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3 HOUSE INSURANCE COMMITTEE SUBSTITUTE FOR HB142  
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8 SYNOPSIS: In the 2012 Regular Session, the Legislature  
9 enacted Act 2012-370, relating to investments by  
10 domestic insurers, and Act 2012-429, relating to  
11 insurance fraud.

12 The purpose of this bill is to enact  
13 technical amendments to the above acts to clarify  
14 and give effect to the language in two sections of  
15 the Code of Alabama 1975.

16 The bill would also delete an item related  
17 to fraud and provide insurance fraud would include  
18 overcharging an insurer or insured for a good or  
19 service as a part of an insurance claim for  
20 damages.

21 The bill would amend Section 27-12A-2, Code  
22 of Alabama 1975, as enacted by Act 2012-429,  
23 providing the definition of insurance fraud, to  
24 delete certain language that is not applicable to  
25 the code section.

1                   This bill would amend Section 27-27-26, Code  
2                   of Alabama 1975, as amended by Act 2012-370,  
3                   relating to domestic insurers, to delete and  
4                   clarify certain language to correct an error in an  
5                   amendment.

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7                   A BILL  
8                   TO BE ENTITLED  
9                   AN ACT

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11                   Relating to insurance; to amend Sections 27-12A-2,  
12                   Code of Alabama 1975, providing the definition of insurance  
13                   fraud, to delete certain language that is not applicable to  
14                   the code section and to further provide for insurance fraud;  
15                   and to amend Section 27-27-26, Code of Alabama 1975, relating  
16                   to domestic insurers, to delete and clarify certain language  
17                   to correct an error in an amendment.

18                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19                   Section 1. Sections 27-12A-2, as enacted by Act  
20                   2012-429, and 27-27-26, Code of Alabama 1975, as amended by  
21                   Act 2012-370, are amended to read as follows:

22                   "§27-12A-2.

23                   "A person commits the crime of insurance fraud if,  
24                   knowingly and with intent to defraud, he or she commits, or  
25                   conceals any material information concerning, one or more of  
26                   the following acts:

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

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

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

23           "(4) Presenting, causing to be presented, or  
24 preparing with knowledge or belief that it will be presented  
25 to or by an insurer, reinsurer, producer, or any of their  
26 respective agents, false information as part of, in support

1 of, or concerning a fact material to, one or more of the  
2 following:

3 "a. An application for the issuance or renewal of an  
4 insurance policy or reinsurance agreement.

5 "b. The rating of an insurance policy or reinsurance  
6 agreement.

7 "c. A claim for payment or benefit pursuant to an  
8 insurance policy or reinsurance agreement.

9 ~~"d. A claim for payment or benefit based on an  
10 advertisement or promises to provide a good or service under  
11 an insurance policy.~~

12 ~~"1. To pay or fail to collect all or part of any  
13 applicable insurance deductible or a rebate in an amount equal  
14 to all or part of any applicable insurance deductible; and~~

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

17 ~~"3. The person knowingly charges an amount for the  
18 good or service that exceeds the usual and customary charge by  
19 the person for the good or service by an amount equal to or  
20 greater than all or part of the applicable insurance  
21 deductible paid by the person to an insurer on behalf of an  
22 insured or remitted to an insured by the person as a rebate.~~

23 "e.d. Premiums paid on an insurance policy or  
24 reinsurance agreement.

25 "f.e. Payments made in accordance with the terms of  
26 an insurance policy or reinsurance agreement.

1           "g.f. A document filed with the commissioner.

2           "i.g. Audit information submitted to the  
3 commissioner or an insurer.

4           "j.h. The formation, acquisition, merger,  
5 reconsolidation, or dissolution of one or more insurance  
6 entities, or the withdrawal from one or more lines of  
7 insurance in all or part of this state by an insurer or  
8 reinsurer.

9           "k.i. The issuance of written evidence of insurance.

10          "t.j. The reinstatement of an insurance policy.

11          "m.k. Issuance, acceptance, change, endorsement, or  
12 continuance of an insurance policy or reinsurance agreement.

13          "n.l. A construction or structure mitigation  
14 inspection report provided for the issuance or renewal of an  
15 insurance policy or discounts or credits related to an  
16 insurance policy.

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

22          "(6) Overcharging an insurer or insured an amount  
23 for a good or service that exceeds the usual and customary  
24 charge by the person providing the good or performing the  
25 service as a part of an insurance claim for damage.

26          "§27-27-26.

1           "(a) No officer or director of a domestic insurer,  
2 and no member of any committee or employee of a domestic  
3 insurer who is charged with the duty of investing or handling  
4 the funds of the insurer, shall do any of the following:

5           "(1) Deposit or invest the funds except in the  
6 corporate name of the insurer; except, that the insurer may  
7 for its convenience hold any equity investment in a street  
8 name or in the name of a nominee.

9           "(2) Borrow the funds of the insurer.

10          "(3) Be pecuniarily interested in any loan, pledge  
11 or deposit, security, investment, sale, purchase, exchange,  
12 reinsurance, or other similar transaction or property of the  
13 insurer except as follows:

14           "a. As a stockholder or member of the insurer.

15           "b. As a holder or owner of common stock or  
16 equity-like preferred stock in any corporation or business  
17 entity trading on a national or international stock exchange.

18           "c. As a holder or owner of shares of mutual funds,  
19 bond funds, or private equity funds registered with the United  
20 States Securities and Exchange Commission.

21           "d. As a holder or owner of bonds and other  
22 evidences of indebtedness of governmental units in the United  
23 States or Canada or private business entities domiciled in the  
24 United States or Canada.

1            "e. As a holder or owner of bonds and other  
2 evidences of indebtedness of international development  
3 organizations of which the United States is a member.

4            "(4) Take ~~from a stockholder or member and~~ or  
5 receive to his or her own use any fee, brokerage, commission,  
6 gift, or other consideration for, or on account of, any such  
7 transaction made by, or on behalf of, the insurer.

8            "(b) No insurer shall guarantee any financial  
9 obligation of any of its officers or directors.

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

21            "(d) The commissioner may, by regulations from time  
22 to time, define and permit additional exceptions to the  
23 prohibition contained in subsection (a) of this section solely  
24 to enable payment of reasonable compensation to a director who  
25 is not otherwise an officer or employee of the insurer, or to  
26 a corporation or firm in which a director is interested, for

1 necessary services performed or sales or purchases made to, or  
2 for, the insurer in the ordinary course of the business of the  
3 insurer and in the usual private professional or business  
4 capacity of the director or the corporation or firm."

5 Section 2. This act shall become effective  
6 immediately following its passage and approval by the  
7 Governor, or its otherwise becoming law.