

1 SB23
2 207507-1
3 By Senator Shelnutt
4 RFD: Banking and Insurance
5 First Read: 02-FEB-21
6 PFD: 12/16/2020

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8 SYNOPSIS: Under existing law, captive insurance
9 companies are licensed and regulated by the Alabama
10 Department of Insurance.

11 This bill would revise certain definitions
12 relating to captive insurance companies, would
13 authorize insurance to be placed on risks in alien
14 jurisdictions under certain conditions, and would
15 revise certain security requirements for the
16 payment of liabilities attributable to branch
17 operations.

18 This bill would also revise certain
19 requirements relating to an Alabama Coastal Captive
20 Insurance Company, would provide for the issuance
21 of certificates of dormancy for captive insurance
22 companies that meet certain requirements, and would
23 require dormant captive insurance companies to take
24 certain action.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

2
3 Relating to captive insurance companies; to amend
4 Sections 27-31B-2, 27-31B-3, 27-31B-6, and 27-31C-3, Code of
5 Alabama 1975, to revise certain definitions; to authorize
6 insurance to be placed on risks in alien jurisdictions under
7 certain conditions; to revise certain security requirements
8 for the payment of liabilities attributable to branch
9 operations; to revise certain requirements relating to an
10 Alabama Coastal Captive Insurance Company; to provide for the
11 issuance of certificates of dormancy for captive insurance
12 companies that meet certain requirements; to require dormant
13 captive insurance companies to take certain action; to add
14 Section 27-31C-3.1 to the Code of Alabama 1975; and to repeal
15 Section 27-31C-4, Code of Alabama 1975, relating to Alabama
16 Coastal Captive Insurance Companies.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 27-31B-2, 27-31B-3, 27-31B-6,
19 and 27-31C-3, Code of Alabama 1975, are amended to read as
20 follows:

21 "§27-31B-2.

22 "As used in this chapter, the following terms shall
23 have the following meanings, unless the context clearly
24 indicates otherwise:

25 "(1) AFFILIATED COMPANY. Any company in the same
26 corporate system as a parent, an industrial insured, or a

1 member organization by virtue of common ownership, control,
2 operation, or management.

3 "(2) ALIEN CAPTIVE INSURANCE COMPANY. Any insurance
4 company formed to write insurance business for its parents and
5 affiliates and licensed pursuant to the laws of an alien
6 jurisdiction which imposes statutory or regulatory standards
7 in a form acceptable to the commissioner on companies
8 transacting the business of insurance in that jurisdiction.

9 "(3) ASSOCIATION. Any legal association of
10 individuals, corporations, limited liability companies,
11 partnerships, associations, or other entities whereby either
12 of the following exists:

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

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

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

21 "3. Have complete voting control over an association
22 captive insurance company formed as a limited liability
23 company.

24 "b. The member organizations of which collectively
25 constitute all of the subscribers of an association captive
26 insurance company formed as a reciprocal insurer.

1 "(4) ASSOCIATION CAPTIVE INSURANCE COMPANY. Any
2 company that insures risks of the member organizations of the
3 association, and that also may insure the risks of affiliated
4 companies of the member organizations and the risks of the
5 association itself and their affiliated companies.

6 "(5) BRANCH BUSINESS. Any insurance business
7 transacted by a branch captive insurance company in this
8 state.

9 "(6) BRANCH CAPTIVE INSURANCE COMPANY. Any alien
10 captive insurance company licensed by the commissioner to
11 transact the business of insurance in this state through a
12 business unit with a principal place of business in this
13 state. A branch captive insurance company is a pure captive
14 insurance company with respect to operations in this state,
15 unless otherwise permitted by the commissioner. A branch
16 captive insurance company may pool insurance business done in
17 this state with business done in alien jurisdictions subject
18 to commissioner approval.

19 "(7) BRANCH OPERATIONS. Any business operations of a
20 branch captive insurance company in this state.

21 "(8) CAPTIVE INSURANCE COMPANY. Any pure captive
22 insurance company, association captive insurance company, risk
23 retention group, protected cell captive insurance company,
24 incorporated cell captive insurance company, or industrial
25 insured captive insurance company formed or licensed under
26 this chapter.

1 "(9) CAPTIVE RISK RETENTION GROUP. A captive
2 insurance company organized and licensed as a captive insurer
3 under the laws of this state and operating pursuant to the
4 Liability Risk Retention Act of 1986, as amended, 15 U.S.C.
5 §3901 et seq., as a stock or mutual corporation, a reciprocal,
6 or other limited liability entity. Risk retention groups
7 formed under this chapter are subject to all the same
8 provisions of this title applicable to a casualty insurer
9 organized and licensed under the laws of this state.

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

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

14 "a. Is not in the corporate system of a parent and
15 affiliated companies in the case of a pure captive insurance
16 company, or is not in the corporate system of an industrial
17 insured and its affiliated companies in the case of an
18 industrial insured captive insurance company.

19 "b. Has an existing contractual relationship with a
20 parent or one of its affiliated companies in the case of a
21 pure captive insurance company or with an industrial insured
22 or one of its affiliated companies in the case of an
23 industrial insured captive insurance company.

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

1 "(12) EXCESS WORKERS' COMPENSATION INSURANCE. In the
2 case of an employer or group of employers that has insured or
3 self-insured its workers' compensation risks in accordance
4 with applicable state or federal law, insurance in excess of a
5 specified per-incident or aggregate limit established by the
6 commissioner.

7 "(13) GENERAL ACCOUNT. All assets and liabilities of
8 a protected cell captive insurance company not attributable to
9 a protected cell.

10 "(14) INCORPORATED CELL. A protected cell of an
11 incorporated cell captive insurance company that is organized
12 as a corporation or other legal entity separate from the
13 incorporated cell captive insurance company.

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

19 "(16) INDUSTRIAL INSURED. As defined in subdivision
20 (2) of Section 27-10-20.

21 "(17) INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY.
22 Any company that insures risks of the industrial insureds that
23 comprise the industrial insured group, and that may insure the
24 risks of the affiliated companies of the industrial insureds
25 and the risks of the controlled unaffiliated business of an
26 industrial insured or its affiliated companies.

1 "(18) INDUSTRIAL INSURED GROUP. Any group that meets
2 either of the following criteria:

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

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

8 "2. Have complete voting control over an industrial
9 insured captive insurance company incorporated as a mutual
10 insurer.

11 "3. Constitute all of the subscribers of an
12 industrial insured captive insurance company formed as a
13 reciprocal insurer.

14 "4. Have complete voting control over an industrial
15 insured captive insurance company formed as a limited
16 liability company.

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

22 "(19) MEMBER ORGANIZATION. Any individual,
23 corporation, limited liability company, partnership,
24 association, or other entity that belongs to an association.

25 "(20) ~~MUNICIPAL~~ MUTUAL CORPORATION. A corporation or
26 other legal entity organized without stockholders. The term
27 includes a nonprofit corporation with members.

1 "(21) MUTUAL INSURER. An incorporated captive
2 insurer without capital stock and the governing body of which
3 is elected from policyholders at the mutual members' annual
4 meeting.

5 "(22) ORGANIZATIONAL DOCUMENTS. The documents that
6 must be submitted pursuant to state law in order to legally
7 form a business in this state, or to obtain a certificate of
8 authority to transact business in the state.

9 "(23) PARENT. An individual, corporation, limited
10 liability company, partnership, association, or other entity
11 that directly or indirectly owns, controls, or holds with
12 power to vote more than 50 percent of the outstanding of any
13 of the following:

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

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

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

20 "(24) PARTICIPANT. An entity as defined in Section
21 27-31B-24, and any affiliates thereof, that are insured by a
22 protected cell captive insurance company, where the losses of
23 the participant are limited through a participant contract.

24 "(25) PARTICIPANT CONTRACT. A contract by which a
25 protected cell captive insurance company insures the risks of
26 a participant and limits the losses of each participant to its

1 pro rata share of the assets of one or more protected cells
2 identified in the participant contract.

3 "(26) PROTECTED CELL. A separate account established
4 by a protected cell captive insurance company formed or
5 licensed under this chapter, in which an identified pool of
6 assets and liabilities is segregated and insulated by means of
7 this chapter from the remainder of the protected cell captive
8 insurance company's assets and liabilities in accordance with
9 the terms of one or more participant contracts to fund the
10 liability of the protected cell captive insurance company,
11 with respect to the participants as set forth in the
12 participant contracts.

13 "(27) PROTECTED CELL ASSETS. All assets, contract
14 rights, and general intangibles identified with and
15 attributable to a specific protected cell of a protected cell
16 captive insurance company.

17 "(28) PROTECTED CELL CAPTIVE INSURANCE COMPANY. Any
18 captive insurance company meeting all of the following:

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

21 "b. The company is formed and licensed under this
22 chapter.

23 "c. The company insures the risks of separate
24 participants through participant contracts.

25 "d. The company funds its liability to each
26 participant through one or more protected cells and segregates
27 the assets of each protected cell from the assets of other

1 protected cells and from the assets of the protected cell
2 captive insurance company's general account.

3 "(29) PROTECTED CELL LIABILITIES. All liabilities
4 and other obligations identified with and attributed to a
5 specific protected cell of a protected cell captive insurance
6 company.

7 "(30) PURE CAPTIVE INSURANCE COMPANY. Any company
8 that insures risks of its parent and affiliated companies or
9 controlled unaffiliated business or businesses.

10 "(31) SPONSOR. Any person or entity that is approved
11 by the commissioner to organize and operate a protected cell
12 captive insurance company.

13 "(32) SURPLUS NOTE. An unsecured subordinated debt
14 obligation deemed to be a surplus certificate under terms
15 acceptable to the commissioner.

16 "§27-31B-3.

17 "(a) Any captive insurance company, when permitted
18 by its articles of association, charter, or other
19 organizational document, may apply to the commissioner for a
20 license to do any and all insurance defined in Sections
21 27-5-2, 27-5-4, and 27-5-5, in subdivisions (1), (2), (4),
22 (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) of
23 subsection (a) of Section 27-5-6, in Sections 27-5-7, 27-5-8,
24 27-5-9, and 27-5-10, and to grant annuity contracts as defined
25 in Section 27-5-3, subject, however, to all of the following:

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

4 "(2) No association captive insurance company may
5 insure any risks other than those of the member organizations
6 of its association, and their affiliated companies.

7 "(3) No industrial insured captive insurance company
8 may insure any risks other than those of the industrial
9 insureds that comprise the industrial insured group, and their
10 affiliated companies.

11 "(4) No risk retention group may insure any risks
12 other than those of its members and owners.

13 "(5) No captive insurance company may provide
14 personal motor vehicle coverage or any component thereof.
15 Homeowner's insurance coverage may be written by an Alabama
16 Coastal Captive Insurance Company as defined in Chapter 31C,
17 but only in the gulf front, beach, and seacoast areas as
18 designated by the Insurance Services Office, Inc.

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

21 "(7) Any captive insurance company may provide
22 excess workers' compensation insurance to its parent and
23 affiliated companies and member organizations unless
24 prohibited by the laws of the state having jurisdiction over
25 the transaction. Any captive insurance company may reinsure
26 workers' compensation of a qualified self-insured plan of its
27 parent and affiliated companies.

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

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

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

13 "(10) No protected cell captive insurance company
14 may insure any risks other than those of its participants.

15 "(b) To conduct insurance business in this state, a
16 captive insurance company shall comply with all of the
17 following:

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

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

24 "(3) It must maintain its principal place of
25 business in this state, or in the case of a branch captive
26 insurance company, maintain ~~the principal~~ a place of business
27 for its branch operations in this state.

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

4 "a. If formed as a corporation or other legal
5 entity, whenever the registered agent cannot with reasonable
6 diligence be found at the registered office of the captive
7 insurance company, the Secretary of State shall be an agent of
8 the captive insurance company upon whom any process, notice,
9 or demand may be served.

10 "b. If formed as a reciprocal insurer, whenever the
11 registered agent cannot with reasonable diligence be found at
12 the registered office of the captive insurance company, the
13 commissioner shall be an agent of the captive insurance
14 company upon whom any process, notice, or demand may be
15 served.

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

18 "a. If formed as a corporation or other legal
19 entity, it shall file with the commissioner a certified copy
20 of its organizational documents and bylaws, a statement under
21 oath of its president and secretary or other authorized
22 official showing its financial condition, and any other
23 statements or documents required by the commissioner.

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

26 "1. File with the commissioner a certified copy of
27 the power of attorney of its attorney-in-fact, a certified

1 copy of its subscribers' agreement, a statement under oath of
2 its attorney-in-fact showing its financial condition, and any
3 other statements or documents required by the commissioner.

4 "2. Submit to the commissioner for approval a
5 description of the coverages, deductibles, coverage limits,
6 and rates, together with any additional information as the
7 commissioner may reasonably require. In the event of any
8 subsequent material change in any item in the description, the
9 reciprocal captive insurance company shall submit to the
10 commissioner for approval an appropriate revision and shall
11 not offer any additional kinds of insurance until a revision
12 of the description is approved by the commissioner. The
13 reciprocal captive insurance company shall inform the
14 commissioner of any material change in rates within 30 days of
15 the adoption of the change.

16 "(2) In addition to the information required by
17 subdivision (1), each applicant captive insurance company
18 shall file with the commissioner evidence of all of the
19 following:

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

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

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

25 "d. The adequacy of the loss prevention programs of
26 its parent, member organizations, industrial insureds, or
27 other insureds as applicable.

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

4 "(3) In addition to the information required by
5 subdivisions (1) and (2), each applicant protected cell
6 captive insurance company shall file with the commissioner all
7 of the following:

8 "a. A business plan demonstrating how the applicant
9 will account for the loss and expense experience of each
10 protected cell at a level of detail found to be sufficient by
11 the commissioner and how it will report the experience to the
12 commissioner.

13 "b. A statement acknowledging that all financial
14 records of the protected cell captive insurance company,
15 including records pertaining to any protected cells, shall be
16 made available for inspection or examination by the
17 commissioner or the commissioner's designated agent.

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

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

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

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

15 "b. The commissioner may disclose the information to
16 a public officer having jurisdiction over the regulation of
17 insurance in another state, provided that (i) the public
18 official shall agree in writing to maintain the
19 confidentiality of the information, and (ii) the laws of the
20 state in which the public official serves require the
21 information to be and to remain confidential.

22 "(d) Each captive insurance company shall pay to the
23 commissioner a nonrefundable fee as set forth in Section
24 27-31B-4 for examining, investigating, and processing its
25 application for license, and the commissioner is authorized to
26 retain legal, financial, and examination services from outside
27 the department, the reasonable cost of which may be charged

1 against the applicant in accordance with Section 27-2-25. In
2 addition, each captive insurance company shall pay a license
3 fee for the year of registration and a renewal fee for each
4 year thereafter as set forth in Section 27-31B-4.

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

10 "(f) (1) Notwithstanding any other provision of this
11 chapter, the commissioner may issue a provisional license to
12 any applicant captive insurance company for a period not to
13 exceed 60 days if the commissioner deems that the public
14 interest will be served by the issuance of the provisional
15 license.

16 "(2) As a condition precedent to the issuance of a
17 provisional license under this subsection, the applicant shall
18 have filed a complete application containing all information
19 required by this section, paid all fees required for
20 licensure, and the commissioner shall have made a preliminary
21 finding that the expertise, experience, and character of the
22 person or persons who will control and manage the captive
23 insurer are acceptable.

24 "(3) The commissioner, by order, may limit the
25 authority of any provisional licensee in any way deemed
26 necessary to protect insureds and the public. The
27 commissioner, by order, may revoke a provisional license if

1 the interests of insureds or the public are endangered. If the
2 applicant fails to complete the regular licensure application
3 process within the 60-day provisional period, the provisional
4 license shall terminate automatically at the end of the 60-day
5 period, and any policy issued during the provisional period
6 shall be cancelled as of the termination date and any premium
7 unearned shall be refunded to the policyholder within 10 days.

8 "§27-31B-6.

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

12 "(1) In the case of a pure captive insurance
13 company, not less than two hundred fifty thousand dollars
14 (\$250,000) or such other amount determined by the commissioner
15 and actuarially supported by a feasibility study.

16 "(2) In the case of an association captive insurance
17 company or risk retention group, not less than five hundred
18 thousand dollars (\$500,000) or such other amount determined by
19 the commissioner and actuarially supported by a feasibility
20 study.

21 "(3) In the case of an industrial insured captive
22 insurance company, not less than five hundred thousand dollars
23 (\$500,000).

24 "(4) In the case of a protected cell captive
25 insurance company, not less than two hundred fifty thousand
26 dollars (\$250,000) or such other amount determined by the
27 commissioner and actuarially supported by a feasibility study.

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

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

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

17 "(e) In the case of a branch captive insurance
18 company, as security for the payment of liabilities
19 attributable to the branch operations, the commissioner ~~shall~~
20 may ~~require that a trust fund, funded by an irrevocable letter~~
21 ~~of credit or other acceptable asset, be established and~~
22 ~~maintained in the United States for the benefit of United~~
23 ~~States policyholders and United States ceding insurers under~~
24 ~~insurance policies issued or reinsurance contracts issued or~~
25 ~~assumed, by the branch captive insurance company through its~~
26 ~~branch operations. The amount of the security may be no less~~
27 ~~than the capital and surplus required hereunder and the~~

1 ~~reserves on these insurance policies or reinsurance contracts,~~
2 ~~including reserves for losses, allocated loss adjustment~~
3 ~~expenses, incurred but not reported losses, and unearned~~
4 ~~premiums with regard to business written through the branch~~
5 ~~operations. Notwithstanding the foregoing, the commissioner~~
6 ~~may permit a branch captive insurance company that is required~~
7 ~~to post security for collateral equal to the amount of net~~
8 ~~loss reserves on branch business by its reinsurer to reduce~~
9 ~~the funds in the trust account required by this section by the~~
10 ~~same amount so long as the security remains posted with the~~
11 ~~reinsurer. If the form of security selected is a letter of~~
12 ~~credit, the letter of credit must be established by, or issued~~
13 ~~or confirmed by, a bank chartered in this state or a member~~
14 ~~bank of the Federal Reserve System plus other insurance~~
15 ~~liabilities as determined by the commissioner to be maintained~~
16 ~~by the branch captive insurance company in a manner acceptable~~
17 ~~to the commissioner.~~

18 "§27-31C-3.

19 "(a) An Alabama Coastal Captive Insurance Company,
20 if permitted by its articles of incorporation or organization,
21 operating agreements, or charter, may apply to the
22 commissioner for a license to write homeowners insurance
23 coverage as limited in Section 27-31B-3(a)(4) and as defined
24 and limited in the standard real property and contents
25 insurance forms as approved by the commissioner.

26 ~~"(b) An Alabama Coastal Captive Insurance Company~~
27 ~~that qualified as an association captive under the provisions~~

1 of Section 27-31B-8 is exempt from the requirement that the
2 association be in existence for one year so long as the
3 association is in good standing as an entity before becoming
4 an owner of an Alabama Coastal Captive Insurance Company.

5 "~~(c)~~ (b) (1) An Alabama Coastal Captive Insurance
6 Company may write homeowners insurance coverage as limited in
7 Section 27-31B-3(a) (4) and as limited to perils described in
8 subsection (a) above.

9 "~~(d)~~ (1) ~~An Alabama Coastal Captive Insurance Company~~
10 ~~formed as a sponsored captive insurance company:~~

11 "a. ~~Is exempt from the provisions of Section~~
12 ~~27-31B-22(b) (9) a. that require that the business written by a~~
13 ~~sponsor captive insurance company, with respect to each~~
14 ~~protected cell, must be fronted by an insurance company~~
15 ~~licensed pursuant to the laws of a state.~~

16 "b. ~~May create a protected cell as a legal person~~
17 ~~separate from the protected cell company and may organize a~~
18 ~~protected cell under any incorporation or organization option~~
19 ~~available under Section 27-31B-8, unless the commissioner~~
20 ~~finds such option is not feasible under Section 27-31C-5.~~

21 "c. ~~May have as its sponsor an association formed to~~
22 ~~address coastal property and insurance issues.~~

23 "(2) An Alabama Coastal Captive Insurance Company
24 may issue directly its own policies to the insureds.

25 "~~(e)~~ (c) Any Alabama Coastal Captive Insurance
26 Company ~~that otherwise qualifies for the limited exemption~~
27 ~~from the provisions of Section 27-31B-22(b) (9) a. pursuant to~~

1 ~~subsection (d) (1) and any Alabama Coastal Captive Insurance~~
2 ~~Company, regardless of form,~~ that issues policies directly to
3 the public shall comply with the following:

4 "(1) It shall not expose itself to loss on one risk
5 in an amount exceeding 10 percent of its surplus to
6 policyholders and any risk or portion of it which has been
7 reinsured must be deducted in determining this limitation of
8 risk;

9 "(2) It shall not have loss reserves in excess of
10 five times its surplus to policyholders;

11 "(3) It shall not have net premiums written in
12 excess of three times its surplus to policyholders and any
13 risk or portion of it which has been reinsured must be
14 deducted in determining this limitation of risk; and

15 "(4) It shall file quarterly and annual statements
16 with the department in accordance with statutory accounting
17 principles on forms and in the manner prescribed by Section
18 27-31B-9.

19 "~~(f)~~ (d) To conduct business in this state, an
20 Alabama Coastal Captive Insurance Company shall:

21 "(1) Obtain from the commissioner a license
22 authorizing it to conduct business as an Alabama Coastal
23 Captive Insurance Company in this state;

24 "(2) Hold at least one meeting of its governing body
25 each year in this state;

26 "(3) Maintain its principal place of business in
27 this state;

1 "(4) Appoint a registered agent to accept service of
2 process and act otherwise on its behalf in this state; and

3 "(5) Name the commissioner as the agent for the
4 Alabama Coastal Captive Insurance Company upon whom process,
5 notice, or demands may be served if a registered agent, with
6 reasonable diligence, is not located and served.

7 "~~(g)~~(e) Before receiving a license, an Alabama
8 Coastal Captive Insurance Company shall file with the
9 commissioner:

10 "(1) A certified copy of its organizational
11 documents;

12 "(2) A statement under oath of its president and
13 secretary or other persons considered appropriate by the
14 commissioner showing its financial condition; and

15 "(3) Other documents required by the commissioner.

16 "~~(h)~~(f) In addition to the information required by
17 subsection ~~(g)~~(e), the applicant Alabama Coastal Captive
18 Insurance Company shall file with the commissioner evidence
19 of:

20 "(1) The amount and liquidity of its assets relative
21 to the risk to be assumed;

22 "(2) The adequacy of the expertise, experience, and
23 character of the person who manages it;

24 "(3) The overall soundness of its plan of operation;

25 "(4) The adequacy of loss prevention programs;

26 "(5) Other overall factors considered relevant by
27 the commissioner in ascertaining if the proposed Alabama

1 Coastal Captive Insurance Company is able to meet its policy
2 obligations;

3 "(6) Any information required by Section 27-31B-8
4 specifically applicable to the form of the Alabama Coastal
5 Captive Insurance Company, and fees prescribed by Section
6 27-31B-4 along with any other required fees.

7 "~~(i)~~ (g) Information submitted pursuant to this
8 section is confidential as provided in Section 27-31B-3,
9 except that information is discoverable by a party in a civil
10 action or contested case to which the Alabama Coastal Captive
11 Insurance Company that submitted the information is a party,
12 upon finding by the court that:

13 "(1) The information may be discoverable by a party
14 in a civil action or contested case to which the captive
15 insurance company that submitted the information is a party;

16 "(2) The information sought is relevant and
17 necessary for the furtherance of the action or case;

18 "(3) The information sought is unavailable from
19 other non-confidential sources; and

20 "(4) A subpoena issued by a judicial or
21 administrative officer of competent jurisdiction has been
22 submitted to the commissioner."

23 Section 2. Section 27-31B-26 is added to the Code of
24 Alabama 1975, to read as follows:

25 §27-31B-26.

26 (a) As used in this section, unless the context
27 requires otherwise, "dormant captive insurance company" means

1 a pure captive insurance company, protected cell captive
2 insurance company, association captive insurance company, or
3 industrial insured captive insurance company that satisfies
4 both of the following:

5 (1) Has ceased transacting the business of
6 insurance, including the issuance of insurance policies.

7 (2) Has no remaining liabilities associated with
8 insurance business transactions or insurance policies issued
9 prior to the filing of its application for a certificate of
10 dormancy under this section.

11 (b) A captive insurance company that meets the
12 criteria of subsection (a) may apply to the commissioner for a
13 certificate of dormancy. The certificate of dormancy shall be
14 subject to renewal every five years and shall be forfeited if
15 not renewed within such time.

16 (c) A dormant captive insurance company that has
17 been issued a certificate of dormancy shall do all of the
18 following:

19 (1) Possess and thereafter maintain unimpaired,
20 paid-in capital and surplus of not less than twenty-five
21 thousand dollars (\$25,000).

22 (2) Prior to March 1 of each year, submit to the
23 commissioner a report of its financial condition, verified by
24 oath of two of its executive officers, in a form as may be
25 prescribed by the commissioner.

26 (3) Pay a license renewal fee as provided in Section
27 27-31B-4.

1 (d) A dormant captive insurance company is not
2 subject to or liable for the payment of any tax under this
3 chapter.

4 (e) A dormant captive insurance company shall apply
5 to the commissioner for approval to surrender its certificate
6 of dormancy and resume conducting the business of insurance
7 prior to issuing any insurance policies.

8 (f) A certificate of dormancy shall be revoked if a
9 dormant captive insurance company no longer meets the criteria
10 of subsection (a).

11 (g) The commissioner may adopt rules and establish
12 guidelines and procedures as necessary to implement and
13 administer this section.

14 Section 3. Section 27-31C-3.1 is added to the Code
15 of Alabama 1975, to read as follows:

16 §27-31C-3.1.

17 The requirements of Sections 27-31B-6 and 27-31B-7
18 shall apply to an Alabama Coastal Captive Insurance Company.

19 Section 4. Section 27-31C-4, Code of Alabama 1975,
20 relating to licensure requirements for Alabama Coastal Captive
21 Insurance Companies, is repealed.

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