

1 SB23
2 209903-3
3 By Senator Shelnutt
4 RFD: Banking and Insurance
5 First Read: 02-FEB-21
6 PFD: 12/16/2020

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to captive insurance companies; to amend
12 Sections 27-31B-2, 27-31B-3, 27-31B-6, 27-31B-8, 27-31B-12,
13 and 27-31B-13, Code of Alabama 1975, to revise certain
14 definitions; to authorize insurance to be placed on risks in
15 alien jurisdictions under certain conditions; to revise
16 certain security requirements for the payment of liabilities
17 attributable to branch operations; to revise certain
18 requirements relating to an Alabama Coastal Captive Insurance
19 Company; to provide for the issuance of certificates of
20 dormancy for captive insurance companies that meet certain
21 requirements; to require dormant captive insurance companies
22 to take certain action; to add Sections 27-31B-26, 27-31B-27,
23 and 27-31B-28 to the Code of Alabama 1975.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 27-31B-2, 27-31B-3, 27-31B-6,
26 27-31B-8, 27-31B-12, and 27-31B-13, Code of Alabama 1975, are
27 amended to read as follows:

1 "§27-31B-2.

2 "As used in this chapter, the following terms shall
3 have the following meanings, unless the context clearly
4 indicates otherwise:

5 "(1) AFFILIATED COMPANY. Any company in the same
6 corporate system as a parent, an industrial insured, or a
7 member organization by virtue of common ownership, control,
8 operation, or management.

9 "(2) AGENCY CAPTIVE INSURANCE COMPANY. A captive
10 insurance company that satisfies both of the following:

11 "a. Is owned or directly or indirectly controlled by
12 one or more licensed insurance producers.

13 "b. Only insures against risks covered by insurance
14 policies sold, solicited or negotiated through the insurance
15 producers that own or control the captive insurance company.

16 "~~(2)~~ (3) ALIEN CAPTIVE INSURANCE COMPANY. Any
17 insurance company formed to write insurance business for its
18 parents and affiliates and licensed pursuant to the laws of an
19 alien jurisdiction which imposes statutory or regulatory
20 standards in a form acceptable to the commissioner on
21 companies transacting the business of insurance in that
22 jurisdiction.

23 "~~(3)~~ (4) ASSOCIATION. Any legal association of
24 individuals, corporations, limited liability companies,
25 partnerships, associations, or other entities whereby either
26 of the following exists:

1 "a. The member organizations of which, or the
2 association itself, whether or not in conjunction with some or
3 all of the member organizations, meet one of the following:

4 "1. Own, control, or hold with power to vote all of
5 the outstanding voting securities of an association captive
6 insurance company incorporated as a stock insurer.

7 "2. Have complete voting control over an association
8 captive insurance company incorporated as a mutual insurer.

9 "3. Have complete voting control over an association
10 captive insurance company formed as a limited liability
11 company.

12 "b. The member organizations of which collectively
13 constitute all of the subscribers of an association captive
14 insurance company formed as a reciprocal insurer.

15 "~~(4)~~ (5) ASSOCIATION CAPTIVE INSURANCE COMPANY. Any
16 company that insures risks of the member organizations of the
17 association, and that also may insure the risks of affiliated
18 companies of the member organizations and the risks of the
19 association itself and their affiliated companies.

20 "~~(5)~~ (6) BRANCH BUSINESS. Any insurance business
21 transacted by a branch captive insurance company in this
22 state.

23 "~~(6)~~ (7) BRANCH CAPTIVE INSURANCE COMPANY. Any alien
24 captive insurance company licensed by the commissioner to
25 transact the business of insurance in this state through a
26 business unit with a principal place of business in this
27 state. A branch captive insurance company is a pure captive

1 insurance company with respect to operations in this state,
2 unless otherwise permitted by the commissioner. A branch
3 captive insurance company may pool insurance business done in
4 this state with business done in alien jurisdictions subject
5 to commissioner approval.

6 "~~(7)~~(8) BRANCH OPERATIONS. Any business operations
7 of a branch captive insurance company in this state.

8 "~~(8)~~(9) CAPTIVE INSURANCE COMPANY. Any pure captive
9 insurance company, agency captive insurance company,
10 association captive insurance company, risk retention group,
11 protected cell captive insurance company, incorporated cell
12 captive insurance company, ~~or~~ industrial insured captive
13 insurance company, reinsurance captive insurance company, or
14 special purpose captive insurance company formed or licensed
15 under this chapter.

16 "~~(9)~~(10) CAPTIVE RISK RETENTION GROUP. A captive
17 insurance company organized and licensed as a captive insurer
18 under the laws of this state and operating pursuant to the
19 Liability Risk Retention Act of 1986, as amended, 15 U.S.C.
20 §3901 et seq., as a stock or mutual corporation, a reciprocal,
21 or other limited liability entity. Risk retention groups
22 formed under this chapter are subject to ~~all the same~~
23 ~~provisions of this title applicable to a casualty insurer~~
24 ~~organized and licensed under the laws of this state~~ Section
25 27-31B-28.

26 "~~(10)~~(11) COMMISSIONER. The Alabama Commissioner of
27 Insurance or the commissioner's designee.

1 "~~(11)~~(12) CONTROLLED UNAFFILIATED BUSINESS. Any
2 company that meets all of the following criteria:

3 "a. Is not in the corporate system of a parent and
4 affiliated companies in the case of a pure captive insurance
5 company, or is not in the corporate system of an industrial
6 insured and its affiliated companies in the case of an
7 industrial insured captive insurance company.

8 "b. Has an existing contractual relationship with a
9 parent or one of its affiliated companies in the case of a
10 pure captive insurance company or with an industrial insured
11 or one of its affiliated companies in the case of an
12 industrial insured captive insurance company.

13 "c. Whose risks are managed by a captive insurance
14 company or an industrial insured captive insurance company, as
15 applicable, in accordance with Section 27-31B-20.

16 "~~(12)~~(13) EXCESS WORKERS' COMPENSATION INSURANCE. In
17 the case of an employer or group of employers that has insured
18 or self-insured its workers' compensation risks in accordance
19 with applicable state or federal law, insurance in excess of a
20 specified per-incident or aggregate limit established by the
21 commissioner.

22 "~~(13)~~(14) GENERAL ACCOUNT. All assets and
23 liabilities of a protected cell captive insurance company not
24 attributable to a protected cell.

25 "~~(14)~~(15) INCORPORATED CELL. A protected cell of an
26 incorporated cell captive insurance company that is organized

1 as a corporation or other legal entity separate from the
2 incorporated cell captive insurance company.

3 "~~(15)~~ (16) INCORPORATED CELL CAPTIVE INSURANCE
4 COMPANY. A protected cell captive insurance company that is
5 established as a corporation or other legal entity separate
6 from its incorporated cells that are also organized as
7 separate legal entities.

8 "~~(16)~~ (17) INDUSTRIAL INSURED. As defined in
9 subdivision (2) of Section 27-10-20.

10 "~~(17)~~ (18) INDUSTRIAL INSURED CAPTIVE INSURANCE
11 COMPANY. Any company that insures risks of the industrial
12 insureds that comprise the industrial insured group, and that
13 may insure the risks of the affiliated companies of the
14 industrial insureds and the risks of the controlled
15 unaffiliated business of an industrial insured or its
16 affiliated companies.

17 "~~(18)~~ (19) INDUSTRIAL INSURED GROUP. Any group that
18 meets either of the following criteria:

19 "a. Any group of industrial insureds that
20 collectively meet any of the following criteria:

21 "1. Own, control, or hold with power to vote all of
22 the outstanding voting securities of an industrial insured
23 captive insurance company incorporated as a stock insurer.

24 "2. Have complete voting control over an industrial
25 insured captive insurance company incorporated as a mutual
26 insurer.

1 "3. Constitute all of the subscribers of an
2 industrial insured captive insurance company formed as a
3 reciprocal insurer.

4 "4. Have complete voting control over an industrial
5 insured captive insurance company formed as a limited
6 liability company.

7 "b. Any group which is created under the Product
8 Liability Risk Retention Act of 1981, 15 U.S. Code § 3901 et
9 seq., as amended, as a corporation or other limited liability
10 association taxable as a stock insurance company or a mutual
11 insurer under the law of the State of Alabama.

12 "~~(19)~~ (20) MEMBER ORGANIZATION. Any individual,
13 corporation, limited liability company, partnership,
14 association, or other entity that belongs to an association.

15 "~~(20)~~ (21) MUNICIPAL MUTUAL CORPORATION. A
16 corporation or other legal entity organized without
17 stockholders. The term includes a nonprofit corporation with
18 members.

19 "~~(21)~~ (22) MUTUAL INSURER. An incorporated captive
20 insurer without capital stock and the governing body of which
21 is elected from policyholders at the mutual members' annual
22 meeting.

23 "~~(22)~~ (23) ORGANIZATIONAL DOCUMENTS. The documents
24 that must be submitted pursuant to state law in order to
25 legally form a business in this state, or to obtain a
26 certificate of authority to transact business in the state.

1 "~~(23)~~ (24) PARENT. An individual, corporation,
2 limited liability company, partnership, association, or other
3 entity that directly or indirectly owns, controls, or holds
4 with power to vote more than 50 percent of the outstanding of
5 any of the following:

6 "(1) Voting securities of a pure captive insurance
7 company organized as a stock corporation.

8 "(2) Membership interests of a pure captive
9 insurance company organized as a nonprofit corporation.

10 "(3) Membership interests of a pure captive
11 insurance company organized as a limited liability company.

12 "~~(24)~~ (25) PARTICIPANT. An entity as defined in
13 Section 27-31B-24, and any affiliates thereof, that are
14 insured by a protected cell captive insurance company, where
15 the losses of the participant are limited through a
16 participant contract.

17 "~~(25)~~ (26) PARTICIPANT CONTRACT. A contract by which a
18 protected cell captive insurance company insures the risks of
19 a participant and limits the losses of each participant to its
20 pro rata share of the assets of one or more protected cells
21 identified in the participant contract.

22 "~~(26)~~ (27) PROTECTED CELL. A separate account
23 established by a protected cell captive insurance company
24 formed or licensed under this chapter, in which an identified
25 pool of assets and liabilities is segregated and insulated by
26 means of this chapter from the remainder of the protected cell
27 captive insurance company's assets and liabilities in

1 accordance with the terms of one or more participant contracts
2 to fund the liability of the protected cell captive insurance
3 company, with respect to the participants as set forth in the
4 participant contracts.

5 ~~"(27)~~ (28) PROTECTED CELL ASSETS. All assets,
6 contract rights, and general intangibles identified with and
7 attributable to a specific protected cell of a protected cell
8 captive insurance company.

9 ~~"(28)~~ (29) PROTECTED CELL CAPTIVE INSURANCE COMPANY.
10 Any captive insurance company meeting all of the following:

11 "a. The minimum capital and surplus required by this
12 chapter are provided by one or more sponsors.

13 "b. The company is formed and licensed under this
14 chapter.

15 "c. The company insures the risks of separate
16 participants through participant contracts.

17 "d. The company funds its liability to each
18 participant through one or more protected cells and segregates
19 the assets of each protected cell from the assets of other
20 protected cells and from the assets of the protected cell
21 captive insurance company's general account.

22 ~~"(29)~~ (30) PROTECTED CELL LIABILITIES. All
23 liabilities and other obligations identified with and
24 attributed to a specific protected cell of a protected cell
25 captive insurance company.

1 "~~(30)~~(31) PURE CAPTIVE INSURANCE COMPANY. Any
2 company that insures risks of its parent and affiliated
3 companies or controlled unaffiliated business or businesses.

4 "(32) REINSURANCE CAPTIVE INSURANCE COMPANY. For the
5 purpose of this section a "reinsurance captive insurance
6 company" is a company which only assumes risks from:

7 "a. An insurer or reinsurer approved or licensed
8 under the laws of this state or any foreign or alien
9 jurisdiction upon approval of the commissioner.

10 "b. Which assumes those risks on a funds withheld
11 basis or other basis deemed acceptable by the Commissioner

12 "(33) SPECIAL PURPOSE FINANCIAL CAPTIVE COMPANIES or
13 SPFC. A captive insurance company that has received a
14 certificate of authority from the commissioner for the limited
15 purposes provided for within this chapter.

16 "~~(31)~~(34) SPONSOR. Any person or entity that is
17 approved by the commissioner to organize and operate a
18 protected cell captive insurance company.

19 "~~(32)~~(35) SURPLUS NOTE. An unsecured subordinated
20 debt obligation deemed to be a surplus certificate under terms
21 acceptable to the commissioner.

22 "§27-31B-3.

23 "(a) Any captive insurance company, when permitted
24 by its articles of association, charter, or other
25 organizational document, may apply to the commissioner for a
26 license to do any and all insurance defined in Sections
27 27-5-2, 27-5-4, and 27-5-5, in subdivisions (1), (2), (4),

1 (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) of
2 subsection (a) of Section 27-5-6, in Sections 27-5-7, 27-5-8,
3 27-5-9, and 27-5-10, and to grant annuity contracts as defined
4 in Section 27-5-3, subject, however, to all of the following:

5 "(1) No pure captive insurance company may insure
6 any risks other than those of its parent and affiliated
7 companies or controlled unaffiliated business.

8 "(2) No agency captive insurance company may insure
9 risks other than those affiliated with the controlling
10 insurance producer.

11 "~~(2)~~ (3) No association captive insurance company may
12 insure any risks other than those of the member organizations
13 of its association, and their affiliated companies.

14 "~~(3)~~ (4) No industrial insured captive insurance
15 company may insure any risks other than those of the
16 industrial insureds that comprise the industrial insured
17 group, and their affiliated companies.

18 "~~(4)~~ (5) No risk retention group may insure any risks
19 other than those of its members and owners.

20 "~~(5)~~ (6) No captive insurance company may provide
21 personal motor vehicle coverage or any component thereof.
22 Homeowner's insurance coverage may be written by an Alabama
23 Coastal Captive Insurance Company as defined in Chapter 31C,
24 but only in the gulf front, beach, and seacoast areas as
25 designated by the Insurance Services Office, Inc.

26 "~~(6)~~ (7) No captive insurance company may accept or
27 cede reinsurance except as provided in Section 27-31B-13.

1 "~~(7)~~(8) Any captive insurance company may provide
2 excess workers' compensation insurance to its parent and
3 affiliated companies and member organizations unless
4 prohibited by the laws of the state having jurisdiction over
5 the transaction. Any captive insurance company may reinsure
6 workers' compensation ~~of a qualified self-insured plan of its~~
7 ~~parent and affiliated companies.~~

8 "~~(8)~~(9) Any captive insurance company which insures
9 risks described in Sections 27-5-2 and 27-5-4 shall comply
10 with all applicable state and federal laws.

11 "~~(9) No branch captive insurance company may write~~
12 ~~any business in this state except insurance or reinsurance of~~
13 ~~the employee benefit business of its parent and affiliated~~
14 ~~companies which is subject to the Employee Retirement Income~~
15 ~~Security Act of 1974, as amended.~~

16 "(10) Insurance may be placed on risks in alien and
17 foreign jurisdictions if the underlying business in the
18 jurisdiction is legal in the jurisdiction, subject to
19 commissioner approval.

20 "~~(10)~~(11) No protected cell captive insurance
21 company may insure any risks other than those of its
22 participants.

23 "(b) To conduct insurance business in this state, a
24 captive insurance company shall comply with all of the
25 following:

26 "(1) It must obtain from the commissioner a license
27 authorizing it to do insurance business in this state.

1 "(2) Its board of directors or managers, or in the
2 case of a reciprocal insurer, its subscribers' advisory
3 committee, must hold at least one meeting each year in this
4 state.

5 "(3) It must maintain its principal place of
6 business in this state, or in the case of a branch captive
7 insurance company, maintain ~~the principal~~ a place of business
8 for its branch operations in this state.

9 "(4) It must appoint a registered agent to accept
10 service of process and to otherwise act on its behalf in this
11 state; subject further to the following:

12 "a. If formed as a corporation or other legal
13 entity, whenever the registered agent cannot with reasonable
14 diligence be found at the registered office of the captive
15 insurance company, the Secretary of State shall be an agent of
16 the captive insurance company upon whom any process, notice,
17 or demand may be served.

18 "b. If formed as a reciprocal insurer, whenever the
19 registered agent cannot with reasonable diligence be found at
20 the registered office of the captive insurance company, the
21 commissioner shall be an agent of the captive insurance
22 company upon whom any process, notice, or demand may be
23 served.

24 "(c) (1) Before receiving a license, a captive
25 insurance company shall comply with one of the following:

26 "a. If formed as a corporation or other legal
27 entity, it shall file with the commissioner a certified copy

1 of its organizational documents and bylaws, a statement under
2 oath of its president and secretary or other authorized
3 official showing its financial condition, and any other
4 statements or documents required by the commissioner.

5 "b. If formed as a reciprocal insurer, it shall
6 comply with both of the following:

7 "1. File with the commissioner a certified copy of
8 the power of attorney of its attorney-in-fact, a certified
9 copy of its subscribers' agreement, a statement under oath of
10 its attorney-in-fact showing its financial condition, and any
11 other statements or documents required by the commissioner.

12 "2. Submit to the commissioner for approval a
13 description of the coverages, deductibles, coverage limits,
14 and rates, together with any additional information as the
15 commissioner may reasonably require. In the event of any
16 subsequent material change in any item in the description, the
17 reciprocal captive insurance company shall submit to the
18 commissioner for approval an appropriate revision and shall
19 not offer any additional kinds of insurance until a revision
20 of the description is approved by the commissioner. The
21 reciprocal captive insurance company shall inform the
22 commissioner of any material change in rates within 30 days of
23 the adoption of the change.

24 "(2) In addition to the information required by
25 subdivision (1), each applicant captive insurance company
26 shall file with the commissioner evidence of all of the
27 following:

1 "a. The amount and liquidity of its assets relative
2 to the risks to be assumed.

3 "b. The adequacy of the expertise, experience, and
4 character of the person or persons who will manage it.

5 "c. The overall soundness of its plan of operation.

6 "d. The adequacy of the loss prevention programs of
7 its parent, member organizations, industrial insureds, or
8 other insureds as applicable.

9 "e. Any other factors deemed relevant by the
10 commissioner in ascertaining whether the proposed captive
11 insurance company will be able to meet its policy obligations.

12 " (3) In addition to the information required by
13 subdivisions (1) and (2), each applicant protected cell
14 captive insurance company shall file with the commissioner all
15 of the following:

16 "a. A business plan demonstrating how the applicant
17 will account for the loss and expense experience of each
18 protected cell at a level of detail found to be sufficient by
19 the commissioner and how it will report the experience to the
20 commissioner.

21 "b. A statement acknowledging that all financial
22 records of the protected cell captive insurance company,
23 including records pertaining to any protected cells, shall be
24 made available for inspection or examination by the
25 commissioner or the commissioner's designated agent.

26 "c. All contracts or sample contracts between the
27 protected cell captive insurance company and any participants.

1 "d. Evidence that expenses shall be allocated to
2 each protected cell in a fair and equitable manner.

3 "(4) Information submitted pursuant to this
4 subsection shall be and remain confidential, and may not be
5 made public by the commissioner or by an employee or agent of
6 the commissioner without the written consent of the company,
7 except as provided in the following:

8 "a. The information may be discoverable by a party
9 in a civil action or contested case to which the captive
10 insurance company that submitted the information is a party,
11 upon a showing by the party seeking to discover the
12 information that (i) the information sought is relevant to and
13 necessary for the furtherance of the action or case, (ii) the
14 information sought is unavailable from other nonconfidential
15 sources, and (iii) a subpoena issued by a judicial or
16 administrative officer of competent jurisdiction has been
17 submitted to the commissioner. Notwithstanding the foregoing,
18 this subdivision shall not apply to any industrial insured
19 captive insurance company insuring the risks of an industrial
20 insured group as defined in paragraph b. of subdivision (18)
21 of Section 27-31B-2 or to a captive risk retention group.

22 "b. The commissioner may disclose the information to
23 a public officer having jurisdiction over the regulation of
24 insurance in another state, provided that (i) the public
25 official shall agree in writing to maintain the
26 confidentiality of the information, and (ii) the laws of the

1 state in which the public official serves require the
2 information to be and to remain confidential.

3 "(d) Each captive insurance company shall pay to the
4 commissioner a nonrefundable fee as set forth in Section
5 27-31B-4 for examining, investigating, and processing its
6 application for license, and the commissioner is authorized to
7 retain legal, financial, and examination services from outside
8 the department, the reasonable cost of which may be charged
9 against the applicant in accordance with Section 27-2-25. In
10 addition, each captive insurance company shall pay a license
11 fee for the year of registration and a renewal fee for each
12 year thereafter as set forth in Section 27-31B-4.

13 "(e) If the commissioner is satisfied that the
14 documents and statements filed by a captive insurance company
15 comply with this chapter, the commissioner may grant a license
16 authorizing the company to do insurance business in this state
17 until April 1 thereafter, which license may be renewed.

18 "(f) (1) Notwithstanding any other provision of this
19 chapter, the commissioner may issue a provisional license to
20 any applicant captive insurance company for a period not to
21 exceed 60 days if the commissioner deems that the public
22 interest will be served by the issuance of the provisional
23 license.

24 "(2) As a condition precedent to the issuance of a
25 provisional license under this subsection, the applicant shall
26 have filed a complete application containing all information
27 required by this section, paid all fees required for

1 licensure, and the commissioner shall have made a preliminary
2 finding that the expertise, experience, and character of the
3 person or persons who will control and manage the captive
4 insurer are acceptable.

5 "(3) The commissioner, by order, may limit the
6 authority of any provisional licensee in any way deemed
7 necessary to protect insureds and the public. The
8 commissioner, by order, may revoke a provisional license if
9 the interests of insureds or the public are endangered. If the
10 applicant fails to complete the regular licensure application
11 process within the 60-day provisional period, the provisional
12 license shall terminate automatically at the end of the 60-day
13 period, and any policy issued during the provisional period
14 shall be cancelled as of the termination date and any premium
15 unearned shall be refunded to the policyholder within 10 days.

16 "§27-31B-6.

17 "(a) No captive insurance company shall be issued a
18 license unless it shall possess and thereafter maintain
19 unimpaired paid-in capital and surplus as follows:

20 "(1) In the case of a pure captive insurance
21 company, not less than ~~two hundred fifty thousand dollars~~
22 ~~(\$250,000)~~ one hundred thousand dollars (\$100,000) or such
23 other amount determined by the commissioner and actuarially
24 supported by a feasibility study.

25 "(2) In the case of an agency captive insurance
26 company, not less than five hundred thousand dollars

1 (\$500,000) or such other amount determined by the commissioner
2 and actuarially supported by a feasibility study.

3 "~~(2)~~(3) In the case of an association captive
4 insurance company or risk retention group, not less than five
5 hundred thousand dollars (\$500,000) or such other amount
6 determined by the commissioner and actuarially supported by a
7 feasibility study.

8 "~~(3)~~(4) In the case of an industrial insured captive
9 insurance company, not less than five hundred thousand dollars
10 (\$500,000).

11 "(5) In the case of a reinsurance captive insurance
12 company, not less than ten thousand dollars (\$10,000) or such
13 other amount determined by the commissioner and actuarially
14 supported by a feasibility study.

15 "~~(4)~~(6) In the case of a protected cell captive
16 insurance company, not less than ~~two hundred fifty thousand~~
17 ~~dollars (\$250,000)~~ one hundred thousand dollars (\$100,000) or
18 such other amount determined by the commissioner and
19 actuarially supported by a feasibility study.

20 "(b) Notwithstanding the requirements of subsection
21 (a), no captive insurance company organized as a reciprocal
22 insurer under this chapter shall be issued a license unless it
23 has and thereafter maintains free surplus of one million
24 dollars (\$1,000,000).

25 "(c) The commissioner may prescribe additional
26 capital and surplus based upon the type, volume, and nature of
27 insurance business transacted.

1 "(d) Capital and surplus may be in the form of cash,
2 cash equivalents, surplus note, securities meeting the
3 eligibility requirements of Section 27-6-3, or, if approved by
4 the commissioner, a clean, irrevocable, and unconditional
5 letter of credit issued by a bank chartered by the State of
6 Alabama or a member bank of the Federal Reserve System and
7 approved by the commissioner. No assets of the captive insurer
8 shall be pledged or encumbered for the payment of the letter
9 of credit.

10 "(e) In the case of a branch captive insurance
11 company, as security for the payment of liabilities
12 attributable to the branch operations, the commissioner ~~shall~~
13 ~~may~~ require ~~that a trust fund, funded by an irrevocable letter~~
14 ~~of credit or other acceptable asset, be established and~~
15 ~~maintained in the United States for the benefit of United~~
16 ~~States policyholders and United States ceding insurers under~~
17 ~~insurance policies issued or reinsurance contracts issued or~~
18 ~~assumed, by the branch captive insurance company through its~~
19 ~~branch operations. The amount of the security may be no less~~
20 ~~than the capital and surplus required hereunder and the~~
21 ~~reserves on these insurance policies or reinsurance contracts,~~
22 ~~including reserves for losses, allocated loss adjustment~~
23 ~~expenses, incurred but not reported losses, and unearned~~
24 ~~premiums with regard to business written through the branch~~
25 ~~operations. Notwithstanding the foregoing, the commissioner~~
26 ~~may permit a branch captive insurance company that is required~~
27 ~~to post security for collateral equal to the amount of net~~

1 loss reserves on branch business ~~by its reinsurer to reduce~~
2 ~~the funds in the trust account required by this section by the~~
3 ~~same amount so long as the security remains posted with the~~
4 ~~reinsurer. If the form of security selected is a letter of~~
5 ~~credit, the letter of credit must be established by, or issued~~
6 ~~or confirmed by, a bank chartered in this state or a member~~
7 ~~bank of the Federal Reserve System~~ plus other insurance
8 liabilities as determined by the commissioner to be maintained
9 by the branch captive insurance company in a manner acceptable
10 to the commissioner.

11 "(f) Any captive formed under this chapter may be
12 capitalized with a surplus note. Any captive issuing a surplus
13 note pursuant to this section must execute a written agreement
14 with the creditor providing the following:

15 "a. The creditor may only be paid out of the portion
16 of the captive's surplus that exceeds the minimum stated in
17 the agreement.

18 "b. The minimum surplus or "floor" shall exceed the
19 sum of: (i) 10 percent of the face amount of the surplus note;
20 and (ii) the greater of the statutory minimum capital or
21 surplus required by statute or the approved feasibility study
22 or such other amount approved by the commissioner.

23 "c. Payments may only be made if the payment does
24 not affect the financial condition of the company.

25 "d. Any payment of principal or interest requires
26 the prior approval of the commissioner.

27 "§27-31B-8.

1 "(a) A pure captive insurance company, an agency
2 captive insurance company, a reinsurance captive insurance
3 company, special purpose financial captive insurance company
4 or a protected cell captive insurance company shall be formed
5 as a stock or mutual insurer, or as a nonprofit or limited
6 liability company with its capital divided into units and held
7 by the stockholders, members, or other equivalent as allowed
8 by law.

9 "(b) An association captive insurance company, an
10 industrial insured captive insurance company, or a risk
11 retention group may be formed in any of the following ways:

12 "(1) Organized as a stock insurer with its capital
13 divided into share units and held by the stockholders,
14 members, or other equivalent as allowed by law.

15 "(2) Organized as a mutual insurer without capital
16 stock, the governing body of which is elected by the member
17 organizations of its association.

18 "(3) Organized as a reciprocal insurer in accordance
19 with Chapter 31 of this title.

20 "(4) Organized as a manager-managed limited
21 liability company.

22 "(c) A captive insurance company incorporated or
23 organized in this state shall have one or more incorporators
24 or one or more organizers, at least one of which shall be a
25 resident of this state.

26 "(d) (1) In the case of a captive insurance company
27 formed as a corporation, before the articles of incorporation

1 are transmitted to the Secretary of State, the incorporators
2 shall petition the commissioner to issue a certificate setting
3 forth the commissioner's finding that the establishment and
4 maintenance of the proposed corporation will promote the
5 general good of the state. In arriving at this finding the
6 commissioner shall consider all of the following:

7 "a. The character, reputation, financial standing,
8 and purposes of the incorporators.

9 "b. The character, reputation, financial
10 responsibility, insurance experience, and business
11 qualifications of the officers and directors.

12 "c. Any other aspects as the commissioner shall deem
13 advisable.

14 "(2) The articles of incorporation, the certificate,
15 and the organization fee shall be transmitted to the Secretary
16 of State, who shall thereupon record both the articles of
17 incorporation and the certificate.

18 "(e) In the case of a captive insurance company
19 formed as a reciprocal insurer, the organizers shall petition
20 the commissioner to issue a certificate setting forth the
21 commissioner's finding that the establishment and maintenance
22 of the proposed association will promote the general good of
23 the state. In arriving at this finding the commissioner shall
24 consider all of the following:

25 "(1) The character, reputation, financial standing,
26 and purposes of the organizers.

1 "(2) The character, reputation, financial
2 responsibility, insurance experience, and business
3 qualifications of the attorney-in-fact.

4 "(3) Any other aspects as the commissioner shall
5 deem advisable.

6 "(f) In the case of a captive insurance company
7 licensed as a branch captive insurance company, the alien
8 captive insurance company shall petition the commissioner to
9 issue a certificate setting forth the commissioner's finding
10 that, after considering the character, reputation, financial
11 responsibility, insurance experience, and business
12 qualifications of the officers and directors of the alien
13 captive insurance company, the licensing and maintenance of
14 the branch operations will promote the general good of the
15 state. The alien captive insurance company may register to do
16 business in this state after the commissioner's certificate is
17 issued.

18 "(g) The capital stock of a captive insurance
19 company incorporated as a stock insurer may be authorized with
20 no par value.

21 "(h) In the case of a captive insurance company, at
22 least one of the members of the board of directors, managing
23 members, or equivalents as allowed by law, shall be a resident
24 of this state.

25 "(i) In the case of a captive insurance company
26 formed as a reciprocal insurer, at least one of the members of

1 the subscribers' advisory committee shall be a resident of
2 this state.

3 "(j) Captive insurance companies formed as
4 corporations under this chapter shall have the privileges and
5 be subject to the general corporation law as well as the
6 applicable provisions of this chapter. In the event of
7 conflict between the general corporation law and this chapter,
8 the latter shall control. The provisions of this title
9 pertaining to mergers, consolidations, and conversions,
10 ~~mutualizations, and redemptions~~ shall apply in
11 determining the procedures to be followed by captive insurance
12 companies in carrying out any of the transactions described
13 therein, except that the commissioner may waive or modify the
14 requirements for public notice and hearing in accordance with
15 rules which the commissioner may adopt addressing categories
16 of transactions. If a notice of public hearing is required,
17 but no one requests a hearing, then the commissioner may
18 cancel the hearing.

19 "(k) (1) Captive insurance companies formed as
20 reciprocal insurers under this chapter shall have the
21 privileges and be subject to Chapter 31 in addition to the
22 applicable provisions of this chapter. In the event of a
23 conflict between Chapter 31 and this chapter, the latter shall
24 control. To the extent a reciprocal insurer is made subject to
25 other provisions of this title pursuant to Chapter 31, the
26 provisions shall not be applicable to a reciprocal insurer
27 formed under this chapter unless the provisions are expressly

1 made applicable to captive insurance companies under this
2 chapter.

3 "(2) In addition to subdivision (1), captive
4 insurance companies organized as reciprocal insurers that are
5 industrial insured groups as defined in paragraph b. of
6 subdivision (18) of Section 27-31B-2 shall have the privileges
7 and be subject to the provisions of Chapter 31A in addition to
8 the applicable provisions of this chapter.

9 "(1) The articles of incorporation, organization, or
10 equivalent allowed by law, or bylaws of a captive insurance
11 company may authorize a quorum of a board of directors to
12 consist of no fewer than one-third of the fixed or prescribed
13 number of directors determined under Title 10.

14 "(m) The subscribers' agreement or other organizing
15 document of a captive insurance company formed as a reciprocal
16 insurer may authorize a quorum of a subscribers' advisory
17 committee to consist of no fewer than one-third of its
18 members.

19 "§27-31B-12.

20 "(a) An association captive insurance company, risk
21 retention group, and an industrial insured captive insurance
22 company insuring the risks of an industrial insured group
23 defined in paragraph b. of subdivision (18) of Section
24 27-31B-2 shall comply with the investment requirements
25 contained in this title, as applicable; provided, however,
26 that compliance with these investment requirements shall be
27 waived for risk retention groups to the extent that credit for

1 risks ceded to reinsurers is allowed pursuant to Section
2 27-31B-13 or to the extent otherwise deemed reasonable and
3 appropriate by the commissioner. Chapter 37 of this title
4 shall apply to association captives, risk retention groups,
5 and industrial insured captive insurance companies insuring
6 the risks of industrial insured groups defined in paragraph b.
7 of subdivision (18) of Section 27-31B-2 except to the extent
8 it is inconsistent with approved accounting standards in use
9 by the association captive insurance company, risk retention
10 group, or industrial insured captive insurance company
11 insuring the risks of an industrial insured group as defined
12 in paragraph b. of subdivision (18) of Section 27-31B-2.
13 Notwithstanding any other provision of this title, the
14 commissioner may approve the use of alternative reliable
15 methods of valuation and rating.

16 "(b) No pure captive insurance company, agency
17 captive insurance company, reinsurance captive company,
18 special purpose financial captive insurance company, and
19 industrial insured captive insurance company insuring the
20 risks of an industrial insured group as defined in paragraph
21 b. of subdivision (18) of Section 27-31B-2, or protected cell
22 captive insurance company shall be subject to any restrictions
23 on allowable investments whatever, including those limitations
24 contained in Chapters 37 and 41. Notwithstanding the
25 foregoing, the commissioner may prohibit or limit any
26 investment that threatens the solvency or liquidity of the
27 company.

1 "(c) Only a pure captive insurance company or a
2 protected cell captive insurance company may make loans to its
3 parent company or affiliates. No loans to a parent company or
4 any affiliate shall be permitted without prior written
5 approval of the commissioner and must be evidenced by a note
6 in a form approved by the commissioner. Loans of minimum
7 capital and surplus funds required by Section 27-31B-6 are
8 prohibited. Any loan made by a protected cell captive
9 insurance company must be made from funds in the company's
10 general account.

11 "§27-31B-13.

12 "(a) A captive insurance company may provide
13 reinsurance, as authorized in this title, on risks ceded by
14 any other insurer.

15 "(b) A captive insurance company may take credit for
16 reserves on risks or portions of risks ceded to reinsurers
17 complying with ~~subdivisions (1) through (4) of subsection (c)~~
18 ~~of Section 27-5-12~~ Sections 27-5B-4 through 27-5B-9. A captive
19 insurer shall not take credit for the reserves on risks or
20 portions of risks ceded to reinsurers not complying with
21 ~~subdivisions (1) through (4) of subsection (c) of Section~~
22 ~~27-5-12~~ Sections 27-5B-4 through 27-5B-9.

23 "(c) For all purposes of this chapter, insurance by
24 a captive insurance company of any workers' compensation
25 ~~qualified self-insured~~ plan of its parent and affiliates shall
26 be deemed to be reinsurance."

1 Section 2. Sections 27-31B-26, 27-31B-27, and
2 27-31B-28, are added to the Code of Alabama 1975, to read as
3 follows:

4 §27-31B-26.

5 A stock captive insurer may become a mutual captive
6 insurer under such plan or procedure as may be approved by the
7 commissioner. The commissioner shall not approve any such
8 plan, procedure, or mutualization unless:

9 (1) It is equitable to stockholders and
10 policyholders;

11 (2) It is subject to approval by the holders of a
12 majority of the insurer's outstanding capital stock having
13 voting rights and by a majority of the insurer's policyholders
14 who vote on such plan in person, by proxy, by mail or e-mail
15 pursuant to such notice and procedure as included in the plan
16 or procedures approved by the commissioner. For purposes of
17 this section a majority vote is one where, based on the number
18 of votes returned, there are more votes for approval of the
19 mutualization than there are for denial;

20 (3) Mutualization will result in retirement of
21 shares of the insurer's capital stock at a reasonable price as
22 specified in the plan;

23 (4) The plan provides for the purchase of the shares
24 of any nonconsenting stockholder in the same manner and
25 subject to the same applicable conditions as provided by the
26 general corporation laws of the state as to rights of

1 nonconsenting stockholders with respect to consolidation or
2 merger of private corporations;

3 (5) The plan provides for definite conditions to be
4 fulfilled by a designated early date upon which such
5 mutualization will be deemed effective; and

6 (6) The mutualization leaves the insurer with
7 surplus funds reasonably adequate for the security of its
8 policyholders and to enable it to continue successfully under
9 an approved plan of operation.

10 §27-31B-27

11 (a) Notwithstanding any other method authorized by
12 law, a foreign or alien captive insurance company may become a
13 domestic captive insurance company by complying with all of
14 the requirements of this chapter relative to the organization
15 and licensing of a domestic captive insurance company of the
16 same type with the approval of the commissioner. A company
17 redomesticating to this state pursuant to this section may be
18 organized under any lawful corporate form permitted by this
19 chapter.

20 (b) A redomestication pursuant to this section shall
21 be authorized for captive insurance companies domiciled in
22 foreign or alien jurisdictions that authorize the
23 redomestication of captive insurance companies where, as a
24 result of the actions taken by the company pursuant to this
25 section to redomesticate to this state, shall no longer be a
26 domestic legal entity of foreign or alien jurisdiction. A
27 company seeking to redomesticate under this section must also

1 provide evidence in a form satisfactory to the commissioner
2 that the applicable regulatory authority of its domicile
3 consents to the redomestication.

4 (c) Upon the completion of a redomestication under
5 this section, the captive insurance company shall be subject
6 to the laws of this state and shall be considered domiciled in
7 this state. The captive insurance company shall be deemed to
8 have a formation date corresponding to its original formation
9 date in the foreign or alien domicile.

10 (d) For the purposes of examination, any examination
11 conducted by the foreign or alien domicile that is
12 substantially similar in scope to an examination that would
13 have been done in this state had the company been domiciled in
14 this state shall be recognized for the purposes of determining
15 an examination period pursuant to Section 27-31B-10(a).

16 (e) This section shall not be the exclusive means of
17 redomesticating an insurance company to this state and shall
18 not restrict the ability of an insurance company to undergo a
19 merger, consolidation, transfer of assets and liabilities, or
20 utilize any other means permitted by law to effect the
21 transfer of operations of a foreign or alien insurance company
22 to this state.

23 §27-31B-28

24 A risk retention group formed pursuant to this
25 chapter shall comply with any provision determined to be
26 applicable to the National Association of Insurance
27 Commissioners' (NAIC) accreditation standards for Risk

1 Retention Groups and any provision of Title 27 determined to
2 be applicable by the commissioner. Applicable provisions
3 shall be adopted by the commissioner pursuant to, and in
4 accordance with, Section 27-2-17.

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

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Senate

Read for the first time and referred to the Senate
committee on Banking and Insurance..... 02-FEB-21

Read for the second time and placed on the calen-
dar with 1 substitute and..... 10-FEB-21

Read for the third time and passed as amended 11-FEB-21

Yeas 23
Nays 0

Patrick Harris,
Secretary.