

**House Insurance Reported Substitute for HB415**

A BILL
TO BE ENTITLED
AN ACT

Relating to insurance, to amend Sections 27-31B-3, 27-31B-6, 27-31B-8, 27-31B-9, and 27-31B-16, Code of Alabama 1975; to impose additional requirements on captive insurers; to require notice of any subsequent material change in any of the items required to be submitted; to increase the minimum paid in capital certain captive insurers are required to maintain; to require the commissioner to take into consideration the competence of the captive manager and legal counsel of the captive insurer and to consider the company's business plan when determining whether the company will promote the general good of the state; and to require licensed captive insurers to annually file an audited financial statement and an actuarial certification of loss reserves and loss expense reserves.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 27-31B-3, 27-31B-6, 27-31B-8, and 27-31B-9, Code of Alabama 1975, are amended as follows:

"§27-31B-3

(a) Any captive insurance company, when permitted by its articles of association, charter, or other organizational

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document, may apply to the commissioner for a license to do any and all insurance defined in Sections 27-5-2, 27-5-4, and 27-5-5, in subdivisions (1), (2), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) of subsection (a) of Section 27-5-6, in Sections 27-5-7, 27-5-8, 27-5-9, and 27-5-10, and to grant annuity contracts as defined in Section 27-5-3, subject, however, to all of the following:

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

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

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

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

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

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

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

(8) Any captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies and member organizations unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurance company may reinsure workers' compensation.

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

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

(11) No protected cell captive insurance company may insure any risks other than those of its participants.

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

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

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

(3) It must maintain its principal place of business in this state, or in the case of a branch captive insurance company, maintain a place of business for its branch

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operations in this state.

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

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

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

(5) It must make adequate arrangements with a bank chartered by the State of Alabama or a member bank of the Federal Reserve System and approved by the commissioner.

(6)a. It must employ or enter into a contract with a natural person or business organization to manage the affairs of the captive insurer that meets the standards of competence and experience satisfactory to the commissioner.

b. The captive insurer shall promptly notify the commissioner of any failure of the captive insurer to comply with this chapter.

c. The commissioner may require a captive insurer to discharge a captive manager for failure to substantively

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fulfill the captive manager's duties under this chapter.

d. The captive manager, if a natural person, or the officers and directors of the captive manager, if a business organization, shall not serve as the president of a captive insurer, except in the case where a captive insurer has contracted with its parent or its affiliated companies or a controlled unaffiliated business for captive management services.

(7) It must employ or enter into a contract with a qualified and experienced independent certified public accountant that is approved by the commissioner.

(8) It must employ or enter into a contract with a qualified and experienced actuary who is approved by the commissioner.

(9) It must submit biographical background information, on a form prescribed by the commissioner, for each director and officer of the captive insurer and for each person who controls, directly or indirectly, 10 percent or more of the captive insurer.

(10) It must submit a plan of operation that clearly indicates the method of operation of the captive insurer including all of the following items:

a. The types and limits of insurance that will be provided.

b. Pro forma financial statements for a period covering three years, which shall include a balance sheet, income statement, and cash flow statement.

c. A description of the captive insurer's reinsurance

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program.

d. A description of the captive insurer's underwriting policy, including who will perform those functions.

e. A description of the captive insurer's claims handling procedures, including who will perform those functions.

f. A description of the captive insurer's investment policy.

g. A description of the captive insurer's rate making policies and procedures.

(11) It must submit a feasibility study, or other analysis, prepared by a qualified actuary.

(12) It must submit a statement disclosing the identity and percentage of ownership of the captive insurer for all persons who control, directly or indirectly, 10 percent or more of the captive insurer.

(13) It must submit evidence of its beneficial ownership, sponsorship, or membership.

(14) It must submit any other factors or information deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(c) If there is a subsequent material change in any item or information submitted pursuant to subsection (b) including, but not limited to, the plan of operation, the captive insurer shall submit an appropriate revision for approval by the commissioner. The captive insurer may not offer any additional kinds of insurance until a revision of

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the description is approved by the commissioner.

~~(e)~~ (d) (1) Before receiving a license, a captive insurance company shall comply with one of the following:

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

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

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

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

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

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

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

c. The overall soundness of its plan of operation.

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

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

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

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

b. A statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner or

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the commissioner's designated agent.

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

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

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

a. The information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that:

- (i) the information sought is relevant to and necessary for the furtherance of the action or case~~;~~ⁱ (ii) the information sought is unavailable from other nonconfidential sources~~;~~ⁱ and
- (iii) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner. Notwithstanding the foregoing, this subdivision shall not apply to any industrial insured captive insurance company insuring the risks of an industrial insured group as defined in ~~paragraph b. of subdivision (19) of~~ Section 27-31B-2 ~~(19)b.~~^{(19)b.} or to a captive risk retention group.

b. The commissioner may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state, provided that~~:~~ⁱ (i) the public official ~~shall agree~~ agrees in writing to maintain the

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confidentiality of the information^{r.i} and (ii) the laws of the state in which the public official serves require the information to be and to remain confidential.

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

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

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

(2) As a condition precedent to the issuance of a provisional license under this subsection, the applicant shall have filed a complete application containing all information

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required by this section, paid all fees required for licensure, and the commissioner shall have made a preliminary finding that the expertise, experience, and character of the person or persons who will control and manage the captive insurer are acceptable.

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

"§27-31B-6

(a) No captive insurance company shall be issued a license unless ~~it shall possess~~ the captive insurance company possesses and thereafter ~~maintain~~ maintains unimpaired paid-in capital and surplus as follows:

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

(2) In the case of an agency captive insurance company, not less than five hundred thousand dollars (\$500,000) or

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another amount determined by the commissioner and actuarially supported by a feasibility study.

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

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

(5) In the case of a reinsurance captive insurance company, not less than ~~ten thousand dollars (\$10,000) or another amount determined by the commissioner and actuarially supported by a feasibility study~~ one million dollars (\$1,000,000).

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

(7) In the case of a branch captive insurance company, not less than two hundred fifty thousand dollars (\$250,000).

(8) In the case of a risk retention group, not less than one million dollars (\$1,000,000) or another amount determined by the commissioner and actuarially supported by a feasibility study.

(b) Notwithstanding the requirements of subsection (a), no captive insurance company organized as a reciprocal insurer

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under this chapter shall be issued a license unless ~~it has~~ the
captive insurance company organized as a reciprocal insurer
possesses and thereafter maintains free surplus of one million
dollars (\$1,000,000).

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

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

(e) In the case of a branch captive insurance company,
as security for the payment of liabilities attributable to the
branch operations, the commissioner may require collateral
equal to the amount of net loss reserves on branch business
plus other insurance liabilities as determined by the
commissioner to be maintained by the branch captive insurance
company in a manner acceptable to the commissioner.

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

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a. The creditor may only be paid out of the portion of the captive insurance company's surplus ~~that~~ which exceeds the minimum stated in the agreement.

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

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

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

"§27-31B-8

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

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

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

(2) Organized as a mutual insurer without capital

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stock, the governing body of which is elected by the member organizations of its association.

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

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

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

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

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

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

c. Any other aspects as the commissioner shall deem advisable.

(2) The articles of incorporation, the certificate, and the organization fee shall be transmitted to the Secretary of State, who shall ~~thereupon~~ record both the articles of

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incorporation and the certificate.

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

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

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

(3) The competence of any person who, pursuant to a contract with the captive insurance company, will manage the affairs of the company.

(4) The competence, reputation, and experience of the company's legal counsel relating to the regulation of insurance.

(5) The company's business plan.

~~+(3)~~ (6) Any other aspects as the commissioner shall deem advisable.

(f) In the case of a captive insurance company licensed as a branch captive insurance company, the alien captive insurance company shall petition the commissioner to issue a certificate setting forth the commissioner's finding that, after considering the character, reputation, financial responsibility, insurance experience, and business

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qualifications of the officers and directors of the alien captive insurance company, the competence of any person who, pursuant to a contract with the captive insurance company, will manage the affairs of the company, the competence, reputation, and experience of the company's legal counsel relating to the regulation of insurance, and the company's business plan, the licensing and maintenance of the branch operations will promote the general good of the state. The alien captive insurance company may register to do business in this state after the commissioner's certificate is issued.

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

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

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

(j) Captive insurance companies formed as corporations under this chapter shall have the privileges and be subject to the general corporation law as well as the applicable provisions of this chapter. In the event of conflict between the general corporation law and this chapter, the latter shall control. The provisions of this title pertaining to mergers, consolidations, and conversions shall apply in determining the

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procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules which the commissioner may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the commissioner may cancel the hearing.

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

(2) In addition to subdivision (1), captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in ~~paragraph b. of subdivision (19)~~ ~~of~~ Section 27-31B-2 (19)b. shall have the privileges and be subject to ~~the provisions of~~ Chapter 31A in addition to the applicable provisions of this chapter.

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

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

"§27-31B-9

(a) Captive insurance companies shall not be required to make any annual report except as provided in this chapter.

(b) Prior to March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. Except as provided in Section 27-31B-6, each captive insurance company shall report using statutory accounting principles, unless the commissioner approves the use of generally accepted accounting principles, with any useful or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each association captive insurance company and each industrial insured captive insurance company insuring the risks of an industrial insured group defined in ~~paragraph b. of subdivision (18) of~~ Section 27-31B-2 (19)b. shall file its report in the form required by Section 27-3-26. Each risk retention group shall file its report in the form required by Section 27-3-26 and shall comply with all filing requirements set forth in this title as well as rules and bulletins of the Alabama Department of

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Insurance applicable to casualty insurers domiciled in the state. The commissioner shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies insuring the risks of an industrial insured group defined in ~~paragraph a. of subdivision (18) of~~ Section 27-31B-2 (19)a. shall report. ~~Subdivision (4) of subsection (c) of~~ Section 27-31B-3 (d) (4) shall apply to each report filed pursuant to this section, except the subdivision shall not apply to reports filed by industrial insured captive insurance companies insuring the risks of industrial insured groups as defined in ~~paragraph b. of subdivision (18) of~~ Section 27-31B-2 (19)b.

(c) Any pure captive insurance company or an industrial insured captive insurance company insuring the risks of industrial insured groups as defined in ~~paragraph a. of subdivision (18) of~~ Section 27-31B-2 (19)a. may make written application for filing the required report on a fiscal year-end. If an alternative reporting date is granted, the annual report shall be due 60 days after the end of the fiscal year and, in order to provide sufficient detail to support the premium tax return, the pure captive insurance company or industrial insured captive insurance company insuring the risks of industrial insureds as defined in ~~paragraph b. of subdivision (18) of~~ Section 27-31B-2 (17) shall file prior to March 1 of each year for each calendar year-end, pages 1, 2, 3, and 5 of the "Captive Annual Statement; Pure or Industrial Insured," verified by oath of two of its executive officers.

(d) Sixty days after the fiscal year-end, a branch



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captive insurance company shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

(e) Annually on or before June 30, an audited statement of the captive insurer's financial condition prepared in accordance with generally accepted accounting principles in the United States for the preceding calendar year ending December 31, which shall include all of the following:

a. The report of an independent certified public accountant.

b. A balance sheet.

c. An income statement.

d. A statement of cash flows.

e. A statement of changes in capital and surplus.

f. Notes to financial statements.

g. Communication of internal control related matters noted in an audit.

h. Accountant's letter of qualifications.

(f) An annual actuarial certification of loss reserves and loss expense reserves which includes an opinion of the

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adequacy of the loss reserves and loss expense reserves of the captive insurer, in a format acceptable to the commissioner, shall be filed with the report required in subsection (b). The person that certifies the reserves shall be approved by the commissioner and shall be a qualified actuary as defined in the National Association of Insurance Commissioners Quarterly and Annual Statement Instructions-Property/Casualty."

Section 2. This act shall become effective June 1, 2026.