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3 By Representatives Faulkner and Rich
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ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§27-31B-2.

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

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

8 "(2) ALIEN CAPTIVE INSURANCE COMPANY. Any insurance
9 company formed to write insurance business for its parents and
10 affiliates and licensed pursuant to the laws of an alien or
11 foreign jurisdiction which imposes statutory or regulatory
12 standards in a form acceptable to the commissioner on
13 companies transacting the business of insurance in that
14 jurisdiction.

15 "(3) ASSOCIATION. Any legal association of
16 individuals, corporations, limited liability companies,
17 partnerships, associations, or other entities whereby either
18 of the following exists:

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

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

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

1 "3. Have complete voting control over an association
2 captive insurance company formed as a limited liability
3 company.

4 "b. The member organizations of which collectively
5 constitute all of the subscribers of an association captive
6 insurance company formed as a reciprocal insurer.

7 "(4) ASSOCIATION CAPTIVE INSURANCE COMPANY. Any
8 company that insures risks of the member organizations of the
9 association, and that also may insure the risks of affiliated
10 companies of the member organizations and the risks of the
11 association itself and their affiliated companies.

12 "(5) BRANCH BUSINESS. Any insurance business
13 transacted by a branch captive insurance company in this
14 state.

15 "(6) BRANCH CAPTIVE INSURANCE COMPANY. Any alien
16 captive insurance company licensed by the commissioner to
17 transact the business of insurance in this state through a
18 business unit with a principal place of business in this
19 state. A branch captive insurance company is a pure captive
20 insurance company with respect to operations in this state,
21 unless otherwise permitted by the commissioner. A branch
22 captive insurance company may pool insurance business done in
23 this state with business done in alien or foreign
24 jurisdictions subject to commissioner approval.

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

1 "(8) CAPTIVE INSURANCE COMPANY. Any pure captive
2 insurance company, association captive insurance company, risk
3 retention group, protected cell captive insurance company,
4 incorporated cell captive insurance company, or industrial
5 insured captive insurance company formed or licensed under
6 this chapter.

7 "(9) CAPTIVE RISK RETENTION GROUP. A captive
8 insurance company organized and licensed as a captive insurer
9 under the laws of this state and operating pursuant to the
10 Liability Risk Retention Act of 1986, as amended, 15 U.S.C.
11 §3901 et seq., as a stock or mutual corporation, a reciprocal,
12 or other limited liability entity. Risk retention groups
13 formed under this chapter are subject to all the same
14 provisions of this title applicable to a casualty insurer
15 organized and licensed under the laws of this state.

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

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

20 "a. Is not in the corporate system of a parent and
21 affiliated companies in the case of a pure captive insurance
22 company, or is not in the corporate system of an industrial
23 insured and its affiliated companies in the case of an
24 industrial insured captive insurance company.

25 "b. Has an existing contractual relationship with a
26 parent or one of its affiliated companies in the case of a
27 pure captive insurance company or with an industrial insured

1 or one of its affiliated companies in the case of an
2 industrial insured captive insurance company.

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

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

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

15 "(14) INCORPORATED CELL. A protected cell of an
16 incorporated cell captive insurance company that is organized
17 as a corporation or other legal entity separate from the
18 incorporated cell captive insurance company.

19 "(15) INCORPORATED CELL CAPTIVE INSURANCE COMPANY. A
20 protected cell captive insurance company that is established
21 as a corporation or other legal entity separate from its
22 incorporated cells that are also organized as separate legal
23 entities.

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

26 "(17) INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY.
27 Any company that insures risks of the industrial insureds that

1 comprise the industrial insured group, and that may insure the
2 risks of the affiliated companies of the industrial insureds
3 and the risks of the controlled unaffiliated business of an
4 industrial insured or its affiliated companies.

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

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

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

12 "2. Have complete voting control over an industrial
13 insured captive insurance company incorporated as a mutual
14 insurer.

15 "3. Constitute all of the subscribers of an
16 industrial insured captive insurance company formed as a
17 reciprocal insurer.

18 "4. Have complete voting control over an industrial
19 insured captive insurance company formed as a limited
20 liability company.

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

1 "(19) MEMBER ORGANIZATION. Any individual,
2 corporation, limited liability company, partnership,
3 association, or other entity that belongs to an association.

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

7 "(21) MUTUAL INSURER. An incorporated captive
8 insurer without capital stock and the governing body of which
9 is elected from policyholders at the mutual members' annual
10 meeting.

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

15 "(23) PARENT. An individual, corporation, limited
16 liability company, partnership, association, or other entity
17 that directly or indirectly owns, controls, or holds with
18 power to vote more than 50 percent of the outstanding of any
19 of the following:

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

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

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

26 "(24) PARTICIPANT. An entity as defined in Section
27 27-31B-24, and any affiliates thereof, that are insured by a

1 protected cell captive insurance company, where the losses of
2 the participant are limited through a participant contract.

3 "(25) PARTICIPANT CONTRACT. A contract by which a
4 protected cell captive insurance company insures the risks of
5 a participant and limits the losses of each participant to its
6 pro rata share of the assets of one or more protected cells
7 identified in the participant contract.

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

18 "(27) PROTECTED CELL ASSETS. All assets, contract
19 rights, and general intangibles identified with and
20 attributable to a specific protected cell of a protected cell
21 captive insurance company.

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

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

26 "b. The company is formed and licensed under this
27 chapter.

1 "c. The company insures the risks of separate
2 participants through participant contracts.

3 "d. The company funds its liability to each
4 participant through one or more protected cells and segregates
5 the assets of each protected cell from the assets of other
6 protected cells and from the assets of the protected cell
7 captive insurance company's general account.

8 "(29) PROTECTED CELL LIABILITIES. All liabilities
9 and other obligations identified with and attributed to a
10 specific protected cell of a protected cell captive insurance
11 company.

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

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

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

21 "§27-31B-3.

22 "(a) Any captive insurance company, when permitted
23 by its articles of association, charter, or other
24 organizational document, may apply to the commissioner for a
25 license to do any and all insurance defined in Sections
26 27-5-2, 27-5-4, and 27-5-5, in subdivisions (1), (2), (4),
27 (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) of

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

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

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

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

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

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

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

24 "(7) Any captive insurance company may provide
25 excess workers' compensation insurance to its parent and
26 affiliated companies and member organizations unless
27 prohibited by the laws of the state having jurisdiction over

1 the transaction. Any captive insurance company may reinsure
2 workers' compensation of a qualified self-insured plan of its
3 parent and affiliated companies.

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

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

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

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

18 "(b) To conduct insurance business in this state, a
19 captive insurance company shall comply with all of the
20 following:

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

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

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

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

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

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

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

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

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

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

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

20 "(2) In addition to the information required by
21 subdivision (1), each applicant captive insurance company
22 shall file with the commissioner evidence of all of the
23 following:

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

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

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

2 "d. The adequacy of the loss prevention programs of
3 its parent, member organizations, industrial insureds, or
4 other insureds as applicable.

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

8 "(3) In addition to the information required by
9 subdivisions (1) and (2), each applicant protected cell
10 captive insurance company shall file with the commissioner all
11 of the following:

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

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

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

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

26 "(4) Information submitted pursuant to this
27 subsection shall be and remain confidential, and may not be

1 made public by the commissioner or by an employee or agent of
2 the commissioner without the written consent of the company,
3 except as provided in the following:

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

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

25 "(d) Each captive insurance company shall pay to the
26 commissioner a nonrefundable fee as set forth in Section
27 27-31B-4 for examining, investigating, and processing its

1 application for license, and the commissioner is authorized to
2 retain legal, financial, and examination services from outside
3 the department, the reasonable cost of which may be charged
4 against the applicant in accordance with Section 27-2-25. In
5 addition, each captive insurance company shall pay a license
6 fee for the year of registration and a renewal fee for each
7 year thereafter as set forth in Section 27-31B-4.

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

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

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

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

12 "§27-31B-6.

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

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

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

25 "(3) In the case of an industrial insured captive
26 insurance company, not less than five hundred thousand dollars
27 (\$500,000).

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

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

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

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

21 "(e) In the case of a branch captive insurance
22 company, as security for the payment of liabilities
23 attributable to the branch operations, the commissioner shall
24 ~~may require that a trust fund, funded by an irrevocable letter~~
25 ~~of credit or other acceptable asset, be established and~~
26 ~~maintained in the United States for the benefit of United~~
27 ~~States policyholders and United States ceding insurers under~~

1 ~~insurance policies issued or reinsurance contracts issued or~~
2 ~~assumed, by the branch captive insurance company through its~~
3 ~~branch operations. The amount of the security may be no less~~
4 ~~than the capital and surplus required hereunder and the~~
5 ~~reserves on these insurance policies or reinsurance contracts,~~
6 ~~including reserves for losses, allocated loss adjustment~~
7 ~~expenses, incurred but not reported losses, and unearned~~
8 ~~premiums with regard to business written through the branch~~
9 ~~operations. Notwithstanding the foregoing, the commissioner~~
10 ~~may permit a branch captive insurance company that is required~~
11 ~~to post security for collateral equal to the amount of net~~
12 ~~loss reserves on branch business by its reinsurer to reduce~~
13 ~~the funds in the trust account required by this section by the~~
14 ~~same amount so long as the security remains posted with the~~
15 ~~reinsurer. If the form of security selected is a letter of~~
16 ~~credit, the letter of credit must be established by, or issued~~
17 ~~or confirmed by, a bank chartered in this state or a member~~
18 ~~bank of the Federal Reserve System plus other insurance~~
19 ~~liabilities as determined by the commissioner to be maintained~~
20 ~~by the branch captive insurance company in a manner acceptable~~
21 ~~to the commissioner.~~

22 "§27-31C-3.

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

1 and limited in the standard real property and contents
2 insurance forms as approved by the commissioner.

3 ~~"(b) An Alabama Coastal Captive Insurance Company~~
4 ~~that qualified as an association captive under the provisions~~
5 ~~of Section 27-31B-8 is exempt from the requirement that the~~
6 ~~association be in existence for one year so long as the~~
7 ~~association is in good standing as an entity before becoming~~
8 ~~an owner of an Alabama Coastal Captive Insurance Company.~~

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

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

15 ~~"a. Is exempt from the provisions of Section~~
16 ~~27-31B-22(b) (9) a. that require that the business written by a~~
17 ~~sponsor captive insurance company, with respect to each~~
18 ~~protected cell, must be fronted by an insurance company~~
19 ~~licensed pursuant to the laws of a state.~~

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

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

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

3 "~~(e)~~ (c) Any Alabama Coastal Captive Insurance
4 Company ~~that otherwise qualifies for the limited exemption~~
5 ~~from the provisions of Section 27-31B-22(b)(9)a. pursuant to~~
6 ~~subsection (d)(1) and any Alabama Coastal Captive Insurance~~
7 ~~Company, regardless of form,~~ that issues policies directly to
8 the public shall comply with the following:

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

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

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

20 "(4) It shall file quarterly and annual statements
21 with the department in accordance with statutory accounting
22 principles on forms and in the manner prescribed by Section
23 27-31B-9.

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

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

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

6 "(3) Maintain its principal place of business in
7 this state;

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

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

14 "~~(g)~~ (e) Before receiving a license, an Alabama
15 Coastal Captive Insurance Company shall file with the
16 commissioner:

17 "(1) A certified copy of its organizational
18 documents;

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

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

23 "~~(h)~~ (f) In addition to the information required by
24 subsection ~~(g)~~ (e), the applicant Alabama Coastal Captive
25 Insurance Company shall file with the commissioner evidence
26 of:

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

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

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

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

7 "(5) Other overall factors considered relevant by
8 the commissioner in ascertaining if the proposed Alabama
9 Coastal Captive Insurance Company is able to meet its policy
10 obligations;

11 "(6) Any information required by Section 27-31B-8
12 specifically applicable to the form of the Alabama Coastal
13 Captive Insurance Company, and fees prescribed by Section
14 27-31B-4 along with any other required fees.

15 "~~(i)~~ (g) Information submitted pursuant to this
16 section is confidential as provided in Section 27-31B-3,
17 except that information is discoverable by a party in a civil
18 action or contested case to which the Alabama Coastal Captive
19 Insurance Company that submitted the information is a party,
20 upon finding by the court that:

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

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

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

1 "(4) A subpoena issued by a judicial or
2 administrative officer of competent jurisdiction has been
3 submitted to the commissioner."

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

6 §27-31B-26.

7 (a) As used in this section, unless the context
8 requires otherwise, "dormant captive insurance company" means
9 a pure captive insurance company, protected cell captive
10 insurance company, association captive insurance company, or
11 industrial insured captive insurance company that satisfies
12 both of the following:

13 (1) Has ceased transacting the business of
14 insurance, including the issuance of insurance policies.

15 (2) Has no remaining liabilities associated with
16 insurance business transactions or insurance policies issued
17 prior to the filing of its application for a certificate of
18 dormancy under this section.

19 (b) A captive insurance company that meets the
20 criteria of subsection (a) may apply to the commissioner for a
21 certificate of dormancy. The certificate of dormancy shall be
22 subject to renewal every five years and shall be forfeited if
23 not renewed within such time.

24 (c) A dormant captive insurance company that has
25 been issued a certificate of dormancy shall do all of the
26 following:

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

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

8 (3) Pay a license renewal fee as provided in Section
9 27-31B-4.

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

13 (e) A dormant captive insurance company shall apply
14 to the commissioner for approval to surrender its certificate
15 of dormancy and resume conducting the business of insurance
16 prior to issuing any insurance policies.

17 (f) A certificate of dormancy shall be revoked if a
18 dormant captive insurance company no longer meets the criteria
19 of subsection (a).

20 (g) The commissioner may adopt rules and establish
21 guidelines and procedures as necessary to implement and
22 administer this section.

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

25 §27-31C-3.1.

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

1 Section 4. Section 27-31C-4, Code of Alabama 1975,
2 relating to licensure requirements for Alabama Coastal Captive
3 Insurance Companies, is repealed.

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Insurance 11-FEB-20

Read for the second time and placed
on the calendar 1 amendment 20-FEB-20

Read for the third time and passed
as amended..... 25-FEB-20

Yeas 99, Nays 0, Abstains 4

Jeff Woodard
Clerk