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3 SENATE BANKING AND INSURANCE COMMITTEE SUBSTITUTE FOR SB23
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8 SYNOPSIS: Under existing law, captive insurance
9 companies are licensed and regulated by the Alabama
10 Department of Insurance.

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

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

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 27-31B-2, 27-31B-3, 27-31B-6,
18 27-31B-8, 27-31B-12, and 27-31B-13, Code of Alabama 1975, are
19 amended to read as follows:

20 "§27-31B-2.

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

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

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

3 "a. Is owned or directly or indirectly controlled by
4 one or more licensed insurance producers.

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

8 "~~(2)~~(3) ALIEN CAPTIVE INSURANCE COMPANY. Any
9 insurance company formed to write insurance business for its
10 parents and affiliates and licensed pursuant to the laws of an
11 alien 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)~~(4) 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)~~ (5) 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)~~ (6) BRANCH BUSINESS. Any insurance business
13 transacted by a branch captive insurance company in this
14 state.

15 "~~(6)~~ (7) 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 jurisdictions subject
24 to commissioner approval.

25 "~~(7)~~ (8) BRANCH OPERATIONS. Any business operations
26 of a branch captive insurance company in this state.

1 "~~(8)~~(9) CAPTIVE INSURANCE COMPANY. Any pure captive
2 insurance company, agency captive insurance company,
3 association captive insurance company, risk retention group,
4 protected cell captive insurance company, incorporated cell
5 captive insurance company, ~~or~~ industrial insured captive
6 insurance company, reinsurance captive insurance company, or
7 special purpose captive insurance company formed or licensed
8 under this chapter.

9 "~~(9)~~(10) CAPTIVE RISK RETENTION GROUP. A captive
10 insurance company organized and licensed as a captive insurer
11 under the laws of this state and operating pursuant to the
12 Liability Risk Retention Act of 1986, as amended, 15 U.S.C.
13 §3901 et seq., as a stock or mutual corporation, a reciprocal,
14 or other limited liability entity. Risk retention groups
15 formed under this chapter are subject to ~~all the same~~
16 ~~provisions of this title applicable to a casualty insurer~~
17 ~~organized and licensed under the laws of this state~~ Section
18 27-31B-28.

19 "~~(10)~~(11) COMMISSIONER. The Alabama Commissioner of
20 Insurance or the commissioner's designee.

21 "~~(11)~~(12) CONTROLLED UNAFFILIATED BUSINESS. Any
22 company that meets all of the following criteria:

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

1 "b. Has an existing contractual relationship with a
2 parent or one of its affiliated companies in the case of a
3 pure captive insurance company or with an industrial insured
4 or one of its affiliated companies in the case of an
5 industrial insured captive insurance company.

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

9 "~~(12)~~ (13) EXCESS WORKERS' COMPENSATION INSURANCE. In
10 the case of an employer or group of employers that has insured
11 or self-insured its workers' compensation risks in accordance
12 with applicable state or federal law, insurance in excess of a
13 specified per-incident or aggregate limit established by the
14 commissioner.

15 "~~(13)~~ (14) GENERAL ACCOUNT. All assets and
16 liabilities of a protected cell captive insurance company not
17 attributable to a protected cell.

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

22 "~~(15)~~ (16) INCORPORATED CELL CAPTIVE INSURANCE
23 COMPANY. A protected cell captive insurance company that is
24 established as a corporation or other legal entity separate
25 from its incorporated cells that are also organized as
26 separate legal entities.

1 "~~(16)~~(17) INDUSTRIAL INSURED. As defined in
2 subdivision (2) of Section 27-10-20.

3 "~~(17)~~(18) INDUSTRIAL INSURED CAPTIVE INSURANCE
4 COMPANY. Any company that insures risks of the industrial
5 insureds that comprise the industrial insured group, and that
6 may insure the risks of the affiliated companies of the
7 industrial insureds and the risks of the controlled
8 unaffiliated business of an industrial insured or its
9 affiliated companies.

10 "~~(18)~~(19) INDUSTRIAL INSURED GROUP. Any group that
11 meets either of the following criteria:

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

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

17 "2. Have complete voting control over an industrial
18 insured captive insurance company incorporated as a mutual
19 insurer.

20 "3. Constitute all of the subscribers of an
21 industrial insured captive insurance company formed as a
22 reciprocal insurer.

23 "4. Have complete voting control over an industrial
24 insured captive insurance company formed as a limited
25 liability company.

26 "b. Any group which is created under the Product
27 Liability Risk Retention Act of 1981, 15 U.S. Code § 3901 et

1 seq., as amended, as a corporation or other limited liability
2 association taxable as a stock insurance company or a mutual
3 insurer under the law of the State of Alabama.

4 "~~(19)~~ (20) MEMBER ORGANIZATION. Any individual,
5 corporation, limited liability company, partnership,
6 association, or other entity that belongs to an association.

7 "~~(20)~~ (21) MUNICIPAL MUTUAL CORPORATION. A
8 corporation or other legal entity organized without
9 stockholders. The term includes a nonprofit corporation with
10 members.

11 "~~(21)~~ (22) MUTUAL INSURER. An incorporated captive
12 insurer without capital stock and the governing body of which
13 is elected from policyholders at the mutual members' annual
14 meeting.

15 "~~(22)~~ (23) ORGANIZATIONAL DOCUMENTS. The documents
16 that must be submitted pursuant to state law in order to
17 legally form a business in this state, or to obtain a
18 certificate of authority to transact business in the state.

19 "~~(23)~~ (24) PARENT. An individual, corporation,
20 limited liability company, partnership, association, or other
21 entity that directly or indirectly owns, controls, or holds
22 with power to vote more than 50 percent of the outstanding of
23 any of the following:

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

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

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

3 "~~(24)~~ (25) PARTICIPANT. An entity as defined in
4 Section 27-31B-24, and any affiliates thereof, that are
5 insured by a protected cell captive insurance company, where
6 the losses of the participant are limited through a
7 participant contract.

8 "~~(25)~~ (26) PARTICIPANT CONTRACT. A contract by which a
9 protected cell captive insurance company insures the risks of
10 a participant and limits the losses of each participant to its
11 pro rata share of the assets of one or more protected cells
12 identified in the participant contract.

13 "~~(26)~~ (27) PROTECTED CELL. A separate account
14 established by a protected cell captive insurance company
15 formed or licensed under this chapter, in which an identified
16 pool of assets and liabilities is segregated and insulated by
17 means of this chapter from the remainder of the protected cell
18 captive insurance company's assets and liabilities in
19 accordance with the terms of one or more participant contracts
20 to fund the liability of the protected cell captive insurance
21 company, with respect to the participants as set forth in the
22 participant contracts.

23 "~~(27)~~ (28) PROTECTED CELL ASSETS. All assets,
24 contract rights, and general intangibles identified with and
25 attributable to a specific protected cell of a protected cell
26 captive insurance company.

1 "~~(28)~~ (29) PROTECTED CELL CAPTIVE INSURANCE COMPANY.
2 Any captive insurance company meeting all of the following:

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

5 "b. The company is formed and licensed under this
6 chapter.

7 "c. The company insures the risks of separate
8 participants through participant contracts.

9 "d. The company funds its liability to each
10 participant through one or more protected cells and segregates
11 the assets of each protected cell from the assets of other
12 protected cells and from the assets of the protected cell
13 captive insurance company's general account.

14 "~~(29)~~ (30) PROTECTED CELL LIABILITIES. All
15 liabilities and other obligations identified with and
16 attributed to a specific protected cell of a protected cell
17 captive insurance company.

18 "~~(30)~~ (31) PURE CAPTIVE INSURANCE COMPANY. Any
19 company that insures risks of its parent and affiliated
20 companies or controlled unaffiliated business or businesses.

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

24 "a. An insurer or reinsurer approved or licensed
25 under the laws of this state or any foreign or alien
26 jurisdiction upon approval of the commissioner.

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

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

7 "~~(31)~~(34) SPONSOR. Any person or entity that is
8 approved by the commissioner to organize and operate a
9 protected cell captive insurance company.

10 "~~(32)~~(35) SURPLUS NOTE. An unsecured subordinated
11 debt obligation deemed to be a surplus certificate under terms
12 acceptable to the commissioner.

13 "§27-31B-3.

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

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

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

4 "~~(2)~~(3) No association captive insurance company may
5 insure any risks other than those of the member organizations
6 of its association, and their affiliated companies.

7 "~~(3)~~(4) No industrial insured captive insurance
8 company may insure any risks other than those of the
9 industrial insureds that comprise the industrial insured
10 group, and their affiliated companies.

11 "~~(4)~~(5) No risk retention group may insure any risks
12 other than those of its members and owners.

13 "~~(5)~~(6) No captive insurance company may provide
14 personal motor vehicle coverage or any component thereof.
15 Homeowner's insurance coverage may be written by an Alabama
16 Coastal Captive Insurance Company as defined in Chapter 31C,
17 but only in the gulf front, beach, and seacoast areas as
18 designated by the Insurance Services Office, Inc.

19 "~~(6)~~(7) No captive insurance company may accept or
20 cede reinsurance except as provided in Section 27-31B-13.

21 "~~(7)~~(8) Any captive insurance company may provide
22 excess workers' compensation insurance to its parent and
23 affiliated companies and member organizations unless
24 prohibited by the laws of the state having jurisdiction over
25 the transaction. Any captive insurance company may reinsure
26 workers' compensation ~~of a qualified self-insured plan of its~~
27 ~~parent and affiliated companies.~~

1 "~~(8)~~(9) Any captive insurance company which insures
2 risks described in Sections 27-5-2 and 27-5-4 shall comply
3 with all applicable state and federal laws.

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

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

13 "~~(10)~~(11) No protected cell captive insurance
14 company may insure any risks other than those of its
15 participants.

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

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

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

25 "(3) It must maintain its principal place of
26 business in this state, or in the case of a branch captive

1 insurance company, maintain ~~the principal~~ a place of business
2 for its branch operations in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 "(4) Information submitted pursuant to this
26 subsection shall be and remain confidential, and may not be
27 made public by the commissioner or by an employee or agent of

1 the commissioner without the written consent of the company,
2 except as provided in the following:

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

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

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

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

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

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

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

26 "(3) The commissioner, by order, may limit the
27 authority of any provisional licensee in any way deemed

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

10 "§27-31B-6.

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

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

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

23 "~~(2)~~ (3) In the case of an association captive
24 insurance company or risk retention group, not less than five
25 hundred thousand dollars (\$500,000) or such other amount
26 determined by the commissioner and actuarially supported by a
27 feasibility study.

1 "~~(3)~~(4) In the case of an industrial insured captive
2 insurance company, not less than five hundred thousand dollars
3 (\$500,000).

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

8 "~~(4)~~(6) In the case of a protected cell captive
9 insurance company, not less than ~~two hundred fifty thousand~~
10 ~~dollars (\$250,000)~~ one hundred thousand dollars (\$100,000) or
11 such other amount determined by the commissioner and
12 actuarially supported by a feasibility study.

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

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

21 "(d) Capital and surplus may be in the form of cash,
22 cash equivalents, surplus note, securities meeting the
23 eligibility requirements of Section 27-6-3, or, if approved by
24 the commissioner, a clean, irrevocable, and unconditional
25 letter of credit issued by a bank chartered by the State of
26 Alabama or a member bank of the Federal Reserve System and
27 approved by the commissioner. No assets of the captive insurer

1 shall be pledged or encumbered for the payment of the letter
2 of credit.

3 "(e) In the case of a branch captive insurance
4 company, as security for the payment of liabilities
5 attributable to the branch operations, the commissioner ~~shall~~
6 may require that a trust fund, funded by an irrevocable letter
7 of credit or other acceptable asset, be established and
8 maintained in the United States for the benefit of United
9 States policyholders and United States ceding insurers under
10 insurance policies issued or reinsurance contracts issued or
11 assumed, by the branch captive insurance company through its
12 branch operations. The amount of the security may be no less
13 than the capital and surplus required hereunder and the
14 reserves on these insurance policies or reinsurance contracts,
15 including reserves for losses, allocated loss adjustment
16 expenses, incurred but not reported losses, and unearned
17 premiums with regard to business written through the branch
18 operations. Notwithstanding the foregoing, the commissioner
19 may permit a branch captive insurance company that is required
20 to post security for collateral equal to the amount of net
21 loss reserves on branch business by its reinsurer to reduce
22 the funds in the trust account required by this section by the
23 same amount so long as the security remains posted with the
24 reinsurer. If the form of security selected is a letter of
25 credit, the letter of credit must be established by, or issued
26 or confirmed by, a bank chartered in this state or a member
27 bank of the Federal Reserve System plus other insurance

1 liabilities as determined by the commissioner to be maintained
2 by the branch captive insurance company in a manner acceptable
3 to the commissioner.

4 "(f) Any captive formed under this chapter may be
5 capitalized with a surplus note. Any captive issuing a surplus
6 note pursuant to this section must execute a written agreement
7 with the creditor providing the following:

8 "a. The creditor may only be paid out of the portion
9 of the captive's surplus that exceeds the minimum stated in
10 the agreement.

11 "b. The minimum surplus or "floor" shall exceed the
12 sum of: (i) 10 percent of the face amount of the surplus note;
13 and (ii) the greater of the statutory minimum capital or
14 surplus required by statute or the approved feasibility study
15 or such other amount approved by the commissioner.

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

18 "d. Any payment of principal or interest requires
19 the prior approval of the commissioner.

20 "§27-31B-8.

21 "(a) A pure captive insurance company, an agency
22 captive insurance company, a reinsurance captive insurance
23 company, special purpose financial captive insurance company
24 or a protected cell captive insurance company shall be formed
25 as a stock or mutual insurer, or as a nonprofit or limited
26 liability company with its capital divided into units and held

1 by the stockholders, members, or other equivalent as allowed
2 by law.

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

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

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

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

14 "(4) Organized as a manager-managed limited
15 liability company.

16 "(c) A captive insurance company incorporated or
17 organized in this state shall have one or more incorporators
18 or one or more organizers, at least one of which shall be a
19 resident of this state.

20 "(d) (1) In the case of a captive insurance company
21 formed as a corporation, before the articles of incorporation
22 are transmitted to the Secretary of State, the incorporators
23 shall petition the commissioner to issue a certificate setting
24 forth the commissioner's finding that the establishment and
25 maintenance of the proposed corporation will promote the
26 general good of the state. In arriving at this finding the
27 commissioner shall consider all of the following:

1 "a. The character, reputation, financial standing,
2 and purposes of the incorporators.

3 "b. The character, reputation, financial
4 responsibility, insurance experience, and business
5 qualifications of the officers and directors.

6 "c. Any other aspects as the commissioner shall deem
7 advisable.

8 "(2) The articles of incorporation, the certificate,
9 and the organization fee shall be transmitted to the Secretary
10 of State, who shall thereupon record both the articles of
11 incorporation and the certificate.

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

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

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

24 "(3) Any other aspects as the commissioner shall
25 deem advisable.

26 "(f) In the case of a captive insurance company
27 licensed as a branch captive insurance company, the alien

1 captive insurance company shall petition the commissioner to
2 issue a certificate setting forth the commissioner's finding
3 that, after considering the character, reputation, financial
4 responsibility, insurance experience, and business
5 qualifications of the officers and directors of the alien
6 captive insurance company, the licensing and maintenance of
7 the branch operations will promote the general good of the
8 state. The alien captive insurance company may register to do
9 business in this state after the commissioner's certificate is
10 issued.

11 "(g) The capital stock of a captive insurance
12 company incorporated as a stock insurer may be authorized with
13 no par value.

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

18 "(i) In the case of a captive insurance company
19 formed as a reciprocal insurer, at least one of the members of
20 the subscribers' advisory committee shall be a resident of
21 this state.

22 "(j) Captive insurance companies formed as
23 corporations under this chapter shall have the privileges and
24 be subject to the general corporation law as well as the
25 applicable provisions of this chapter. In the event of
26 conflict between the general corporation law and this chapter,
27 the latter shall control. The provisions of this title

1 pertaining to mergers, consolidations, and conversions,
2 ~~mutualizations, and redomestications~~ shall apply in
3 determining the procedures to be followed by captive insurance
4 companies in carrying out any of the transactions described
5 therein, except that the commissioner may waive or modify the
6 requirements for public notice and hearing in accordance with
7 rules which the commissioner may adopt addressing categories
8 of transactions. If a notice of public hearing is required,
9 but no one requests a hearing, then the commissioner may
10 cancel the hearing.

11 "(k) (1) Captive insurance companies formed as
12 reciprocal insurers under this chapter shall have the
13 privileges and be subject to Chapter 31 in addition to the
14 applicable provisions of this chapter. In the event of a
15 conflict between Chapter 31 and this chapter, the latter shall
16 control. To the extent a reciprocal insurer is made subject to
17 other provisions of this title pursuant to Chapter 31, the
18 provisions shall not be applicable to a reciprocal insurer
19 formed under this chapter unless the provisions are expressly
20 made applicable to captive insurance companies under this
21 chapter.

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

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

6 "(m) The subscribers' agreement or other organizing
7 document of a captive insurance company formed as a reciprocal
8 insurer may authorize a quorum of a subscribers' advisory
9 committee to consist of no fewer than one-third of its
10 members.

11 "§27-31B-12.

12 "(a) An association captive insurance company, risk
13 retention group, and an industrial insured captive insurance
14 company insuring the risks of an industrial insured group
15 defined in paragraph b. of subdivision (18) of Section
16 27-31B-2 shall comply with the investment requirements
17 contained in this title, as applicable; provided, however,
18 that compliance with these investment requirements shall be
19 waived for risk retention groups to the extent that credit for
20 risks ceded to reinsurers is allowed pursuant to Section
21 27-31B-13 or to the extent otherwise deemed reasonable and
22 appropriate by the commissioner. Chapter 37 of this title
23 shall apply to association captives, risk retention groups,
24 and industrial insured captive insurance companies insuring
25 the risks of industrial insured groups defined in paragraph b.
26 of subdivision (18) of Section 27-31B-2 except to the extent
27 it is inconsistent with approved accounting standards in use

1 by the association captive insurance company, risk retention
2 group, or industrial insured captive insurance company
3 insuring the risks of an industrial insured group as defined
4 in paragraph b. of subdivision (18) of Section 27-31B-2.
5 Notwithstanding any other provision of this title, the
6 commissioner may approve the use of alternative reliable
7 methods of valuation and rating.

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

20 "(c) Only a pure captive insurance company or a
21 protected cell captive insurance company may make loans to its
22 parent company or affiliates. No loans to a parent company or
23 any affiliate shall be permitted without prior written
24 approval of the commissioner and must be evidenced by a note
25 in a form approved by the commissioner. Loans of minimum
26 capital and surplus funds required by Section 27-31B-6 are
27 prohibited. Any loan made by a protected cell captive

1 insurance company must be made from funds in the company's
2 general account.

3 §27-31B-13.

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

7 "(b) A captive insurance company may take credit for
8 reserves on risks or portions of risks ceded to reinsurers
9 complying with ~~subdivisions (1) through (4) of subsection (c)~~
10 ~~of Section 27-5-12~~ Sections 27-5B-4 through 27-5B-9. A captive
11 insurer shall not take credit for the reserves on risks or
12 portions of risks ceded to reinsurers not complying with
13 ~~subdivisions (1) through (4) of subsection (c) of Section~~
14 ~~27-5-12~~ Sections 27-5B-4 through 27-5B-9.

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

19 Section 2. Sections 27-31B-26, 27-31B-27, and
20 27-31B-28, are added to the Code of Alabama 1975, to read as
21 follows:

22 §27-31B-26.

23 A stock captive insurer may become a mutual captive
24 insurer under such plan or procedure as may be approved by the
25 commissioner. The commissioner shall not approve any such
26 plan, procedure, or mutualization unless:

1 (1) It is equitable to stockholders and
2 policyholders;

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

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

15 (4) The plan provides for the purchase of the shares
16 of any nonconsenting stockholder in the same manner and
17 subject to the same applicable conditions as provided by the
18 general corporation laws of the state as to rights of
19 nonconsenting stockholders with respect to consolidation or
20 merger of private corporations;

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

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

1 §27-31B-27

2 (a) Notwithstanding any other method authorized by
3 law, a foreign or alien captive insurance company may become a
4 domestic captive insurance company by complying with all of
5 the requirements of this chapter relative to the organization
6 and licensing of a domestic captive insurance company of the
7 same type with the approval of the commissioner. A company
8 redomesticating to this state pursuant to this section may be
9 organized under any lawful corporate form permitted by this
10 chapter.

11 (b) A redomestication pursuant to this section shall
12 be authorized for captive insurance companies domiciled in
13 foreign or alien jurisdictions that authorize the
14 redomestication of captive insurance companies where, as a
15 result of the actions taken by the company pursuant to this
16 section to redomesticate to this state, shall no longer be a
17 domestic legal entity of foreign or alien jurisdiction. A
18 company seeking to redomesticate under this section must also
19 provide evidence in a form satisfactory to the commissioner
20 that the applicable regulatory authority of its domicile
21 consents to the redomestication.

22 (c) Upon the completion of a redomestication under
23 this section, the captive insurance company shall be subject
24 to the laws of this state and shall be considered domiciled in
25 this state. The captive insurance company shall be deemed to
26 have a formation date corresponding to its original formation
27 date in the foreign or alien domicile.

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

7 (e) This section shall not be the exclusive means of
8 redomesticating an insurance company to this state and shall
9 not restrict the ability of an insurance company to undergo a
10 merger, consolidation, transfer of assets and liabilities, or
11 utilize any other means permitted by law to effect the
12 transfer of operations of a foreign or alien insurance company
13 to this state.

14 §27-31B-28

15 A risk retention group formed pursuant to this
16 chapter shall comply with any provision determined to be
17 applicable to the National Association of Insurance
18 Commissioners' (NAIC) accreditation standards for Risk
19 Retention Groups and any provision of Title 27 determined to
20 be applicable by the commissioner. Applicable provisions
21 shall be adopted by the commissioner pursuant to, and in
22 accordance with, Section 27-2-17.

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