

1 SB3  
2 113068-1  
3 By Senators Brooks and Pittman  
4 RFD: Judiciary  
5 First Read: 12-JAN-10  
6 PFD: 05/16/2009

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

14 This bill would specifically define  
15 insurance fraud by a person, an insurer, a  
16 reinsurer, a broker, or their respective agents.  
17 This bill would authorize the Department of  
18 Insurance to investigate suspected insurance fraud  
19 and would also require the reporting to certain  
20 public officers of suspected insurance fraud.

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

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

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

3 The bill would provide for assessments on  
4 insurers to fund the unit, for the establishment of  
5 the Insurance Fraud Unit Fund, and would make  
6 appropriations from the fund for the fiscal years  
7 ending September 30, 2010, and September 30, 2011.

8 This bill would provide civil penalties up  
9 to \$1,000 per violation or suspension of license or  
10 certificate of authority. This bill would also  
11 provide for civil and criminal penalties in  
12 addition to restitution to the aggrieved party and  
13 would limit the filing of a cause of action to six  
14 years.

15 The bill would also authorize the  
16 Commissioner of Insurance to promulgate rules to  
17 administer this act and to require licensees of the  
18 department to include three hours of continuing  
19 education on insurance producer ethics or business  
20 practices.

21 The bill would also specify that health  
22 maintenance organizations would be subject to rules  
23 of the commissioner adopted pursuant to Sections  
24 27-7-43 and 27-7-44, Code of Alabama 1975, relating  
25 to licensing and privacy.

26 Amendment 621 of the Constitution of Alabama  
27 of 1901, now appearing as Section 111.05 of the

1 Official ReCompilation of the Constitution of  
2 Alabama of 1901, as amended, prohibits a general  
3 law whose purpose or effect would be to require a  
4 new or increased expenditure of local funds from  
5 becoming effective with regard to a local  
6 governmental entity without enactment by a 2/3 vote  
7 unless: it comes within one of a number of  
8 specified exceptions; it is approved by the  
9 affected entity; or the Legislature appropriates  
10 funds, or provides a local source of revenue, to  
11 the entity for the purpose.

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

19  
20 A BILL

21 TO BE ENTITLED

22 AN ACT

23  
24 Relating to the Department of Insurance; to define  
25 insurance fraud; to authorize the department to oversee and  
26 investigate suspected insurance fraud; to provide for  
27 confidentiality of information and files; to create the

1 Insurance Fraud Unit within the department; to provide for  
2 assessments on insurer, to establish the Insurance Fraud Unit  
3 Fund, and to make appropriations from the fund for the fiscal  
4 years ending September 30, 2010, and September 30, 2011, for  
5 the operation of the Insurance Fraud Unit; to provide certain  
6 immunity from civil liability for certain persons reporting  
7 and investigating suspected insurance fraud; to provide civil  
8 and criminal penalties; to authorize the Commissioner of  
9 Insurance to promulgate rules necessary to implement and  
10 administer this act and requiring licensees subject to  
11 continuing education requirements to include courses on ethics  
12 or business practices; for this purpose to amend Section  
13 10-4-115, Code of Alabama 1975, as last amended by Act No.  
14 2008-502, 2008 Regular Session, relating to health care  
15 service plans, and Section 27-21A-23, Code of Alabama 1975, as  
16 last amended by Act No. 2008-502, 2008 Regular Session,  
17 relating to health maintenance organizations; and in  
18 connection therewith would have as its purpose or effect the  
19 requirement of a new or increased expenditure of local funds  
20 within the meaning of Amendment 621 of the Constitution of  
21 Alabama of 1901, now appearing as Section 111.05 of the  
22 Official Recompilation of the Constitution of Alabama of 1901,  
23 as amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. The Legislature finds that the business  
26 of insurance involves many transactions that have potential  
27 for fraud, abuse, and other illegal activities. This act is

1 intended to permit full utilization of the expertise of the  
2 Department of Insurance to investigate, discover, and  
3 prosecute insurance fraud and assist and receive assistance  
4 from state, local, and federal law enforcement and regulatory  
5 agencies in enforcing laws prohibiting insurance fraud.

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

8 CHAPTER 12A.

9 INSURANCE FRAUD INVESTIGATION UNIT AND CRIME PREVENTION ACT.

10 ARTICLE 1.

11 DEFINITIONS AND CRIME OF INSURANCE FRAUD.

12 Section 27-12A-1. Definitions.

13 As used in this chapter, the following terms shall  
14 have the following meanings:

15 (1) BUSINESS OF INSURANCE. The writing of insurance,  
16 including annuities or the reinsurance of risks, by an  
17 insurer, including acts necessary or incidental to writing  
18 insurance or reinsuring risks and the activities of persons  
19 who act as or are officers, directors, insurance producers or  
20 their employees, or managing general agents, adjusters, third  
21 party administrators, or other persons authorized to act in  
22 their behalf.

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

3 (3) DEPARTMENT. The Alabama Department of Insurance.

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

8 a. Pay or indemnify another as to loss from certain  
9 contingencies called risks.

10 b. Pay or grant a specified amount or determinable  
11 benefit to another in connection with ascertainable risk  
12 contingencies.

13 c. Pay an annuity to another.

14 d. Act as surety.

15 For the purposes of this chapter "insurance" also  
16 includes any health benefit plan as defined in Section  
17 27-53-1, Code of Alabama 1975.

18 (5) INSURER. A person entering into agreements,  
19 contracts of insurance, arrangements, or reinsurance, or a  
20 health benefit plan, or a group health plan as defined in  
21 Section 607(1) of the Employee Retirement Income Security Act  
22 of 1974, or any entity offering a service benefit plan, and  
23 who agrees to perform any of the acts set forth in subdivision  
24 (4), including but not limited to, fraternal benefit  
25 societies, mutual aid associations, health maintenance  
26 organizations, and health care service plans, regardless of  
27 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.

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

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

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

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

23 (11) UNIT. The Insurance Fraud Unit of the Alabama  
24 Department of Insurance.

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

26 A person commits the crime of insurance fraud if,  
27 knowingly and with intent to defraud, he or she commits, or

1 conceals any material information concerning, one or more of  
2 the following acts:

3 (1) The solicitation or acceptance of new or renewal  
4 insurance risks on behalf of an insurer, reinsurer, or other  
5 person engaged in the business of insurance, by a person who  
6 knows or should know that the insurer, reinsurer, or other  
7 person responsible for the risk is financially unable to pay  
8 its claims at the time of the transaction.

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

19 (3) The embezzlement, abstraction, purloinment, or  
20 conversion of monies, funds, premiums, credits, or other  
21 property relating to the business of insurance of an insurer,  
22 reinsurer, or other person engaged in the business of  
23 insurance.

24 (4) The transaction of the business of insurance in  
25 violation of laws requiring a license, certificate of  
26 authority, or other legal authority for the transaction of the  
27 business of insurance.

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

7                   a. An application for the issuance or renewal of an  
8 insurance policy or reinsurance agreement.

9                   b. The rating of an insurance policy or reinsurance  
10 agreement.

11                  c. A claim for payment or benefit pursuant to an  
12 insurance policy or reinsurance agreement.

13                  d. Premiums paid on an insurance policy or  
14 reinsurance agreement.

15                  e. Payments made in accordance with the terms of an  
16 insurance policy or reinsurance agreement.

17                  f. A document filed with the commissioner or the  
18 chief insurance regulatory official of another jurisdiction.

19                  g. The financial condition of an insurer or  
20 reinsurer.

21                  h. Audit information submitted to the commissioner  
22 or an insurer.

23                  i. The formation, acquisition, merger,  
24 reconsolidation, or dissolution of one or more insurance  
25 entities, or the withdrawal from one or more lines of  
26 insurance in all or part of this state by an insurer or  
27 reinsurer.

1           j. The issuance of written evidence of insurance.

2           k. The reinstatement of an insurance policy.

3           l. Issuance, acceptance, change, endorsement, or  
4           continuance of an insurance policy or reinsurance agreement.

5           Section 27-12A-3. Insurance fraud in the first  
6           degree.

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

11          (b) Insurance fraud in the first degree is a Class B  
12          felony.

13          Section 27-12A-4. Insurance fraud in the second  
14          degree.

15          (a) An act prohibited by subdivisions (1), (2), (3),  
16          or (5) of Section 27-12A-2, in cases where the loss or  
17          potential loss does not exceed one thousand dollars (\$1,000),  
18          constitutes insurance fraud in the second degree.

19          (b) Insurance fraud in the second degree is a Class  
20          C felony.

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

23          (a) An act prohibited by subdivision (4) of Section  
24          27-12A-2, constitutes insurance fraud in the third degree.

25          (b) Insurance fraud in the third degree is a Class A  
26          misdemeanor.

27          Section 27-12A-6. General.

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

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

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

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

14 Section 27-12A-7. Enforcement.

15 (a) The enforcement of this chapter shall be vested  
16 in the Department of Insurance. It shall be the duty of the  
17 department to see that the provisions of this chapter are at  
18 all times obeyed and to take such measures and to make such  
19 investigations as will prevent or detect the violation of any  
20 provision thereof. The department shall present to the  
21 Attorney General any evidence of criminality coming to its  
22 knowledge.

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

26 (c) Nothing in this chapter shall be construed as  
27 state regulation of self-insured employee welfare benefit

1 plans as defined in the Employee Retirement Income Security  
2 Act of 1974, 29 U.S.C. § 1001 et seq.

3 Section 27-12A-8. Licensing penalties for insurance  
4 fraud.

5 (a) A person who violates this chapter shall be  
6 subject to the suspension or revocation of any insurance  
7 license or certificate of authority held by the person or  
8 civil penalties of up to fifteen thousand dollars (\$15,000)  
9 per violation, or both. Suspension or revocation of an  
10 insurance license or certificate of authority and the  
11 imposition of civil penalties shall be pursuant to action  
12 brought before the commissioner. The order of the commissioner  
13 may also require a person found in violation of this chapter  
14 to make restitution to persons aggrieved by the violations.

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

22 ARTICLE 2.

23 INSURANCE FRAUD PREVENTION.

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

1           (a) A fraud warning shall be included on one or more  
2 of the following: Claim forms, applications, reinstatements  
3 for insurance, participation agreements, declaration pages,  
4 claim payments, and similar documents, regardless of the  
5 method or form of transmission and shall contain the following  
6 statement or a substantially similar statement:

7           "Any person who knowingly presents a false or  
8 fraudulent claim for payment of a loss or benefit or who  
9 knowingly presents false information in an application for  
10 insurance is guilty of a crime and may be subject to fines or  
11 confinement in prison, or both."

12           (b) The lack of a statement required by subsection  
13 (a) shall not constitute a defense in any prosecution for  
14 insurance fraud.

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

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

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

1 (f) None of the requirements of this section shall  
2 be deemed to apply to reinsurers, reinsurance contracts,  
3 reinsurance agreements, or reinsurance claims transacted.

4 (g) As used in this section, "insurer" refers only  
5 to those entities defined in Section 27-12A-1(5) which hold a  
6 certificate of authority from the commissioner, and  
7 "unauthorized insurers" refers only to those entities  
8 operating pursuant to Article 2, beginning with Section  
9 27-10-20, of Chapter 10.

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

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

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

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

24 (a) Except as otherwise provided in subsection (c),  
25 there shall be no civil liability imposed on and no cause of  
26 action shall arise against a person for furnishing or  
27 receiving information concerning suspected, anticipated, or

1 completed insurance fraud, if the information is provided to  
2 or received from any one of the following persons:

3 (1) The commissioner or the employees, agents, or  
4 representatives of the commissioner.

5 (2) Federal, state, or local law enforcement or  
6 regulatory officials, or their employees, agents, or  
7 representatives.

8 (3) A person involved in the prevention and  
9 detection of insurance fraud or the agents, employees, or  
10 representatives of the person.

11 (4) NAIC or its employees, agents, or  
12 representatives.

13 (5) The Attorney General, or the employees, agents,  
14 or representatives of the Attorney General.

15 (b) The department, commissioner, Attorney General,  
16 and all governmental employees (federal, state, county, or  
17 municipal), consultants, and investigators engaged by or on  
18 behalf of the State of Alabama for the purpose of implementing  
19 or performing the duties, obligations, and responsibilities  
20 under this chapter, shall be immune from civil liability  
21 against the claims of any person for any claims of any nature  
22 whatsoever arising out of or related to their action under  
23 this chapter, except that the immunity provided for in this  
24 subsection shall not apply when the conduct of the actor is  
25 willful, malicious, fraudulent, or done in bad faith or beyond  
26 the authority of the actor.

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

9           (d) This section shall not abrogate or modify common  
10 law or statutory privileges or immunities enjoyed by a person  
11 described in subsection (a) or (b).

12           (e) The limit on civil liability in subsection (a)  
13 applies only to the act of reporting and does not limit civil  
14 liability against a person for committing fraud or other  
15 tortious conduct.

16           Section 27-12A-23. Confidentiality.

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

23           (b) Notwithstanding subsection (a), the department  
24 may release documents and evidence obtained by the unit in an  
25 investigation of suspected or actual insurance fraud pursuant  
26 to any of the following:

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

3           (2) Federal, state, or local law enforcement or  
4 regulatory agencies, including, but not limited to, the  
5 Attorney General and the Chief Examiner of Public Accounts;  
6 organizations established for the purpose of detecting and  
7 preventing insurance fraud; or the NAIC.

8           (3) At the discretion of the commissioner, a person  
9 in the business of insurance that is aggrieved by the  
10 insurance fraud.

11           (c) Release of documents and evidence under  
12 subsection (b) shall not abrogate or modify the privilege  
13 granted in subsection (a).

14           (d) The confidentiality of records imposed by this  
15 section shall not extend to any documents or evidence  
16 submitted as part of an investigative report that are public  
17 documents. A document that is a public record pursuant to any  
18 other statute shall not be affected by this section.

19           (e) Employees, directors, agents, servants,  
20 consultants, private attorneys, investigators, staff  
21 attorneys, and others engaged by or on behalf of the State of  
22 Alabama for the purpose of implementing or performing the  
23 duties, obligations, and responsibilities under this chapter,  
24 shall not be subject to subpoena in civil actions by any court  
25 in this state to testify concerning any matter of which they  
26 have knowledge that arises out of or is related to a pending

1 or continuing insurance fraud investigation being conducted by  
2 the unit.

3 (f) With the exception of those documents created by  
4 or at the request of a company specifically in connection with  
5 the investigation of suspected or actual insurance fraud,  
6 subsection (a) shall not be construed to prevent the discovery  
7 of documents otherwise subject to discovery in a civil matter  
8 from the insurer or producer. Copies of all documents,  
9 materials, and information furnished to the department by an  
10 insurer, producer, or an employee or agent on behalf of an  
11 insurer or producer, shall be retained in their ordinary and  
12 customary location by the insurer or producer for the period  
13 provided by law.

14 Section 27-12A-24. Other law enforcement or  
15 regulatory authority.

16 This chapter shall not be construed to do any of the  
17 following:

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

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

24 (3) Limit the powers granted by law to the Attorney  
25 General, the commissioner, the department, or the unit to  
26 investigate and examine possible violations of law and to take  
27 appropriate action against wrongdoers.

1 (4) Create a private cause of action.

2 ARTICLE 3.

3 INSURANCE FRAUD UNIT.

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

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

13 (b) The unit shall perform all of the following  
14 duties:

15 (1) Initiate independent inquiries and conduct  
16 independent investigations when the unit has cause to believe  
17 that any insurance fraud may be, is being, or has been,  
18 committed.

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

1           (3) Conduct independent examinations of alleged  
2 insurance fraud and undertake independent studies to determine  
3 the extent of insurance fraud.

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

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

7           (2) Issue and serve subpoenas.

8           (3) Administer oaths and affirmations.

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

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

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

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

17           (8) Conduct investigations outside of this state. If  
18 the information the unit seeks to obtain is located outside of  
19 this state, the person from whom the information is sought may  
20 make the information available to the unit to examine at the  
21 place where the information is located. The unit may designate  
22 representatives, including officials of the state in which the  
23 matter is located, to inspect the information on behalf of the  
24 unit, and the unit may respond to similar requests from  
25 officials of other states.

26           (d) Investigators of the unit shall have all the  
27 powers vested in law enforcement officers of the State of

1 Alabama, including, but not limited to, the powers of arrest  
2 and the power to serve process, but only as necessary to  
3 enforce this chapter, and shall perform the duties,  
4 responsibilities, and functions as may be required for the  
5 unit to carry out its duties and responsibilities pursuant to  
6 this chapter. No person shall serve as investigator of the  
7 unit who has not met the minimum standards established for law  
8 enforcement officers by the Alabama Peace Officers' Standards  
9 and Training Commission, or other standards as may be provided  
10 hereafter by law.

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

14 Section 27-12A-41. Assessments.

15 (a) The commissioner shall assess each insurer  
16 authorized to write insurance in the State of Alabama two  
17 hundred dollars (\$200) per year in order to fund the  
18 operations of the unit.

19 (b) Assessments shall be due not less than 30 days  
20 after prior written notice to the insurer and shall accrue  
21 interest at six percent per annum on and after the due date.  
22 Failure to remit payment of an assessment shall warrant the  
23 suspension or revocation of an insurer's certificate of  
24 authority.

25 (c) As used in this section "insurer authorized to  
26 write insurance in the State of Alabama" refers only to those

1 entities defined in subdivision (5) of Section 27-12A-1 which  
2 hold a certificate of authority from the commissioner.

3 Section 27-12A-42. Creation of Insurance Fraud Unit  
4 Fund.

5 (a) There is created a fund in the State Treasury  
6 designated the Insurance Fraud Unit Fund. The expenses  
7 incurred by the department in operating the unit, including  
8 expenses incurred by the department for providing  
9 administrative personnel, legal counsel, litigation support,  
10 expert witness, and costs of investigations, shall be paid  
11 from the fund. The department may not hire, contract, or  
12 otherwise engage the services of private attorneys to  
13 administer or implement this chapter other than as may be  
14 needed for assistance in criminal prosecutions.

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

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

24 (c) The department may file a claim for restitution  
25 for any expenses incurred by the department in investigating  
26 and prosecuting a person convicted of insurance fraud. This  
27 restitution shall be payable to the State Treasury to the

1 credit of the Insurance Fraud Unit Fund as a refund against  
2 disbursements.

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

6 Section 3. 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, 2010.

11 Section 4. There is appropriated from the Insurance  
12 Fraud Unit Fund established pursuant to this act to the  
13 Department of Insurance an amount of three hundred twenty  
14 thousand dollars (\$320,000) for the fiscal year ending  
15 September 30, 2011.

16 Section 5. The Commissioner of Insurance may adopt  
17 reasonable rules for the implementation and administration of  
18 this act. The commissioner may adopt reasonable rules  
19 requiring licensees subject to the continuing education  
20 requirements of Chapter 8A of Title 27, Code of Alabama 1975,  
21 to include up to three hours of educational courses over a  
22 period of 24 months on the topic of insurance producer ethics  
23 or business practices.

24 Section 6. Sections 10-4-115 and 27-21A-23, Code of  
25 Alabama 1975, as last amended by Act No. 2008-502, 2008  
26 Regular Session, are amended to read as follows:

27 "§10-4-115.

1           "(a) No statute of this state applying to insurance  
2 companies shall be applicable to any corporation organized  
3 under the provisions of this article and amendments thereto or  
4 to any contract made by the corporation unless expressly  
5 mentioned in this article and made applicable; except as  
6 follows:

7           "(1) The corporation shall be subject to the  
8 provisions regarding annual premium tax to be paid by insurers  
9 on insurance premiums.

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

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

19           "(4) The corporation shall be subject to Section  
20 27-1-17, requiring insurers and health plans to pay health  
21 care providers in a timely manner.

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

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

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

3           "(8) The corporation shall be subject to the  
4 provisions of Chapter 57 of Title 27, requiring coverage to be  
5 offered for the payment of colorectal cancer examinations for  
6 covered persons who are 50 years of age or older, or for  
7 covered persons who are less than 50 years of age and at high  
8 risk for colorectal cancer according to current American  
9 Cancer Society colorectal cancer screening guidelines.

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

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

18           "(11) The corporation shall be subject to Chapter  
19 12A of Title 27.

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

25           "§27-21A-23.

26           "(a) Except as otherwise provided in this chapter,  
27 provisions of the insurance law and provisions of health care

1 service plan laws shall not be applicable to any health  
2 maintenance organization granted a certificate of authority  
3 under this chapter. This provision shall not apply to an  
4 insurer or health care service plan licensed and regulated  
5 pursuant to the insurance law or the health care service plan  
6 laws of this state except with respect to its health  
7 maintenance organization activities authorized and regulated  
8 pursuant to this chapter.

9 "(b) Solicitation of enrollees by a health  
10 maintenance organization granted a certificate of authority  
11 shall not be construed to violate any provision of law  
12 relating to solicitation or advertising by health  
13 professionals.

14 "(c) Any health maintenance organization authorized  
15 under this chapter shall not be deemed to be practicing  
16 medicine and shall be exempt from the provisions of Section  
17 34-24-310, et seq., relating to the practice of medicine.

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

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

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

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

8           "(h) Notwithstanding the provisions of subsection  
9           (a), a health maintenance organization shall be subject to the  
10          provisions of Chapter 54 of this title.

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

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

24          "(k) Notwithstanding the provisions of subsection  
25          (a), a health maintenance organization shall be subject to  
26          Chapter 59 of this title, requiring that policies and

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

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

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

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

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