

1 HB189
2 135931-2
3 By Representative Hill
4 RFD: Insurance
5 First Read: 07-FEB-12

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

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

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

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

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

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

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

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT

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

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

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 "§27-27-26.

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

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

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

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

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

1 "b. A holder or owner of shares of mutual funds,
2 bond funds, or private equity funds registered with the United
3 States Securities and Exchange Commission.

4 "c. A holder or owner of bonds and other evidences
5 of indebtedness of governmental units in the United States or
6 Canada or private business entities domiciled in the United
7 States or Canada.

8 "d. A holder or owner of bonds and other evidences
9 of indebtedness of international development organizations of
10 which the United States is a member.

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

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

17 "(c) This section ~~shall~~ may not prohibit ~~such~~ a
18 director, or officer, or member of a committee or employee
19 from becoming a policyholder of the insurer and enjoying the
20 usual rights so provided for its policyholders, nor shall it
21 prohibit any ~~such~~ officer, director, or member of a committee
22 or employee from participating as beneficiary in any pension
23 trust, deferred compensation plan, profit-sharing plan, or
24 stock option plan authorized by the insurer and to which he or
25 she may be eligible, nor shall it prohibit any director or
26 member of a committee from receiving a reasonable fee for
27 legal services actually rendered to ~~such~~ insurer.

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

12 "§27-27-29.

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

19 "(b) Every domestic insurer shall have, and
20 maintain, its assets in this state, or in a financial
21 institution conducting business in this state except as to:

22 "(1) Real property and personal property appurtenant
23 ~~thereto~~ to the real property lawfully owned by the insurer and
24 located outside this state; ~~and.~~

25 "(2) ~~Such~~ The property of the insurer as may be
26 customary, necessary, and convenient to enable and facilitate

1 the operation of its branch offices and regional home offices
2 located outside this state as referred to in subsection (d).

3 "(3) Having, depositing, or transmitting funds and
4 assets of the insurer in, or to, a jurisdiction outside of
5 this state as required by the law of the jurisdiction or as
6 reasonably required in the course of its business, including
7 the retention of funds, assets, personal property, or
8 securities in a depository outside the State of Alabama for
9 purposes of safekeeping or for the convenient operation of the
10 insurer.

11 "(c) Removal of all, or a material part of, the
12 records or assets of a domestic insurer from this state except
13 pursuant to a plan of merger or consolidation approved by the
14 commissioner under this title, or for such reasonable purposes
15 and periods of time as may be approved by the commissioner in
16 writing in advance of ~~such~~ the removal, or concealment of ~~such~~
17 the records or assets, or material part ~~thereof~~ of the records
18 or assets, from the commissioner is prohibited. Any person who
19 removes, or attempts to remove, such records or assets, or
20 such material part ~~thereof~~ of the records or assets, from the
21 home office or other place of business or of safekeeping of
22 the insurer in this state with the intent to remove the ~~same~~
23 records or assets from this state or who conceals or attempts
24 to conceal the ~~same~~ records or assets from the commissioner,
25 in violation of this section, shall, upon conviction ~~thereof~~,
26 be guilty of a felony, punishable by a fine of not more than
27 ten thousand dollars (\$10,000), or by imprisonment in the

1 penitentiary for not more than five years, or by both ~~such~~ the
2 fine and imprisonment in the discretion of the court. Upon any
3 removal or attempted removal of ~~such~~ the records or assets or
4 upon retention of ~~such~~ the records or assets, or material part
5 thereof, outside this state beyond the period therefor
6 specified in the ~~commissioner's~~ consent of the commissioner
7 under which the records were so removed thereat or upon
8 concealment of, or attempt to conceal, records or assets in
9 violation of this section, the commissioner may institute
10 delinquency proceedings against the insurer pursuant to the
11 provisions of Chapter 32 of this title.

12 "(d) This section ~~shall~~ may not be deemed to
13 prohibit or prevent an insurer from:

14 "(1) Establishing and maintaining branch offices or
15 regional home offices in other states where necessary or
16 convenient for the transaction of its business and keeping
17 therein the detailed records and assets customary and
18 necessary for the servicing of its insurance in force and
19 affairs in the territory served by such an office, as long as
20 such records and assets are made readily available at ~~such~~ the
21 office for examination by the commissioner or at ~~the~~
22 ~~commissioner's~~ his or her request; ~~or.~~

23 "~~(2) Having, depositing, or transmitting funds and~~
24 ~~assets of the insurer in, or to, jurisdictions outside of this~~
25 ~~state required by the law of such jurisdiction or as~~
26 ~~reasonably and customarily required in the regular course of~~
27 ~~its business, including the retention of personal property or~~

1 ~~securities in a depository outside the State of Alabama for~~
2 ~~purposes of safekeeping or for the convenient operation of the~~
3 ~~insurer.~~

4 "(2) Using custodial arrangements for the holding of
5 securities owned by the insurer, either in or outside of this
6 state, and either segregated from or commingled with
7 securities owned by others, if the arrangements conform to
8 rules adopted by the commissioner for safeguarding the assets
9 and facilitating the examination by the commissioner of
10 insurers using the custodial arrangements.

11 "(e) With the written permission of the
12 commissioner, a domestic insurer may maintain its executive
13 offices outside the State of Alabama and keep there complete
14 records of its assets, transactions, and affairs in accordance
15 with the methods and systems as are customary or suitable for
16 the kind or kinds of insurance transacted. All records kept at
17 the executive offices outside Alabama shall be made available
18 to the commissioner of Alabama upon reasonable notice by the
19 commissioner.

20 "(f) This section shall not apply to those actions
21 taken by insurance companies prior to January 1, 1972, but
22 only applies to future actions of domestic insurance
23 companies.

24 "(g) Notwithstanding any other provision of this
25 section, any company may evidence ownership of its assets by
26 use of a clearing corporation or book-entry deposit system.

27 "§27-41-5.

1 "An insurer shall not make any investment or loan
2 exceeding 10 percent of the admitted assets of the insurer,
3 other than loans on policies or annuity contracts, unless ~~the~~
4 ~~same be~~ authorized, approved or ratified by the board of
5 directors of the insurer or by ~~such~~ the committee or person as
6 the board of directors shall expressly authorize. The action
7 of the board of directors, the committee, or other persons so
8 authorized shall be recorded and regular reports thereof shall
9 be submitted to the board of directors. This requisite shall
10 not apply to funeral supplies authorized for mutual aid
11 associations under Section 27-41-38 which are purchased in the
12 regular course of business under the general supervision of
13 the association's board of directors.

14 "§27-41-27.

15 ~~"An insurer authorized to transact insurance in a~~
16 ~~foreign country may make investments, in an aggregate amount~~
17 ~~not exceeding its obligations incurred in such country, in~~
18 ~~securities of or in such country possessing characteristics~~
19 ~~similar to like investments required pursuant to this chapter~~
20 ~~for investments in the United States of America. Canadian~~
21 ~~securities eligible for investment under other provisions of~~
22 ~~this chapter are not subject to this section.~~

23 "(a) An insurer may invest in securities or other
24 investments (1) issued in, (2) located in, (3) denominated in
25 the currency of, (4) whose ultimate payment amounts of
26 principal or interest are subject to fluctuations in the
27 currency of, or (5) whose obligors are domiciled in countries

1 other than the United States or Canada, which are
2 substantially of the same kinds and classes as those
3 authorized for investment under this chapter.

4 "(b) Subject to the limitations in subsection (c) of
5 this section.

6 "(1) An investment of an insurer authorized under
7 subsection (a) of this section in any one foreign jurisdiction
8 whose sovereign debt has a 1 designation from the Securities
9 Valuation Office shall not exceed 10 percent of the admitted
10 assets of the insurer.

11 "(2) An investment of an insurer authorized under
12 subsection (a) of this section in any one foreign jurisdiction
13 whose sovereign debt has a 2 or 3 designation from the
14 Securities Valuation Office may not exceed five percent of the
15 admitted assets of the insurer.

16 "(3) An investment of an insurer authorized under
17 subsection (a) of this section in any one foreign jurisdiction
18 whose sovereign debt has a 4, 5, or 6 designation from the
19 Securities Valuation Office may not exceed three percent of
20 the admitted assets of the insurer.

21 "(4) An investment of an insurer authorized under
22 subsection (a) of this section denominated in any one foreign
23 currency may not exceed two percent of the admitted assets of
24 the insurer.

25 "(5) An investment of an insurer authorized under
26 subsection (a) of this section denominated in foreign

1 currencies may not exceed, in the aggregate, five percent of
2 the admitted assets of the insurer.

3 "(6) An investment of an insurer authorized under
4 subsection (a) of this section may not be considered
5 denominated in a foreign currency if the acquiring insurer
6 enters into one or more contracts in permitted transactions to
7 exchange all payments made on the foreign currency denominated
8 investment for United States currency at a rate which
9 effectively insulates the investment cash flow against future
10 changes in currency exchange rates during the period the
11 contract or contracts are in effect.

12 "(c) An investment of an insurer authorized under
13 subsection (a) of this section may not exceed, in the
14 aggregate, 20 percent of its admitted assets.

15 "(7) The Securities Valuation Office (SVO) or its
16 successor or interest means the National Association of
17 Insurance Commissioners office that is responsible for the
18 day-to-day credit quality assessment and valuation of
19 securities owned by state regulated insurance companies.

20 "(d) An insurer which is authorized to do business
21 in a foreign country or which has outstanding insurance,
22 annuity, or reinsurance contracts on lives or risks resident
23 in or located in a foreign country may, in addition to the
24 investments authorized by subsection (a) of this section,
25 invest securities and investments (1) issued in, (2) located
26 in, (3) denominated in the currency of, (4) whose ultimate
27 payment amounts of principal and interest are subject to

1 fluctuations in the currency of, or (5) whose obligors are
2 domiciled in the foreign countries which are substantially of
3 the same kinds and classes as those authorized for investment
4 under this chapter.

5 "(e) An investment of an insurer authorized under
6 subsection (d) of this section and cash in the currency of the
7 country which is at any time held by the insurer, may not
8 exceed, in the aggregate, the greater of (1) one and one-half
9 times the amount of its reserves and other obligations under
10 the contracts or (2) the amount which the insurer is required
11 by law to invest in the country."

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