

1 SB45
2 155415-2
3 By Senator Blackwell
4 RFD: Banking and Insurance
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8 SYNOPSIS: Under existing law, the risk-based capital
9 law for insurers does not apply to fraternal
10 benefit societies or health organizations.

11 Under existing law, for purposes of the
12 Alabama Producer Controlled Property and Casualty
13 Insurer Law, insurer is defined to exclude risk
14 retention groups.

15 Under existing law, a risk retention group
16 chartered and licensed in this state is subject to
17 certain laws relating to its formation and
18 operation.

19 This bill would make Alabama's law
20 substantially similar to the current versions of
21 the Model Risk-Based Capital for Insurers Act, the
22 Model Business Transacted with Producer Controlled
23 Property and Casualty Insurer Law, and the Model
24 Risk-Based Capital for Health Organizations Act,
25 all developed by the National Association of
26 Insurance Commissioners.

1 This bill would amend the Alabama risk-based
2 capital law so as to include fraternal benefit
3 societies and health organizations, such as health
4 care service plans, health maintenance
5 organizations, and dental service corporations, and
6 would subject fraternal benefit societies to the
7 same risk-based capital requirements applicable to
8 life and health insurers and health organizations
9 to the same risk-based capital requirements
10 applicable to property and casualty insurers.

11 This bill would amend the Alabama Producer
12 Controlled Property and Casualty Insurer Law so as
13 to change the definition of insurer to include risk
14 retention groups.

15 This bill would amend the Alabama Risk
16 Retention Act to require risk retention groups
17 chartered and licensed in this state to file an
18 annual financial statement with the Department of
19 Insurance and with the NAIC in a form prescribed by
20 the NAIC and in an electronic form if required by
21 the commissioner, and would also require risk
22 retention groups chartered and licensed in this
23 state to adopt governance standards relating to the
24 board of directors, service provider contracts,
25 written policy, and audit committee, and to adopt a

1 code of business conduct and ethics for directors,
2 officers, and employees.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to insurance; to revise the Alabama
9 Risk-Based Capital (RBC) for Insurers Act to define insurers
10 to include fraternal benefit societies and health
11 organizations, such as health care service plans, health
12 maintenance organizations, and dental service corporations; to
13 subject health organizations to the same RBC requirements
14 applicable to property and casualty insurers; to revise the
15 Alabama Business Transacted with Producer Controlled Property
16 and Casualty Insurer Law to change the definition of insurer
17 to include risk retention groups; to revise the Alabama Risk
18 Retention Act to require risk retention groups chartered and
19 licensed in this state to file an annual financial statement
20 with the Department of Insurance and with the NAIC in a form
21 prescribed by the NAIC and to require them to adopt governance
22 standards relating to the board of directors, service provider
23 contracts, written policy, and audit committee; to adopt a
24 code of business conduct and ethics for directors, officers,
25 and employees; to amend Sections 27-2B-2; 27-2B-3; 27-2B-4, as
26 amended by Act 2013-194, 2013 Regular Session; 27-2B-7; and

1 27-2B-10, Code of Alabama 1975; to add Section 27-2B-14.1 to
2 the Code of Alabama 1975; to amend Sections 27-6B-2 and
3 27-6B-4, Code of Alabama 1975; to amend Section 27-3A-3, Code
4 of Alabama 1975; to add Section 27-3A-3.1 to the Code of
5 Alabama 1975; and to amend Sections 10A-20-6.16, 22-21-374 and
6 22-21A-23, Code of Alabama 1975.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. The purposes of this act are as follows:

9 (1) To revise the Alabama Risk-Based Capital (RBC)
10 for Insurers Act to be substantially similar to the most
11 recent versions of the Model Risk-Based Capital for Insurers
12 Act and the Model Risk-Based Capital for Health Organizations
13 Act developed by the National Association of Insurance
14 Commissioners.

15 (2) To revise the Alabama Business Transacted with
16 Producer Controlled Property and Casualty Insurer Law to be
17 substantially similar to the most recent version of the Model
18 Business Transacted with Producer Controlled Property and
19 Casualty Insurer Law developed by the National Association of
20 Insurance Commissioners.

21 (3) To revise the Alabama Risk Retention Act to be
22 substantially similar to the most recent version of the Model
23 Risk Retention Act developed by the National Association of
24 Insurance Commissioners.

25 Section 2. Sections 27-2B-2; 27-2B-3; 27-2B-4, as
26 amended by Act 2013-194, 2013 Regular Session; 27-2B-7; and

1 27-2B-10, Code of Alabama 1975, are amended to read as
2 follows:

3 "§27-2B-2.

4 "As used in this chapter, these terms shall have the
5 following meanings:

6 "(1) ADJUSTED RBC REPORT. An RBC report which has
7 been adjusted by the commissioner in accordance with
8 subsection (e) of Section 27-2B-3.

9 "(2) CORRECTIVE ORDER. An order issued by the
10 commissioner specifying corrective actions which the
11 commissioner has determined are required.

12 "(3) DOMESTIC INSURER. Any ~~insurance company~~ insurer
13 domiciled in this state.

14 "(4) FOREIGN INSURER. Any ~~insurance company~~ insurer
15 which is licensed to do business in this state but not
16 domiciled in this state.

17 "(5) FRATERNAL BENEFIT SOCIETY. Any insurer licensed
18 under Chapter 34.

19 "(6) HEALTH ORGANIZATION. Any health care service
20 plan, health maintenance organization, limited health service
21 organization, dental services corporation, or other managed
22 care organization licensed under this title. This term does
23 not include any life and disability insurer or property and
24 casualty insurer.

1 "(7) INSURER. As defined in Section 27-1-2,
2 including, without limitation, any fraternal benefit society
3 and any health organization.

4 "~~(5)~~(8) LIFE OR HEALTH INSURER. Any ~~insurance~~
5 ~~company~~ insurer licensed to do business in this state and
6 authorized to transact life and/or disability insurance,
7 including a property and casualty insurer writing only
8 disability insurance, but shall not include fraternal benefit
9 societies, health care service corporations, dental service
10 organizations, health maintenance organizations, dental plan
11 organizations or mutual aid associations.

12 "~~(6)~~(9) NAIC. The National Association of Insurance
13 Commissioners.

14 "~~(7)~~(10) NEGATIVE TREND. With respect to a life or
15 health insurer or a fraternal benefit society, a negative
16 trend over a period of time, as determined in accordance with
17 the trend test calculation included in the RBC instructions.

18 "~~(8)~~(11) PROPERTY AND CASUALTY INSURER. Any
19 ~~insurance company~~ insurer licensed to do business in this
20 state and authorized to transact property, marine, casualty
21 and/or surety insurance, but shall not include monoline
22 mortgage guaranty insurers, financial guaranty insurers and
23 title insurers.

24 "~~(9)~~(12) RBC. Risk-based capital.

25 "~~(10)~~(13) RBC INSTRUCTIONS. The RBC report including
26 risk-based capital instructions adopted by the NAIC, as the

1 RBC instructions may be amended by the NAIC from time to time
2 in accordance with the procedures adopted by the NAIC.

3 ~~"(11)"~~ (14) RBC LEVEL. An insurer's company action
4 level RBC, regulatory action level RBC, authorized control
5 level RBC, or mandatory control level RBC where:

6 "a. "Company action level RBC" means, with respect
7 to any insurer, the product of 2.0 and its authorized control
8 level RBC.

9 "b. "Regulatory action level RBC" means the product
10 of 1.5 and its authorized control level RBC.

11 "c. "Authorized control level RBC" means the number
12 determined under the risk-based capital formula in accordance
13 with the RBC instructions.

14 "d. "Mandatory control level RBI" means the product
15 of .70 and the authorized control level RBC.

16 ~~"(12)"~~ (15) RBC PLAN. A comprehensive financial plan
17 containing the elements specified in subsection (b) of Section
18 27-2B-4. If the commissioner rejects the RBC plan, and it is
19 revised by the insurer, with or without the commissioner's
20 recommendation, the plan shall be called the revised RBC plan.

21 ~~"(13)"~~ (16) RBC REPORT. The report required in Section
22 27-2B-3.

23 ~~"(14)"~~ (17) STATUTORY CAPITAL AND SURPLUS. The
24 combination of capital and surplus. As used in this
25 definition, these terms shall have the following meanings:

1 "a. Capital. At any particular time, the sum of (i)
2 the par value of all shares of the insurer having a par value
3 that have been issued, (ii) the amount of consideration
4 received by the insurer for all shares of the insurer without
5 par value that have been issued, except any part of the
6 consideration therefor as may have been allocated to surplus
7 in a manner permitted by law, and (iii) any amounts not
8 included in clauses (i) and (ii) of this subdivision as have
9 been transferred to capital of the insurer, whether upon the
10 issue of shares as a share dividend or otherwise, minus all
11 reductions from the sum as have been affected in a manner
12 permitted by law.

13 "b. Surplus. The excess of the net admitted assets
14 of an insurer over its capital. As used in this definition,
15 "net admitted assets" means the excess of admitted assets of
16 an insurer over its liabilities.

17 "~~(15)~~ (18) TOTAL ADJUSTED CAPITAL. The sum of:

18 "a. An insurer's statutory capital and surplus.

19 "b. Other items, if any, as the RBC instructions may
20 provide.

21 "§27-2B-3.

22 "(a) Every domestic insurer shall, on or prior to
23 each March 1 (the "filing date"), prepare and submit to the
24 commissioner a report of its RBC levels as of the end of the
25 calendar year just ended, in a form and containing information

1 as is required by the RBC instructions. In addition, every
2 domestic insurer shall file its RBC report with:

3 "(1) The NAIC according to the RBC instructions.

4 "(2) The insurance commissioner in any state in
5 which the insurer is authorized to do business, if the
6 insurance commissioner has notified the insurer of its request
7 in writing, in which case the insurer shall file its RBC
8 report not later than the later of either of the following:

9 "a. Fifteen days from the receipt of notice to file
10 its RBC report with that state.

11 "b. The filing date.

12 "(b) A life and health insurer's and a fraternal
13 benefit society's RBC shall be determined in accordance with
14 the formula set forth in the RBC instructions. The formula
15 shall take into account, and may adjust for the covariance
16 between, the following factors determined in each case by
17 applying the factors in the manner set forth in the RBC
18 instructions:

19 "(1) The risk with respect to the insurer's assets.

20 "(2) The risk of adverse insurance experience with
21 respect to the insurer's liabilities and obligations.

22 "(3) The interest rate risk with respect to the
23 insurer's business.

24 "(4) All other business risks and other relevant
25 risks as are set forth in the RBC instructions. Subdivisions
26 (1) to (4), inclusive, shall be determined in each case by

1 applying the factors in the manner set forth in the RBC
2 instructions.

3 "(c) A property and casualty insurer's and a health
4 organization's RBC shall be determined in accordance with the
5 formula set forth in the RBC instructions. The formula shall
6 take into account, and may adjust for the covariance between,
7 the following factors determined in each case by applying the
8 factors in the manner set forth in the RBC instructions:

9 "(1) Asset risk.

10 "(2) Credit risk.

11 "(3) Underwriting risk.

12 "(4) All other business risks and other relevant
13 risks as are set forth in the RBC instructions. Subdivisions
14 (1) to (4), inclusive, shall be determined by applying the
15 factors in the manner set forth in the RBC instructions.

16 "(d) An excess of capital over the amount produced
17 by the risk-based capital requirements contained in this
18 chapter and the formulas, schedules, and instructions
19 referenced in this chapter is desirable in the business of
20 insurance. Accordingly, insurers should seek to maintain
21 capital above the RBC levels required by this chapter.
22 Additional capital is used and useful in the insurance
23 business and helps to secure an insurer against various risks
24 inherent in or affecting the business of insurance and not
25 accounted for or only partially measured by the risk-based
26 capital requirements contained in this chapter.

1 "(e) If a domestic insurer files an RBC report which
2 in the judgment of the commissioner is inaccurate, then the
3 commissioner shall adjust the RBC report to correct the
4 inaccuracy and shall notify the insurer of the adjustment. The
5 notice shall contain a statement of the reason for the
6 adjustment. An RBC report as so adjusted is referred to as an
7 "adjusted RBC report."

8 "§27-2B-4.

9 "(a) Company action level event means any of the
10 following events:

11 "(1) The filing of an RBC report by an insurer which
12 indicates any of the following:

13 "a. The insurer's total adjusted capital is greater
14 than or equal to its regulatory action level RBC, but less
15 than its company action level RBC.

16 "b. If a life or health insurer or fraternal benefit
17 society, the insurer has total adjusted capital which is
18 greater than or equal to its company action level RBC but less
19 than the product of its authorized control level RBC and 3.0
20 and has a negative trend.

21 "c. If a property and casualty insurer or a health
22 organization, the insurer has total adjusted capital which is
23 greater than or equal to its company action level RBC, but
24 less than the product of its authorized control level RBC and
25 3.0, and triggers the trend test determined in accordance with

1 the trend test calculation included in the property and
2 casualty or health organization RBC instructions.

3 "(2) The notification by the commissioner to the
4 insurer of an adjusted RBC report that indicates an event in
5 subdivision (1) of this subsection, provided the insurer does
6 not challenge the adjusted RBC report under Section 27-2B-8.

7 "(3) If, pursuant to Section 27-2B-8, an insurer
8 challenges an adjusted RBC report that indicates the event in
9 subdivision (1) of this subsection, the notification by the
10 commissioner to the insurer that the commissioner has, after a
11 hearing, rejected the insurer's challenge.

12 "(b) In the event of a company action level event,
13 the insurer shall prepare and submit to the commissioner an
14 RBC plan which shall include all of the following:

15 "(1) Identify the conditions which contribute to the
16 company action level event.

17 "(2) Contain proposals of corrective actions which
18 the insurer intends to take and would be expected to result in
19 the elimination of the company action level event.

20 "(3) Provide projections of the insurer's financial
21 results in the current year and at least the four succeeding
22 years, both in the absence of proposed corrective actions and
23 giving effect to the proposed corrective actions, including
24 projections of statutory operating income, net income,
25 capital, or surplus. The projections for both new and renewal
26 business may include separate projections for each major line

1 of business and separately identify each significant income,
2 expense, and benefit component.

3 "(4) Identify the key assumptions impacting the
4 insurer's projections and the sensitivity of the projections
5 to the assumptions.

6 "(5) Identify the quality of, and problems
7 associated with, the insurer's business, including, but not
8 limited to, its assets, anticipated business growth and
9 associated surplus strain, extraordinary exposure to risk, mix
10 of business, and use of reinsurance, if any, in each case.

11 "(c) The RBC plan shall be submitted as follows:

12 "(1) Within 45 days of the company action level
13 event.

14 "(2) If the insurer challenges an adjusted RBC
15 report pursuant to Section 27-2B-8, within 45 days after
16 notification to the insurer that the commissioner has, after a
17 hearing, rejected the insurer's challenge.

18 "(d) Within 60 days after the submission by an
19 insurer of an RBC plan to the commissioner, the commissioner
20 shall notify the insurer whether the RBC plan shall be
21 implemented or is, in the judgment of the commissioner,
22 unsatisfactory. If the commissioner determines the RBC plan is
23 unsatisfactory, the notification to the insurer shall set
24 forth the reasons for the determination, and may set forth
25 proposed revisions which will render the RBC plan
26 satisfactory, in the judgment of the commissioner. Upon

1 notification from the commissioner, the insurer shall prepare
2 a revised RBC plan, which may incorporate by reference any
3 revisions proposed by the commissioner, and shall submit the
4 revised RBC plan to the commissioner as follows:

5 "(1) Within 45 days after the notification from the
6 commissioner.

7 "(2) If the insurer challenges the notification from
8 the commissioner under Section 27-2B-8, within 45 days after a
9 notification to the insurer that the commissioner has, after a
10 hearing, rejected the insurer's challenge.

11 "(E.) In the event of a notification by the
12 commissioner to an insurer that the insurer's RBC plan or
13 revised RBC plan is unsatisfactory, the commissioner may, at
14 the commissioner's discretion, subject to the insurer's right
15 to a hearing under Section 27-2B-8, specify in the
16 notification that the notification constitutes a regulatory
17 action level event.

18 "(f) Every domestic insurer that files an RBC plan
19 or revised RBC plan with the commissioner shall file a copy of
20 the RBC plan or revised RBC plan with the insurance
21 commissioner in any state in which the insurer is authorized
22 to do business if:

23 "(1) The state has an RBC provision substantially
24 similar to subsection (a) of Section 27-2B-9.

25 "(2) The insurance commissioner of that state has
26 notified the insurer of its request for the filing in writing,

1 in which case the insurer shall file a copy of the RBC plan or
2 revised RBC plan in that state no later than the later of
3 either of the following:

4 "a. Fifteen days after the receipt of notice to file
5 a copy of its RBC plan or revised RBC plan with the state.

6 "b. The date on which the RBC plan or revised RBC
7 plan is filed under subsections (c) and (d) of this section.

8 "§27-2B-7.

9 "(a) "Mandatory control level event" means any of
10 the following events:

11 "(1) The filing of an RBC report which indicates
12 that the insurer's total adjusted capital is less than its
13 mandatory control level RBC.

14 "(2) Notification by the commissioner to the insurer
15 of an adjusted RBC report that indicates the event in
16 subdivision (1), provided the insurer does not challenge the
17 adjusted RBC report under Section 27-2B-8.

18 "(3) If, pursuant to Section 27-2B-8, the insurer
19 challenges an adjusted RBC report that indicates the event in
20 subdivision (1), notification by the commissioner to the
21 insurer that the commissioner has, after a hearing, rejected
22 the insurer's challenge.

23 "(b) In the event of a mandatory control level
24 event:

25 "(1) With respect to a life insurer, health
26 organization, or fraternal benefit society, the commissioner

1 shall take actions as necessary to place the insurer under
2 regulatory control pursuant to Chapter 32. In that event, the
3 mandatory control level event shall be deemed sufficient
4 grounds for the commissioner to take action pursuant to
5 Chapter 32, and the commissioner shall have the rights,
6 powers, and duties with respect to the insurer as are set
7 forth in Chapter 32. Notwithstanding any of the foregoing, the
8 commissioner may forego action for up to 90 days after the
9 mandatory control level event if the commissioner finds there
10 is a reasonable expectation that the mandatory control level
11 event may be eliminated within the 90-day period.

12 "(2) With respect to a property and casualty
13 insurer, the commissioner shall take actions as necessary to
14 place the insurer under regulatory control pursuant to Chapter
15 32. In the case of an insurer which is writing no business and
16 which is running-off its existing business, the commissioner
17 may allow the insurer to continue its run-off under his or her
18 supervision. In either event, the mandatory control level
19 event shall be deemed sufficient grounds for the commissioner
20 to take action, pursuant to Chapter 32, and the commissioner
21 shall have the rights, powers, and duties with respect to the
22 insurer as are set forth in Chapter 32. Notwithstanding any of
23 the foregoing, the commissioner may forego action for up to 90
24 days after the mandatory control level event if the
25 commissioner finds there is a reasonable expectation that the

1 mandatory control level event may be eliminated within the
2 90-day period.

3 "§27-2B-10.

4 "(a) The provisions of this chapter are supplemental
5 to any other provisions of the laws of this state, and shall
6 not preclude or limit any other powers or duties of the
7 commissioner under other laws, including, but not limited to,
8 Chapter 32, and Section 27-2-33.

9 "(b) The commissioner may adopt reasonable rules
10 necessary for the implementation of this chapter.

11 "(c) The commissioner may exempt from the
12 application of this chapter any domestic property and casualty
13 insurer that meets all of the following criteria:

14 "(1) Writes direct business only in this state.

15 "(2) Writes direct annual premiums of two million
16 dollars (\$2,000,000) or less.

17 "(3) Assumes no reinsurance in excess of five
18 percent of direct premium written.

19 "(d) The commissioner may exempt from the
20 application of this chapter any health organization that meets
21 all of the following criteria:

22 "(1) Writes direct business only in this state.

23 "(2) Assumes no reinsurance in excess of five
24 percent of direct premium written.

25 "(3) Meets either of the following criteria:

1 "a. Writes direct annual premiums for comprehensive
2 medical business of one million dollars (\$1,000,000) or less.

3 "b. Is a limited health services organization that
4 covers less than 1,000 lives."

5 Section 3. Section 27-2B-14.1 is added to the Code
6 of Alabama 1975, to read as follows:

7 §27-2B-14.1.

8 For RBC reports required to be filed by health
9 organizations and fraternal benefit societies with respect to
10 2015, the following requirements shall apply in lieu of the
11 provisions of Sections 27-2B-4, 27-2B-5, 27-2B-6, and 27-2B-7:

12 (1) In the event of a company action level event
13 with respect to a domestic insurer, the commissioner shall
14 take no regulatory action hereunder.

15 (2) In the event of a regulatory action level event
16 under subdivisions (1), (2), or (3) of subsection (a) of
17 Section 27-2B-5, the commissioner shall take the actions
18 required under Section 27-2B-4.

19 (3) In the event of a regulatory action level event
20 under subdivisions (4), (5), (6), (7), (8), or (9) of
21 subsection (a) of Section 27-2B-5, or an authorized control
22 level event, the commissioner shall take the actions required
23 under Section 27-2B-5 with respect to the organization or
24 society.

1 (4) In the event of a mandatory control level event
2 with respect to an insurer, the commissioner shall take the
3 actions required under Section 27-2B-6.

4 Section 4. Sections 27-6B-2 and 27-6B-4 of the Code
5 of Alabama 1975, are amended to read as follows:

6 "§27-6B-2.

7 "As used in this chapter, the following terms shall
8 have the following meanings, respectively, unless the context
9 clearly indicates otherwise:

10 "(1) ACCREDITED STATE. A state in which the
11 Department of Insurance meets the minimum financial
12 qualifications and regulatory standards promulgated and
13 established, from time to time, by the National Association of
14 Insurance Commissioners.

15 "(2) COMMISSIONER. The Commissioner of Insurance.

16 "(3) CONTROL or CONTROLLED. The same as defined in
17 ~~subsection (3) of~~ Section 27-29-1.

18 "(4) CONTROLLED INSURER. A licensed insurer who is
19 controlled, directly or indirectly, by a producer.

20 "(5) CONTROLLING PRODUCER. A producer who, directly
21 or indirectly, controls an insurer.

22 "(6) LICENSED INSURER or INSURER. Any person, firm,
23 association, or corporation duly licensed to transact a
24 property and casualty insurance business in this state. For
25 the purposes of this chapter, the following are not licensed
26 insurers:

1 ~~"a. A risk retention group as defined in the~~
2 ~~Superfund Amendments Reauthorization Act of 1986, Pub. L. No.~~
3 ~~99-499, 100 Stat. 1613 (1986) and the Risk Retention Act~~
4 ~~(commencing with Section 3901 of Title 15, U.S.C., 1982 and~~
5 ~~1986 of Supp. to Title 15, U.S.C.).~~

6 **"b.a.** A residual market pool and a joint
7 underwriting authority or association.

8 **"c.b.** A captive insurer other than risk retention
9 groups as defined in 15 U.S.C. Section 3901 et seq. and 42
10 U.S.C. Section 9671, which, for the purposes of this chapter,
11 ~~is an insurance company~~ are insurers owned by another
12 organization whose exclusive purpose is to insure risks of the
13 parent organization and ~~any affiliated company~~ companies or,
14 in the case of ~~any group~~ groups and ~~association~~ associations,
15 ~~an insurance organization~~ organizations owned by the ~~insured~~
16 insureds whose ~~only~~ exclusive purpose is to insure risks to
17 ~~any member organization,~~ member organizations and group member
18 ~~or affiliate of the member~~ members and their affiliates.

19 (7) PRODUCER. An insurance broker or brokers or any
20 other person, firm, association, or corporation, when, for any
21 compensation, commission, or other thing of value, the person,
22 firm, association, or corporation acts or aids in any manner
23 in soliciting, negotiating, or procuring the making of any
24 insurance contract on behalf of another insured person, firm,
25 association, or corporation. The term is not intended to
26 include an exclusive agent or any independent agent acting on

1 behalf of the controlled insurer and any subagent or
2 representative of the agent, who acts in the solicitation of,
3 negotiation for, or procurement or making of an insurance
4 contract, if the agent is not also acting in the capacity of
5 an insurance broker in the transaction in question.

6 "§27-6B-4.

7 "(a) Unless there is a written contract between the
8 controlling producer and the insurer approved by the board of
9 directors of the insurer and specifying the responsibilities
10 of each party, a controlled insurer shall not accept business
11 from a controlling producer and a controlling producer shall
12 not place business with a controlled insurer. The contract
13 between a controlling producer and a controlled insurer shall,
14 as a minimum, contain all of the following:

15 "(1) A provision that, upon written notice to the
16 controlling producer, the controlled insurer may terminate the
17 contract for cause. The controlled insurer shall suspend the
18 authority of the controlling producer to write business during
19 any pending dispute regarding the cause for the termination.

20 "(2) A provision requiring the controlling producer
21 to give a detailed accounting to the controlled insurer on any
22 material transaction, including information necessary to
23 support all commissions, charges, and other fees received by,
24 or owing to, the controlling producer.

25 "(3) A provision requiring the controlling producer
26 to send all funds due, under the terms of the contract, to the

1 controlled insurer on at least a monthly basis. The contract
2 shall require the due date to be fixed so that premiums or any
3 installment collected are remitted no later than ninety days
4 after the effective date of any policy placed with the
5 controlled insurer under the contract.

6 "(4) A provision requiring all funds collected for
7 the account of the controlled insurer to be held by the
8 controlling producer in a fiduciary capacity, in one or more
9 appropriately identified bank accounts in a bank that is a
10 member of the Federal Reserve System, in accordance with any
11 applicable insurance law. Funds of a controlling producer, not
12 required to be licensed in this state, shall be maintained in
13 compliance with the requirements of the domiciliary
14 jurisdiction of the controlling producer.

15 "(5) A provision requiring the controlling producer
16 to maintain separate identifiable records of business written
17 for the controlled insurer.

18 "(6) A provision prohibiting the controlling
19 producer from assigning the contract in whole or in part.

20 "(7) A provision that the rates and terms of the
21 commissions, charges, and other fees of the controlling
22 producer shall be no greater than those applicable to
23 comparable business placed with the controlled insurer by
24 producers other than controlling producers. For purposes of
25 this ~~subsection~~ subdivision and ~~subsection (d)~~ subdivision 11,
26 examples of "comparable business" includes the same lines of

1 insurance, the same kinds of insurance, the same kinds of
2 risks, similar policy limits, and similar quality of business.

3 "(8) A provision that if the contract provides that
4 the controlling producer, on insurance business placed with
5 the insurer, is to be compensated contingent upon the
6 insurer's profits on that business, the compensation shall not
7 be determined and paid until at least five years after the
8 premiums on liability insurance are earned and at least one
9 year after the premiums are earned on any other insurance. In
10 no event may the commissions be paid until the adequacy of the
11 controlled insurer's reserves on remaining claims has been
12 independently verified pursuant to ~~the reporting requirements~~
13 of subsection ~~(f)~~ (e).

14 "(9) A provision specifying a limit on the
15 controlling producer's writings in relation to the controlled
16 insurer's surplus and total writing and that the insurer may
17 establish a different limit for each line or sub-line of
18 business written by the controlling producer. The controlled
19 insurer shall notify the controlling producer when the limit
20 is approached and shall not accept business from the
21 controlling producer if the applicable limit is reached. The
22 controlling producer shall not place business with the
23 controlled insurer if it has been notified by the controlled
24 insurer that the limit has been reached.

25 "(10) A provision that the controlling producer may
26 negotiate but ~~may~~ shall not bind reinsurance on behalf of the

1 controlled insurer on business the controlling producer places
2 with the controlled insurer, except that the controlling
3 producer may bind facultative reinsurance contracts pursuant
4 to obligatory facultative agreements if the contract with the
5 controlled insurer contains underwriting guidelines including,
6 for both reinsurance assumed and ceded, a list of reinsurers
7 with which the automatic agreements are in effect, the
8 coverages, and amounts, or percentages that may be reinsured,
9 and commission schedules.

10 "(11) The controlled insurer shall provide the
11 controlling producer with its underwriting standards, rules,
12 and procedures, and manuals setting forth the rates to be
13 charged, and the conditions for the acceptance or rejection of
14 risks. The controlling producer shall adhere to the standards,
15 rules, procedures, rates, and conditions. The standards,
16 rules, procedures, rates, and conditions shall be the same as
17 those applicable to comparable business placed with the
18 controlled insurer by a producer other than the controlling
19 producer.

20 "(b) This section shall apply if, in any calendar
21 year, the aggregate amount of gross written premium on
22 business placed with a controlled insurer by a controlling
23 producer is equal to or greater than five percent of the
24 admitted assets of the controlled insurer, as reported by the
25 controlled insurer in the quarterly statement filed as of
26 September 30 of the year immediately preceding.

1 "(c) This section shall not apply if:

2 "(1) The controlling producer:

3 "a. Places insurance only with the controlled
4 insurer, or only with the controlled insurer and one or more
5 members of the holding company system of the controlled
6 insurer, or only with the parent, affiliate, or subsidiary of
7 the controlled insurer and receives no compensation based upon
8 the amount of premium written in connection with the
9 insurance, and

10 "b. Accepts insurance placements only from
11 non-affiliated subproducers and not directly from insureds,
12 and

13 "(2) The controlled insurer, except for insurance
14 business written through a residual market facility such as
15 the Automobile Assigned Risk Plan, accepts insurance business
16 only from a controlling producer, a producer controlled by the
17 controlled insurer, or a producer that is a subsidiary of the
18 controlled insurer.

19 "~~(e) Each~~ (d) Every controlled insurer shall have an
20 audit committee of the board of directors composed of
21 independent directors. The audit committee shall annually meet
22 with management, the insurer's independent certified public
23 accountants, and an independent casualty actuary⁷ or other
24 independent loss reserve specialist acceptable to the
25 commissioner to review the adequacy of the insurer's loss
26 reserves.

1 "~~(f)~~(e) The controlled insurer shall report the
2 following:

3 "(1) In addition to any other required loss reserve
4 certification, the controlled insurer shall annually, on April
5 1 of each year, file with the commissioner an opinion of an
6 independent casualty actuary (or other independent loss
7 reserve specialist acceptable to the commissioner) reporting
8 loss ratios for each line of business written and attesting to
9 the adequacy of loss reserves established for losses incurred
10 and outstanding as of year-end (including incurred but not
11 reported) on business placed by the producer.

12 "(2) At least annually, the controlled insurer shall
13 report to the commissioner, the amount of the commissions to
14 be paid to the producer, the percentage the amount represents
15 of the net premiums written, and comparable amounts and
16 percentage paid to noncontrolling producers for placements of
17 the same kinds of insurance."

18 Section 5. Section 27-31A-3 of the Code of Alabama
19 1975, is amended to read as follows:

20 "§27-31A-3.

21 "(a) (1) A risk retention group shall, pursuant to
22 Title 27, be chartered and licensed to write only liability
23 insurance pursuant to this chapter and, except as provided
24 elsewhere in this chapter, shall comply with all of the laws,
25 rules, regulations, and requirements applicable to the
26 insurers chartered and licensed in this state and with Section

1 27-31A-4, to the extent the requirements are not a limitation
2 on laws, rules, regulations, or requirements of this state.

3 "(2) Notwithstanding any other provision to the
4 contrary, all risk retention groups chartered in this state
5 shall file with the department and the National Association of
6 Insurance Commissioners (NAIC) an annual statement in a form
7 prescribed by the NAIC and, if required by the commissioner,
8 in electronic format. The statement shall be completed in
9 accordance with its instructions and the NAIC Accounting
10 Practices and Procedures Manual.

11 "(b) Before it may offer insurance in any state,
12 each risk retention group shall also submit for approval to
13 the Commissioner of Insurance a plan of operation or
14 feasibility study. The risk retention group shall submit an
15 appropriate revision in the event of any subsequent material
16 change in any item of the plan of operation or feasibility
17 study within 10 days of the change. The group shall not offer
18 any additional kinds of liability insurance, in this state or
19 in any other state, until a revision of the plan or study is
20 approved by the commissioner.

21 "(c) At the time of filing its application for
22 charter, the risk retention group shall provide to the
23 commissioner in summary form the following information: the
24 identity of the initial members of the group, the identity of
25 those individuals who organized the group or who will provide
26 administrative services, or otherwise influence or control the

1 activities of the group, the amount and nature of initial
2 capitalization, the coverages to be afforded, and the states
3 in which the group intends to operate. Upon receipt of this
4 information, the commissioner shall forward the information to
5 the National Association of Insurance Commissioners.
6 Notification to the National Association of Insurance
7 Commissioners is in addition to and shall not be sufficient to
8 satisfy the requirements of Section 27-31A-4 or any other
9 sections of this chapter."

10 Section 6. Section 27-31A-3.1 is added to the Code
11 of Alabama 1975, to read as follows:

12 §27-31A-3.1.

13 (a) Within a year of the effective date of this act,
14 existing risk retention groups shall be in compliance with the
15 governance standards set forth in this section. New risk
16 retention groups shall be in compliance with these standards
17 at the time of licensure.

18 (b) The board of directors or board, as used in this
19 section, means the governing body of the risk retention group
20 elected by the shareholders or members to establish policy,
21 elect or appoint officers and committees, and make other
22 governing decisions. Director, as used in this section, means
23 a natural person designated in the articles of the risk
24 retention group, or designated, elected, or appointed by any
25 other manner, name, or title to act as a member of the board
26 of directors.

1 (c) (1) The board of directors of the risk retention
2 group shall have a majority of independent directors. If the
3 risk retention group is a reciprocal, then the
4 attorney-in-fact would be required to adhere to the same
5 standards regarding independence of operation and governance
6 as imposed on the risk retention group's board of
7 directors/subscribers advisory committee under these
8 standards; and, to the extent permissible under state law,
9 service providers of a reciprocal risk retention group should
10 contract with the risk retention group and not the
11 attorney-in-fact.

12 (2) No director qualifies as independent unless the
13 board of directors affirmatively determines that the director
14 has no material relationship with the risk retention group.
15 Each risk retention group shall disclose these determinations
16 to its domestic regulator, at least annually. For this
17 purpose, any person that is a direct or indirect owner of or
18 subscriber in the risk retention group (or is an officer,
19 director, and/or employee of such an owner and insured, unless
20 some other position of such officer, director, and/or employee
21 constitutes a material relationship), as contemplated by
22 Section 3901(a) (4) (E) (ii) of the Liability Risk Retention Act,
23 is considered to be independent.

24 (d) Material relationship of a person with the risk
25 retention group includes, but is not limited to, the
26 following:

1 (1) The receipt in any one 12-month period of
2 compensation or payment of any other item of value by such
3 person, a member of such person's immediate family, or any
4 business with which such person is affiliated from the risk
5 retention group or a consultant or service provider to the
6 risk retention group is greater than or equal to five percent
7 of the risk retention group's gross written premium for such
8 12-month period or two percent of its surplus, whichever is
9 greater, as measured at the end of any fiscal quarter falling
10 in such a 12-month period. Such person or immediate family
11 member of such person is not independent until one year after
12 his or her compensation from the risk retention group falls
13 below the threshold.

14 (2) A relationship with an auditor as follows: A
15 director or an immediate family member of a director who is
16 affiliated with or employed in a professional capacity by a
17 present or former internal or external auditor of the risk
18 retention group is not independent until one year after the
19 end of the affiliation, employment, or auditing relationship.

20 (3) A relationship with a related entity as follows:
21 A director or immediate family member of a director who is
22 employed as an executive officer of another company where any
23 of the risk retention group's present executives serve on that
24 other company's board of directors is not independent until
25 one year after the end of such service or the employment
26 relationship.

1 (e) (1) The term of any material service provider
2 contract with the risk retention group shall not exceed five
3 years. Any such contract, or its renewal, shall require the
4 approval of the majority of the risk retention group's
5 independent directors. The risk retention group's board of
6 directors shall have the right to terminate any service
7 provider, audit, or actuarial contracts at any time for cause
8 after providing adequate notice as defined in the contract.
9 The service provider contract is deemed material if the amount
10 to be paid for such contract is greater than or equal to five
11 percent of the risk retention group's annual gross written
12 premium or two percent of its surplus, whichever is greater.

13 (2) For purposes of this standard, service providers
14 shall include captive managers, auditors, accountants,
15 actuaries, investment advisors, lawyers, managing general
16 underwriters, or other party responsible for underwriting,
17 determination of rates, collection of premium, adjusting and
18 settling claims, and/or the preparation of financial
19 statements. Any reference to lawyers in the prior sentences
20 does not include defense counsel retained by the risk
21 retention group to defend claims, unless the amount of fees
22 paid to such lawyers are material as referenced in subsection
23 (d).

24 (3) No service provider contract meeting the
25 definition of material relationship contained in subsection
26 (d) shall be entered into unless the risk retention group has

1 notified the commissioner in writing of its intention to enter
2 into such transaction at least 30 days prior thereto and the
3 commissioner has not disapproved it within such period.

4 (f) The risk retention group's board of directors
5 shall adopt a written policy in the plan of operation as
6 approved by the board that requires the board to do all of the
7 following:

8 (1) Assure that all owner/insureds of the risk
9 retention group receive evidence of ownership interest.

10 (2) Develop a set of governance standards applicable
11 to the risk retention group.

12 (3) Oversee the evaluation of the risk retention
13 group's management including, but not limited to, the
14 performance of the captive manager, managing general
15 underwriter, or other party or parties responsible for
16 underwriting, determination of rates, collection of premium,
17 adjusting or settling claims, or the preparation of financial
18 statements.

19 (4) Review and approve the amount to be paid for all
20 material service providers.

21 (5) Review and approve, at least annually, all of
22 the following:

23 a. Risk retention group's goals and objectives
24 relevant to the compensation of officers and service
25 providers.

1 b. The officers' and service providers' performance
2 in light of those goals and objectives.

3 c. The continued engagement of the officers and
4 material service providers.

5 (g) The risk retention group shall have an audit
6 committee composed of at least three independent board members
7 as defined in Section 27-31A-2. A non-independent board
8 member may participate in the activities of the audit
9 committee, if invited by the members, but cannot be a member
10 of the committee.

11 (h) The audit committee shall have a written charter
12 that defines the committee's purpose, which, at a minimum,
13 must be to do all of the following:

14 (1) Assist in board oversight of the integrity of
15 the financial statements, the compliance with legal and
16 regulatory requirements, and the qualifications, independence,
17 and performance of the independent auditor and actuary.

18 (2) Discuss the annual audited financial statements
19 and quarterly financial statements with management.

20 (3) Discuss the annual audited financial statements
21 with its independent auditor and, if advisable, discuss the
22 quarterly financial statements with its independent auditor.

23 (4) Discuss policies with respect to risk assessment
24 and risk management.

1 (5) Meet separately and periodically, either
2 directly or through a designated representative of the
3 committee, with management and independent auditors.

4 (6) Review with the independent auditor any audit
5 problems or difficulties and management's response.

6 (7) Set clear hiring policies of the risk retention
7 group as to the hiring of employees or former employees of the
8 independent auditor.

9 (8) Require the external auditor to rotate the lead
10 or coordinating audit partner having primary responsibility
11 for the risk retention group's audit as well as the audit
12 partner responsible for reviewing that audit so that neither
13 individual performs audit services for more than five
14 consecutive fiscal years.

15 (9) Report regularly to the board of directors.

16 (i) The domestic regulator may waive the requirement
17 to establish an audit committee composed of independent board
18 members if the risk retention group is able to demonstrate to
19 the domestic regulator that it is impracticable to do so and
20 the risk retention group's board of directors itself is
21 otherwise able to accomplish the purposes of an audit
22 committee, as described in subsection (h).

23 (j) The board of directors shall adopt and disclose
24 governance standards, where disclose means making such
25 information available through electronic (e.g., posting such
26 information on the risk retention group's website) or other

1 means, and providing such information to members/insureds upon
2 request, which shall include all of the following:

3 (1) A process by which the directors are elected by
4 the owner/insureds.

5 (2) Director qualification standards.

6 (3) Director responsibilities.

7 (4) Director access to management and, as necessary
8 and appropriate, independent advisors.

9 (5) Director compensation.

10 (6) Director orientation and continuing education.

11 (7) The policies and procedures that are followed
12 for management succession.

13 (8) The policies and procedures that are followed
14 for annual performance evaluation of the board.

15 (k) The board of directors shall adopt and disclose
16 a code of business conduct and ethics for directors, officers,
17 and employees and promptly disclose to the board of directors
18 any waivers of the code for directors or executive officers,
19 which should include all of the following topics:

20 (1) Conflicts of interest.

21 (2) Matters covered under the corporate
22 opportunities doctrine under the state of domicile.

23 (3) Confidentiality.

24 (4) Fair dealing.

25 (5) Protection and proper use of risk retention
26 group assets.

1 (6) Compliance with all applicable laws, rules, and
2 regulations.

3 (7) Requiring the reporting of any illegal or
4 unethical behavior which affects the operation of the risk
5 retention group.

6 (1) The captive manager, president, or chief
7 executive officer of the risk retention group shall promptly
8 notify the domestic regulator in writing if either of them
9 becomes aware of any material non-compliance with any of these
10 governance standards.

11 Section 7. Sections 10A-20-6.16, and 27-21A-23, and
12 Section 22-21-374, Code of Alabama 1975, are amended to read
13 as follows:

14 "§10A-20-6.16.

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

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

24 "(2) ~~The corporation shall be subject to the~~
25 ~~provisions of~~ Chapter 557 of Title 27, regarding the

1 prohibition of unfair discriminatory acts by insurers on the
2 basis of an applicant's or insured's abuse status.

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

8 ~~"(4) The corporation shall be subject to~~ Section
9 27-1-17, requiring insurers and health plans to pay health
10 care providers in a timely manner.

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

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

17 ~~"(7) The corporation shall be subject to the~~
18 ~~provisions of~~ Chapter 54 of Title 27.

19 ~~"(8) The corporation shall be subject to the~~
20 ~~provisions of~~ Chapter 57 of Title 27, requiring coverage to be
21 offered for the payment of colorectal cancer examinations for
22 covered persons who are 50 years of age or older, or for
23 covered persons who are less than 50 years of age and at high
24 risk for colorectal cancer according to current American
25 Cancer Society colorectal cancer screening guidelines.

1 "~~(9) The corporation shall be subject to~~ Chapter 58
2 of Title 27, requiring that policies and contracts including
3 coverage for prostate cancer early detection be offered,
4 together with identification of associated costs.

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

9 "~~(11) The corporation shall be subject to~~ Chapter
10 54A of Title 27, requiring that policies and contracts to
11 offer coverage for certain treatment for Autism Spectrum
12 Disorder under certain conditions.

13 "~~(12) The corporation shall be subject to~~ Chapter
14 12A of Title 27.

15 "(13) Chapter 2B of Title 27.

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

21 "§22-21-374

22 "(a) A dental service corporation will pay the
23 prescribed fees and taxes required of a disability insurer.

24 "(b) The following provisions of the insurance laws
25 of this state apply to dental service corporations authorized

1 by this article, to the extent that they are not inconsistent
2 with the provisions herein:

3 "(1) Title 27, Chapters 1 and 2, Administration and
4 General Provisions~~7~~.

5 "(2) Title 27, Chapter 2B, Risk-Based Capital for
6 Insurers.

7 "~~(2)~~ (3) Title 27, Chapter 4, Fees and Taxes~~7~~.

8 "~~(3)~~ (4) Title 27, Chapter 6, Administration of
9 Deposits~~7~~.

10 "~~(4)~~ (5) Title 27, Chapter 12, Unfair Trade
11 Practices~~7~~.

12 "~~(5)~~ (6) Title 27, Chapter 32, Insurer Insolvency;
13 Rehabilitation and Liquidation.

14 "(c) The commissioner may by rule modify or waive
15 any requirements referred to in subsection (b) for dental
16 service corporations if that is necessary to avoid
17 unreasonable hardship, expense, or inconvenience and if the
18 interests of subscribers continue to be adequately protected.

19 "§27-21A-23.

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

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

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

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

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

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

22 "(f) Notwithstanding the provisions of subsection
23 (a), a health maintenance organization shall be subject to all
24 of the following:

25 "(1) Section 27-1-17.

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

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

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

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

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

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

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

8 "(9)(n) ~~Notwithstanding the provisions of subsection~~
9 ~~(a), a health maintenance organization shall be subject to~~
10 Chapter 54A, ~~of this title~~ requiring policies and contracts to
11 offer coverage for certain treatment for Autism Spectrum
12 Disorder under certain conditions.

13 "(10) Chapter 2B, regarding risk-based capital."

14 Section 8. This act shall become effective on the
15 first day of January next following its passage and approval
16 by the Governor, or its otherwise becoming law.