

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

1  
2 ENROLLED, An Act,

3           Relating to the Department of Insurance; to define  
4 insurance fraud; to authorize the department to oversee and  
5 investigate suspected insurance fraud; to provide for  
6 confidentiality of information and files; to create the  
7 Insurance Fraud Unit within the department; to provide for  
8 assessments on insurer, to establish the Insurance Fraud Unit  
9 Fund, and to make appropriations from the fund for the fiscal  
10 years ending September 30, 2012, and September 30, 2013, for  
11 the operation of the Insurance Fraud Unit; to provide certain  
12 immunity from civil liability for certain persons reporting  
13 and investigating suspected insurance fraud; to provide civil  
14 and criminal penalties; to authorize the Commissioner of  
15 Insurance to promulgate rules necessary to implement and  
16 administer this act; for this purpose to amend Section  
17 10A-20-6.16, Code of Alabama 1975, relating to health care  
18 service plans, and Section 27-21A-23, Code of Alabama 1975,  
19 relating to health maintenance organizations; and in  
20 connection therewith would have as its purpose or effect the  
21 requirement of a new or increased expenditure of local funds  
22 within the meaning of Amendment 621 of the Constitution of  
23 Alabama of 1901, now appearing as Section 111.05 of the  
24 Official Recompilation of the Constitution of Alabama of 1901,  
25 as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

12 CHAPTER 12A.

13 INSURANCE FRAUD INVESTIGATION UNIT AND CRIME PREVENTION ACT.

14 ARTICLE 1.

15 DEFINITIONS AND CRIME OF INSURANCE FRAUD.

16 Section 27-12A-1. Definitions.

17 As used in this chapter, the following terms shall  
18 have the following meanings:

19 (1) COMMISSIONER. The Alabama Commissioner of  
20 Insurance or his or her designee.

21 (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

1 whether the person is acting in violation of laws requiring a  
2 certificate of authority or regardless of whether the person  
3 denies being an insurer.

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

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

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

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

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

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

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

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

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

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

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

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

1 standards set forth in state or federal law or the record  
2 retention policy of the insurer, reinsurer, or other person.

3 (3) The embezzlement, abstraction, theft, or  
4 conversion of monies, funds, premiums, credits, or other  
5 property relating to the transaction of the business of  
6 insurance of an insurer, reinsurer, or other person engaged in  
7 the transaction of the business of insurance.

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

14 a. An application for the issuance or renewal of an  
15 insurance policy or reinsurance agreement.

16 b. The rating of an insurance policy or reinsurance  
17 agreement.

18 c. A claim for payment or benefit pursuant to an  
19 insurance policy or reinsurance agreement.

20 d. A claim for payment or benefit based on an  
21 advertisement or promises to provide a good or service under  
22 an insurance policy.

23 1. To pay or fail to collect all or part of any  
24 applicable insurance deductible or a rebate in an amount equal  
25 to all or part of any applicable insurance deductible; and

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

3           3. The person knowingly charges an amount for the  
4 good or service that exceeds the usual and customary charge by  
5 the person for the good or service by an amount equal to or  
6 greater than all or part of the applicable insurance  
7 deductible paid by the person to an insurer on behalf of an  
8 insured or remitted to an insured by the person as a rebate.

9           e. Premiums paid on an insurance policy or  
10 reinsurance agreement.

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

13           g. A document filed with the commissioner.

14           i. Audit information submitted to the commissioner  
15 or an insurer.

16           j. The formation, acquisition, merger,  
17 reconsolidation, or dissolution of one or more insurance  
18 entities, or the withdrawal from one or more lines of  
19 insurance in all or part of this state by an insurer or  
20 reinsurer.

21           k. The issuance of written evidence of insurance.

22           l. The reinstatement of an insurance policy.

23           m. Issuance, acceptance, change, endorsement, or  
24 continuance of an insurance policy or reinsurance agreement.



1           n. A construction or structure mitigation inspection  
2 report provided for the issuance or renewal of an insurance  
3 policy or discounts or credits related to an insurance policy.

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

9           Section 27-12A-3. Insurance fraud in the first  
10 degree.

11           (a) An act prohibited by Section 27-12A-2, in cases  
12 where the loss or potential loss exceeds one thousand dollars  
13 (\$1,000), constitutes insurance fraud in the first degree.

14           (b) Insurance fraud in the first degree is a Class B  
15 felony.

16           Section 27-12A-4. Insurance fraud in the second  
17 degree.

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

22           (b) Insurance fraud in the second degree is a Class  
23 C felony.

24           Section 27-12A-5. Transacting insurance without a  
25 license.

1 (a) A person commits the crime of transacting  
2 insurance without a license if he or she knowingly transacts  
3 the business of insurance in violation of laws requiring a  
4 license, certificate of authority, or other legal authority  
5 for the transaction of the business of insurance.

6 (b) Transacting insurance without a license is a  
7 Class A misdemeanor.

8 Section 27-12A-6. General.

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

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

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

20 (d) For the purposes of Article 4A of Chapter 18 of  
21 Title 15, insurance fraud shall be considered criminal  
22 activity.

23 Section 27-12A-7. Enforcement.

24 (a) The enforcement of this chapter shall be vested  
25 in the Department of Insurance. It shall be the duty of the

1 department to see that the provisions of this chapter are at  
2 all times obeyed and to take such measures and to make such  
3 investigations as will prevent or detect the violation of any  
4 provision thereof. The department may present to the Attorney  
5 General any credible evidence coming to its knowledge of  
6 criminality under this chapter. In the event of the neglect or  
7 refusal of the Attorney General to institute and prosecute the  
8 violation, the department shall be authorized to proceed  
9 therein with all the rights, privileges, and powers conferred  
10 by law upon the Attorney General including the power to appear  
11 before grand juries and to interrogate witnesses before grand  
12 juries.

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

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

20 (d) Nothing in this chapter shall be construed as  
21 expanding the authority of the Department of Insurance to  
22 investigate or audit the records of the sponsor or members of  
23 a sponsor group of self-insured employee welfare benefit plans  
24 as defined in the Employee Retirement Income Security Act of  
25 1974, 29 U.S.C § 1001 et seq.

1           Section 27-12A-8. Licensing penalties for insurance  
2 fraud.

3           (a) A producer who violates this chapter may be  
4 subject to the suspension or revocation of any insurance  
5 license held by the producer or civil penalties of up to five  
6 thousand dollars (\$5,000) per violation, or both. Suspension  
7 or revocation of an insurance license or certificate of  
8 authority and the imposition of civil penalties shall be  
9 pursuant to action brought before the commissioner. Suspension  
10 or revocation of any insurance licenses and the imposition of  
11 civil penalties shall be pursuant to action brought before the  
12 commissioner in accordance with this title.

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

23           (c) The commissioner shall also notify the proper  
24 licensing authority of a practitioner for the appropriate  
25 disciplinary action including the revocation or suspension of

1 any professional license when a practitioner is convicted of a  
2 violation of this chapter and whose services are compensated  
3 in whole or in part, directly or indirectly, by insurance  
4 proceeds.

5 Section 27-12A-9.

6 Administrative cease and desist authority.

7 Whenever it appears to the commissioner that any  
8 person has engaged in or is about to engage in any act or  
9 practice constituting a violation of any provision of this  
10 chapter or any rule or order hereunder, the commissioner may,  
11 in the commissioner's discretion, do either or both of the  
12 following:

13 (1) Issue a cease and desist order, with or without  
14 a prior hearing, against the person or persons engaged in the  
15 prohibited activities, directing them to cease and desist from  
16 engaging in the act or practice.

17 (2) Bring an action in any court of competent juris-  
18 diction to enjoin the act or practice and to enforce compli-  
19 ance with this chapter or any rule or order issued hereunder.  
20 Upon a proper showing, a permanent injunction, temporary re-  
21 straining order, or writ of mandamus shall be granted and a  
22 receiver or conservator may be appointed for the defendant or  
23 the defendant's assets. In addition, upon a proper showing by  
24 the commissioner, the court may enter an order of rescission,  
25 restitution, or disgorgement directed at any person who has

1 engaged in an act constituting a violation of this chapter or  
2 any rule or order adopted or issued pursuant to this chapter.  
3 The commissioner shall not be required to post a bond.

4 ARTICLE 2.

5 INSURANCE FRAUD PREVENTION.

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

7 (a) A fraud warning shall be included on at least  
8 one of the following: Claim release forms, applications,  
9 reinstatements for insurance, participation agreements,  
10 declaration pages, and claim documents, regardless of the  
11 method or form of transmission and shall contain the following  
12 statement or a substantially similar statement:

13 "Any person who knowingly presents a false or  
14 fraudulent claim for payment of a loss or benefit or who  
15 knowingly presents false information in an application for  
16 insurance is guilty of a crime and may be subject to  
17 restitution fines or confinement in prison, or any combination  
18 thereof."

19 (b) The lack of a statement required by subsection  
20 (a) shall not constitute a defense in any prosecution for  
21 insurance fraud.

22 (c) Policies issued by unauthorized insurers shall  
23 contain a statement disclosing the status of the insurer to do

1 business in the state where the policy is delivered or issued  
 2 for delivery or the state where coverage is in force.

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

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

11 (f) None of the requirements of this section shall  
 12 be deemed to apply to reinsurers, reinsurance contracts,  
 13 reinsurance agreements, or reinsurance claims transacted.

14 (g) As used in this section, "insurer" refers only  
 15 to those entities defined in Section 27-12A-1(5) which hold a  
 16 certificate of authority from the commissioner, and  
 17 "unauthorized insurers" refers only to those entities  
 18 operating pursuant to Article 2, beginning with Section  
 19 27-10-20, of Chapter 10.

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

21 (a) Persons engaged in the business of insurance,  
 22 having knowledge or a reasonable belief that insurance fraud  
 23 is being, will be, or has been committed, shall provide to the  
 24 department such information that is required by, and in a  
 25 manner prescribed by, the department. As used in this section,

1 "persons engaged in the business of insurance" refers only to  
2 those entities defined in Section 27-12A-1(5) which hold a  
3 certificate of authority from the commissioner.

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

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

9 (a) Except as otherwise provided in subsection (b),  
10 there shall be no civil liability imposed on and no cause of  
11 action shall arise against a person for furnishing or  
12 receiving information concerning suspected, anticipated, or  
13 completed insurance fraud. This shall not abrogate or modify  
14 common law or statutory privileges or immunities enjoyed by a  
15 person, and the limit on civil liability applies only to the  
16 act of reporting and does not limit civil liability against a  
17 person for committing fraud or other tortuous conduct.

18 (b) Subsection (a) shall not apply to false  
19 statements made with actual malice by a person furnishing or  
20 receiving information concerning suspected, anticipated, or  
21 completed insurance fraud. In any action brought against a  
22 person for filing a report or furnishing other information  
23 concerning insurance fraud, the party bringing the action  
24 shall plead specifically any allegations that subsection (a)



1 shall not apply because the person filing the report or  
2 furnishing the information did so with actual malice.

3 Section 27-12A-23. Confidentiality.

4 (a) Documents and evidence provided pursuant to  
5 Section 27-12A-21 or obtained by the department in an  
6 investigation of suspected or actual insurance fraud shall be  
7 privileged and confidential, shall not be a public record, and  
8 shall not be subject to discovery or subpoena in a civil or  
9 criminal action.

10 (b) Notwithstanding subsection (a), the department  
11 may release documents and evidence obtained by the unit in an  
12 investigation of suspected or actual insurance fraud pursuant  
13 to any of the following:

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

16 (2) Federal, state, or local law enforcement or  
17 regulatory agencies, including, but not limited to, the  
18 Attorney General and the Chief Examiner of Public Accounts;  
19 the NICB; or the NAIC.

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

23 (c) Release of documents and evidence under  
24 subsection (b) shall not abrogate or modify the privilege  
25 granted in subsection (a).

1           (d) The confidentiality of records imposed by this  
2 section shall not extend to any documents or evidence  
3 submitted as part of an investigative report that are public  
4 documents. A document that is a public record pursuant to any  
5 other statute shall not be affected by this section.

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

15           (f) With the exception of those documents created by  
16 or at the request of a company specifically in connection with  
17 the investigation of suspected or actual insurance fraud,  
18 subsection (a) shall not be construed to prevent the discovery  
19 of documents otherwise subject to discovery in a civil matter  
20 from the insurer or producer. Copies of all documents,  
21 materials, and information furnished to the department by an  
22 insurer, producer, or an employee or agent on behalf of an  
23 insurer or producer, shall be retained in their ordinary and  
24 customary location by the insurer or producer for the period  
25 provided by law.

1                   Section 27-12A-24. Other law enforcement or  
2 regulatory authority.

3                   This chapter shall not be construed to do any of the  
4 following:

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

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

11                   (3) Limit the powers granted by law to the Attorney  
12 General, the commissioner, the department, or the unit to  
13 investigate and examine possible violations of law and to take  
14 appropriate action against wrongdoers.

15                   (4) Create a private cause of action.

16                   ARTICLE 3.

17                   INSURANCE FRAUD UNIT.

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

19                   (a) There is hereby established within the  
20 department the Insurance Fraud Unit. The commissioner shall  
21 appoint the necessary full-time supervisory and investigative  
22 personnel of the unit who shall be qualified by training and  
23 experience to perform the duties of their positions. The

1 commissioner shall furnish offices, equipment, operating  
2 expenses, and necessary personnel to maintain and operate the  
3 unit.

4 (b) The unit shall perform all of the following  
5 duties:

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

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

16 (3) Conduct independent examinations of alleged  
17 insurance fraud and undertake independent studies to determine  
18 the extent of insurance fraud.

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

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

22 (2) Issue and serve subpoenas.

23 (3) Administer oaths and affirmations.

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

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

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

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

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

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

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

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

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

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

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

1           Section 3. 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, 2012.

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

11           Section 5. The Commissioner of Insurance may adopt  
12 reasonable rules for the implementation and administration of  
13 this act.

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

16           "§10A-20-6.16.

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

23           "(1) The corporation shall be subject to the  
24 provisions regarding annual premium tax to be paid by insurers  
25 on insurance premiums.



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

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

10           "(4) The corporation shall be subject to Section  
11 27-1-17, requiring insurers and health plans to pay health  
12 care providers in a timely manner.

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

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

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

21           "(8) The corporation shall be subject to the  
22 provisions of Chapter 57 of Title 27, requiring coverage to be  
23 offered for the payment of colorectal cancer examinations for  
24 covered persons who are 50 years of age or older, or for  
25 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 "(9) The corporation shall be subject to Chapter 58  
4 of Title 27, requiring that policies and contracts including  
5 coverage for prostate cancer early detection be offered,  
6 together with identification of associated costs.

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

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

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

18 "§27-21A-23.

19 "(a) Except as otherwise provided in this chapter,  
20 provisions of the insurance law and provisions of health care  
21 service plan laws shall not be applicable to any health  
22 maintenance organization granted a certificate of authority  
23 under this chapter. This provision shall not apply to an  
24 insurer or health care service plan licensed and regulated  
25 pursuant to the insurance law or the health care service plan

1 laws of this state except with respect to its health  
2 maintenance organization activities authorized and regulated  
3 pursuant to this chapter.

4 "(b) Solicitation of enrollees by a health  
5 maintenance organization granted a certificate of authority  
6 shall not be construed to violate any provision of law  
7 relating to solicitation or advertising by health  
8 professionals.

9 "(c) Any health maintenance organization authorized  
10 under this chapter shall not be deemed to be practicing  
11 medicine and shall be exempt from the provisions of Section  
12 34-24-310, et seq., relating to the practice of medicine.

13 "(d) No person participating in the arrangements of  
14 a health maintenance organization other than the actual  
15 provider of health care services or supplies directly to  
16 enrollees and their families shall be liable for negligence,  
17 misfeasance, nonfeasance, or malpractice in connection with  
18 the furnishing of such services and supplies.

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

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

1           "(g) Notwithstanding the provisions of subsection  
2           (a), a health maintenance organization shall be subject to the  
3           provisions of Chapter 56 of this title, regarding the Access  
4           to Eye Care Act.

5           "(h) Notwithstanding the provisions of subsection  
6           (a), a health maintenance organization shall be subject to the  
7           provisions of Chapter 54 of this title.

8           "(i) Notwithstanding the provisions of subsection  
9           (a), a health maintenance organization shall be subject to the  
10          provisions of Chapter 57 of this title, requiring coverage to  
11          be offered for the payment of colorectal cancer examinations  
12          for covered persons who are 50 years of age or older, or for  
13          covered persons who are less than 50 years of age and at high  
14          risk for colorectal cancer according to current American  
15          Cancer Society colorectal cancer screening guidelines.

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

21          "(k) Notwithstanding the provisions of subsection  
22          (a), a health maintenance organization shall be subject to  
23          Chapter 59 of this title, requiring that policies and  
24          contracts including coverage for chiropractic be offered,  
25          together with identification of associated costs.

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

5           "(m) Notwithstanding the provisions of subsection  
6           (a), a health maintenance organization shall be subject to  
7           Chapter 12A."

8           Section 7. Although this bill would have as its  
9           purpose or effect the requirement of a new or increased  
10          expenditure of local funds, the bill is excluded from further  
11          requirements and application under Amendment 621, now  
12          appearing as Section 111.05 of the Official Recompilation of  
13          the Constitution of Alabama of 1901, as amended, because the  
14          bill defines a new crime or amends the definition of an  
15          existing crime.

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

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 02-MAY-12, as amended.

Greg Pappas  
Clerk

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Senate

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10-MAY-12

Passed