11 b. The rating of an insurance policy or reinsurance
12 agreement.

13 c. A claim for payment or benefit pursuant to an
14 insurance policy or reinsurance agreement.

15 d. A claim for payment or benefit based on an
16 advertisement or promises to provide a good or service under
17 an insurance policy.

18 1. To pay or fail to collect all or part of any
19 applicable insurance deductible or a rebate in an amount equal
20 to all or part of any applicable insurance deductible; and

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

23 3. The person knowingly charges an amount for the
24 good or service that exceeds the usual and customary charge by
25 the person for the good or service by an amount equal to or
26 greater than all or part of the applicable insurance

1 deductible paid by the person to an insurer on behalf of an
2 insured or remitted to an insured by the person as a rebate.

3 e. Premiums paid on an insurance policy or
4 reinsurance agreement.

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

7 g. A document filed with the commissioner.

8 i. Audit information submitted to the commissioner
9 or an insurer.

10 j. The formation, acquisition, merger,
11 reconsolidation, or dissolution of one or more insurance
12 entities, or the withdrawal from one or more lines of
13 insurance in all or part of this state by an insurer or
14 reinsurer.

15 k. The issuance of written evidence of insurance.

16 l. The reinstatement of an insurance policy.

17 m. Issuance, acceptance, change, endorsement, or
18 continuance of an insurance policy or reinsurance agreement.

19 n. A construction or structure mitigation inspection
20 report provided for the issuance or renewal of an insurance
21 policy or discounts or credits related to an insurance policy.

22 (5) The failure to decline or refusal to return an
23 insurance payment for a loss or a recovery to which the person
24 is not entitled by reason of an insurer's mistake or other
25 facts or circumstances connected with the person's claim or
26 the coverage provided by an applicable insurance policy.

1 Section 27-12A-3. Insurance fraud in the first
2 degree.

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

6 (b) Insurance fraud in the first degree is a Class B
7 felony.

8 Section 27-12A-4. Insurance fraud in the second
9 degree.

10 (a) An act prohibited by Section 27-12A-2, in cases
11 where the loss or potential loss does not exceed one thousand
12 dollars (\$1,000), constitutes insurance fraud in the second
13 degree.

14 (b) Insurance fraud in the second degree is a Class
15 C felony.

16 Section 27-12A-5. Transacting insurance without a
17 license.

18 (a) A person commits the crime of transacting
19 insurance without a license if he or she knowingly transacts
20 the business of insurance in violation of laws requiring a
21 license, certificate of authority, or other legal authority
22 for the transaction of the business of insurance.

23 (b) Transacting insurance without a license is a
24 Class A misdemeanor.

25 Section 27-12A-6. General.

1 (a) No prosecution may be commenced under this
2 article more than ~~six~~ two years after the alleged violation
3 was detected.

4 (b) An individual who has been convicted of
5 insurance fraud in the first degree or insurance fraud in the
6 second degree shall be disqualified from engaging in the
7 business of insurance in this state.

8 (c) A person may not willfully permit another person
9 who has been convicted of insurance fraud in the first degree
10 or insurance fraud in the second degree to transact in the
11 business of insurance in this state.

12 (d) For the purposes of Article 4A of Chapter 18 of
13 Title 15, insurance fraud shall be considered criminal
14 activity.

15 Section 27-12A-7. Enforcement.

16 (a) The enforcement of this chapter shall be vested
17 in the Department of Insurance. It shall be the duty of the
18 department to see that the provisions of this chapter are at
19 all times obeyed and to take such measures and to make such
20 investigations as will prevent or detect the violation of any
21 provision thereof. The department may present to the Attorney
22 General any credible evidence coming to its knowledge of
23 criminality under this chapter. In the event of the neglect or
24 refusal of the Attorney General to institute and prosecute the
25 violation, the department shall be authorized to proceed
26 therein with all the rights, privileges, and powers conferred
27 by law upon the Attorney General including the power to appear

1 before grand juries and to interrogate witnesses before grand
2 juries.

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

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

10 (d) Nothing in this chapter shall be construed as
11 expanding the authority of the Department of Insurance to
12 investigate or audit the records of the sponsor or members of
13 a sponsor group of self-insured employee welfare benefit plans
14 as defined in the Employee Retirement Income Security Act of
15 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
13 disciplinary action including the revocation or suspension of
14 any 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
17 proceeds.

18 Section 27-12A-9.

19 Administrative cease and desist authority.

20 Whenever it appears to the commissioner that any
21 person has engaged in or is about to engage in any act or
22 practice constituting a violation of any provision of this
23 chapter or any rule or order hereunder, the commissioner may,
24 in the commissioner's discretion, do either or both of the
25 following:

26 (1) Issue a cease and desist order, with or without
27 a prior hearing, against the person or persons engaged in the

1 prohibited activities, directing them to cease and desist from
2 engaging in the act or practice.

3 (2) Bring an action in any court of competent juris-
4 diction to enjoin the act or practice and to enforce compli-
5 ance with this chapter or any rule or order issued hereunder.
6 Upon a proper showing, a permanent injunction, temporary re-
7 straining order, or writ of mandamus shall be granted and a
8 receiver or conservator may be appointed for the defendant or
9 the defendant's assets. In addition, upon a proper showing by
10 the commissioner, the court may enter an order of rescission,
11 restitution, or disgorgement directed at any person who has
12 engaged in an act constituting a violation of this chapter or
13 any rule or order adopted or issued pursuant to this chapter.
14 The commissioner shall not be required to post a bond.

15 ARTICLE 2.

16 INSURANCE FRAUD PREVENTION.

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

18 (a) A fraud warning shall be included on at least
19 one of the following: Claim release forms, applications,
20 reinstatements for insurance, participation agreements,
21 declaration pages, and claim documents, regardless of the
22 method or form of transmission and shall contain the following
23 statement or a substantially similar statement:

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

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

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

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

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

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

25 (g) As used in this section, "insurer" refers only
26 to those entities defined in Section 27-12A-1(5) which hold a
27 certificate of authority from the commissioner, and

1 "unauthorized insurers" refers only to those entities
2 operating pursuant to Article 2, beginning with Section
3 27-10-20, of Chapter 10.

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

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

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

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

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

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

10 Section 27-12A-23. Confidentiality.

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

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

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

23 (2) Federal, state, or local law enforcement or
24 regulatory agencies, including, but not limited to, the
25 Attorney General and the Chief Examiner of Public Accounts;
26 the NICB; or the NAIC.

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

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

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

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

21 (f) With the exception of those documents created by
22 or at the request of a company specifically in connection with
23 the investigation of suspected or actual insurance fraud,
24 subsection (a) shall not be construed to prevent the discovery
25 of documents otherwise subject to discovery in a civil matter
26 from the insurer or producer. Copies of all documents,
27 materials, and information furnished to the department by an

1 insurer, producer, or an employee or agent on behalf of an
2 insurer or producer, shall be retained in their ordinary and
3 customary location by the insurer or producer for the period
4 provided by law.

5 Section 27-12A-24. Other law enforcement or
6 regulatory authority.

7 This chapter shall not be construed to do any of the
8 following:

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

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

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

19 (4) Create a private cause of action.

20 ARTICLE 3.

21 INSURANCE FRAUD UNIT.

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

23 (a) There is hereby established within the
24 department the Insurance Fraud Unit. The commissioner shall

1 appoint the necessary full-time supervisory and investigative
2 personnel of the unit who shall be qualified by training and
3 experience to perform the duties of their positions. The
4 commissioner shall furnish offices, equipment, operating
5 expenses, and necessary personnel to maintain and operate the
6 unit.

7 (b) The unit shall perform all of the following
8 duties:

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

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

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

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

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

25 (2) Issue and serve subpoenas.

26 (3) Administer oaths and affirmations.

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

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

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

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

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

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

1 and Training Commission, or other standards as may be provided
2 hereafter by law.

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

6 Section 27-12A-41. Assessments.

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

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

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

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

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

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

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

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

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

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

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

1 Section 4. There is appropriated from the Insurance
2 Fraud Unit Fund established pursuant to this act to the
3 Department of Insurance an amount of three hundred twenty
4 thousand dollars (\$320,000) for the fiscal year ending
5 September 30, 2013.

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

9 Section 6. Sections 10A-20-6.16 and 27-21A-23, Code
10 of Alabama 1975, are amended to read as follows:

11 "§10A-20-6.16.

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

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

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

25 "(3) The corporation shall be subject to the
26 provisions regarding Medicare Supplement Minimum Standards set
27 forth in Article 2 of Chapter 19 of Title 27, and Long-Term

1 Care Insurance Policy Minimum Standards set forth in Article 3
2 of Chapter 19 of Title 27.

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

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

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

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

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

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

25 "(10) The corporation shall be subject to Chapter 59
26 of Title 27 requiring that policies and contracts including

1 coverage for chiropractic be offered, together with
2 identification of associated costs.

3 "(11) The corporation shall be subject to Chapter
4 12A of Title 27.

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

10 "§27-21A-23.

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

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

26 "(c) Any health maintenance organization authorized
27 under this chapter shall not be deemed to be practicing

1 medicine and shall be exempt from the provisions of Section
2 34-24-310, et seq., relating to the practice of medicine.

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

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

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

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

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

22 "(i) Notwithstanding the provisions of subsection
23 (a), a health maintenance organization shall be subject to the
24 provisions of Chapter 57 of this title, requiring coverage to
25 be offered for the payment of colorectal cancer examinations
26 for covered persons who are 50 years of age or older, or for
27 covered persons who are less than 50 years of age and at high

1 risk for colorectal cancer according to current American
2 Cancer Society colorectal cancer screening guidelines.

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

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

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

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

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

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

1
2
3

4
5
6
7
8
9
10
11
12
13
14

15
16
17
18

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Insurance 14-FEB-12

Read for the second time and placed
on the calendar with 1 substitute
and 2 amendments..... 26-APR-12

Read for the third time and passed
as amended..... 02-MAY-12

Yeas 96, Nays 0, Abstains 0

Greg Pappas
Clerk