

1 SB23
2 209903-4
3 By Senator Shelnutt
4 RFD: Banking and Insurance
5 First Read: 02-FEB-21
6 PFD: 12/16/2020

1 SB23

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4 ENROLLED, An Act,

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

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 27-31B-2, 27-31B-3, 27-31B-6,
20 27-31B-8, 27-31B-12, and 27-31B-13, Code of Alabama 1975, are
21 amended to read as follows:

22 "§27-31B-2.

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

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

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

7 "a. Is owned or directly or indirectly controlled by
8 one or more licensed insurance producers.

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

12 "~~(2)~~ (3) ALIEN CAPTIVE INSURANCE COMPANY. Any
13 insurance company formed to write insurance business for its
14 parents and affiliates and licensed pursuant to the laws of an
15 alien jurisdiction which imposes statutory or regulatory
16 standards in a form acceptable to the commissioner on
17 companies transacting the business of insurance in that
18 jurisdiction.

19 "~~(3)~~ (4) ASSOCIATION. Any legal association of
20 individuals, corporations, limited liability companies,
21 partnerships, associations, or other entities whereby either
22 of the following exists:

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

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

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

6 "3. Have complete voting control over an association
7 captive insurance company formed as a limited liability
8 company.

9 "b. The member organizations of which collectively
10 constitute all of the subscribers of an association captive
11 insurance company formed as a reciprocal insurer.

12 "~~(4)~~ (5) ASSOCIATION CAPTIVE INSURANCE COMPANY. Any
13 company that insures risks of the member organizations of the
14 association, and that also may insure the risks of affiliated
15 companies of the member organizations and the risks of the
16 association itself and their affiliated companies.

17 "~~(5)~~ (6) BRANCH BUSINESS. Any insurance business
18 transacted by a branch captive insurance company in this
19 state.

20 "~~(6)~~ (7) BRANCH CAPTIVE INSURANCE COMPANY. Any alien
21 captive insurance company licensed by the commissioner to
22 transact the business of insurance in this state through a
23 business unit with a principal place of business in this
24 state. A branch captive insurance company is a pure captive
25 insurance company with respect to operations in this state,

1 unless otherwise permitted by the commissioner. A branch
2 captive insurance company may pool insurance business done in
3 this state with business done in alien jurisdictions subject
4 to commissioner approval.

5 "~~(7)~~(8) BRANCH OPERATIONS. Any business operations
6 of a branch captive insurance company in this state.

7 "~~(8)~~(9) CAPTIVE INSURANCE COMPANY. Any pure captive
8 insurance company, agency captive insurance company,
9 association captive insurance company, risk retention group,
10 protected cell captive insurance company, incorporated cell
11 captive insurance company, ~~or~~ industrial insured captive
12 insurance company, reinsurance captive insurance company, or
13 special purpose captive insurance company formed or licensed
14 under this chapter.

15 "~~(9)~~(10) CAPTIVE RISK RETENTION GROUP. A captive
16 insurance company organized and licensed as a captive insurer
17 under the laws of this state and operating pursuant to the
18 Liability Risk Retention Act of 1986, as amended, 15 U.S.C.
19 §3901 et seq., as a stock or mutual corporation, a reciprocal,
20 or other limited liability entity. Risk retention groups
21 formed under this chapter are subject to ~~all the same~~
22 ~~provisions of this title applicable to a casualty insurer~~
23 ~~organized and licensed under the laws of this state~~ Section
24 27-31B-28.

1 "~~(10)~~ (11) COMMISSIONER. The Alabama Commissioner of
2 Insurance or the commissioner's designee.

3 "~~(11)~~ (12) CONTROLLED UNAFFILIATED BUSINESS. Any
4 company that meets all of the following criteria:

5 "a. Is not in the corporate system of a parent and
6 affiliated companies in the case of a pure captive insurance
7 company, or is not in the corporate system of an industrial
8 insured and its affiliated companies in the case of an
9 industrial insured captive insurance company.

10 "b. Has an existing contractual relationship with a
11 parent or one of its affiliated companies in the case of a
12 pure captive insurance company or with an industrial insured
13 or one of its affiliated companies in the case of an
14 industrial insured captive insurance company.

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

18 "~~(12)~~ (13) EXCESS WORKERS' COMPENSATION INSURANCE. In
19 the case of an employer or group of employers that has insured
20 or self-insured its workers' compensation risks in accordance
21 with applicable state or federal law, insurance in excess of a
22 specified per-incident or aggregate limit established by the
23 commissioner.

1 "~~(13)~~ (14) GENERAL ACCOUNT. All assets and
2 liabilities of a protected cell captive insurance company not
3 attributable to a protected cell.

4 "~~(14)~~ (15) INCORPORATED CELL. A protected cell of an
5 incorporated cell captive insurance company that is organized
6 as a corporation or other legal entity separate from the
7 incorporated cell captive insurance company.

8 "~~(15)~~ (16) INCORPORATED CELL CAPTIVE INSURANCE
9 COMPANY. A protected cell captive insurance company that is
10 established as a corporation or other legal entity separate
11 from its incorporated cells that are also organized as
12 separate legal entities.

13 "~~(16)~~ (17) INDUSTRIAL INSURED. As defined in
14 subdivision (2) of Section 27-10-20.

15 "~~(17)~~ (18) INDUSTRIAL INSURED CAPTIVE INSURANCE
16 COMPANY. Any company that insures risks of the industrial
17 insureds that comprise the industrial insured group, and that
18 may insure the risks of the affiliated companies of the
19 industrial insureds and the risks of the controlled
20 unaffiliated business of an industrial insured or its
21 affiliated companies.

22 "~~(18)~~ (19) INDUSTRIAL INSURED GROUP. Any group that
23 meets either of the following criteria:

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

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

4 "2. Have complete voting control over an industrial
5 insured captive insurance company incorporated as a mutual
6 insurer.

7 "3. Constitute all of the subscribers of an
8 industrial insured captive insurance company formed as a
9 reciprocal insurer.

10 "4. Have complete voting control over an industrial
11 insured captive insurance company formed as a limited
12 liability company.

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

18 "~~(19)~~ (20) MEMBER ORGANIZATION. Any individual,
19 corporation, limited liability company, partnership,
20 association, or other entity that belongs to an association.

21 "~~(20)~~ (21) MUNICIPAL MUTUAL CORPORATION. A
22 corporation or other legal entity organized without
23 stockholders. The term includes a nonprofit corporation with
24 members.

1 "~~(21)~~(22) MUTUAL INSURER. An incorporated captive
2 insurer without capital stock and the governing body of which
3 is elected from policyholders at the mutual members' annual
4 meeting.

5 "~~(22)~~(23) ORGANIZATIONAL DOCUMENTS. The documents
6 that must be submitted pursuant to state law in order to
7 legally form a business in this state, or to obtain a
8 certificate of authority to transact business in the state.

9 "~~(23)~~(24) PARENT. An individual, corporation,
10 limited liability company, partnership, association, or other
11 entity that directly or indirectly owns, controls, or holds
12 with power to vote more than 50 percent of the outstanding of
13 any of the following:

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

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

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

20 "~~(24)~~(25) PARTICIPANT. An entity as defined in
21 Section 27-31B-24, and any affiliates thereof, that are
22 insured by a protected cell captive insurance company, where
23 the losses of the participant are limited through a
24 participant contract.

1 "~~(25)~~ (26) PARTICIPANT CONTRACT. A contract by which a
2 protected cell captive insurance company insures the risks of
3 a participant and limits the losses of each participant to its
4 pro rata share of the assets of one or more protected cells
5 identified in the participant contract.

6 "~~(26)~~ (27) PROTECTED CELL. A separate account
7 established by a protected cell captive insurance company
8 formed or licensed under this chapter, in which an identified
9 pool of assets and liabilities is segregated and insulated by
10 means of this chapter from the remainder of the protected cell
11 captive insurance company's assets and liabilities in
12 accordance with the terms of one or more participant contracts
13 to fund the liability of the protected cell captive insurance
14 company, with respect to the participants as set forth in the
15 participant contracts.

16 "~~(27)~~ (28) PROTECTED CELL ASSETS. All assets,
17 contract rights, and general intangibles identified with and
18 attributable to a specific protected cell of a protected cell
19 captive insurance company.

20 "~~(28)~~ (29) PROTECTED CELL CAPTIVE INSURANCE COMPANY.
21 Any captive insurance company meeting all of the following:

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

24 "b. The company is formed and licensed under this
25 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)~~ (30) PROTECTED CELL LIABILITIES. All
9 liabilities and other obligations identified with and
10 attributed to a specific protected cell of a protected cell
11 captive insurance company.

12 "~~(30)~~ (31) PURE CAPTIVE INSURANCE COMPANY. Any
13 company that insures risks of its parent and affiliated
14 companies or controlled unaffiliated business or businesses.

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

18 "a. An insurer or reinsurer approved or licensed
19 under the laws of this state or any foreign or alien
20 jurisdiction upon approval of the commissioner.

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

23 "(33) SPECIAL PURPOSE FINANCIAL CAPTIVE COMPANIES or
24 SPFC. A captive insurance company that has received a

1 certificate of authority from the commissioner for the limited
2 purposes provided for within this chapter.

3 "~~(31)~~(34) SPONSOR. Any person or entity that is
4 approved by the commissioner to organize and operate a
5 protected cell captive insurance company.

6 "~~(32)~~(35) SURPLUS NOTE. An unsecured subordinated
7 debt obligation deemed to be a surplus certificate under terms
8 acceptable to the commissioner.

9 "§27-31B-3.

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

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

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

1 "~~(2)~~(3) No association captive insurance company may
2 insure any risks other than those of the member organizations
3 of its association, and their affiliated companies.

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

8 "~~(4)~~(5) No risk retention group may insure any risks
9 other than those of its members and owners.

10 "~~(5)~~(6) No captive insurance company may provide
11 personal motor vehicle coverage or any component thereof.
12 Homeowner's insurance coverage may be written by an Alabama
13 Coastal Captive Insurance Company as defined in Chapter 31C,
14 but only in the gulf front, beach, and seacoast areas as
15 designated by the Insurance Services Office, Inc.

16 "~~(6)~~(7) No captive insurance company may accept or
17 cede reinsurance except as provided in Section 27-31B-13.

18 "~~(7)~~(8) Any captive insurance company may provide
19 excess workers' compensation insurance to its parent and
20 affiliated companies and member organizations unless
21 prohibited by the laws of the state having jurisdiction over
22 the transaction. Any captive insurance company may reinsure
23 workers' compensation ~~of a qualified self-insured plan of its~~
24 ~~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.

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

1 official showing its financial condition, and any other
2 statements or documents required by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 "b. The commissioner may disclose the information to
25 a public officer having jurisdiction over the regulation of

1 insurance in another state, provided that (i) the public
2 official shall agree in writing to maintain the
3 confidentiality of the information, and (ii) the laws of the
4 state in which the public official serves require the
5 information to be and to remain confidential.

6 "(d) Each captive insurance company shall pay to the
7 commissioner a nonrefundable fee as set forth in Section
8 27-31B-4 for examining, investigating, and processing its
9 application for license, and the commissioner is authorized to
10 retain legal, financial, and examination services from outside
11 the department, the reasonable cost of which may be charged
12 against the applicant in accordance with Section 27-2-25. In
13 addition, each captive insurance company shall pay a license
14 fee for the year of registration and a renewal fee for each
15 year thereafter as set forth in Section 27-31B-4.

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

21 "(f) (1) Notwithstanding any other provision of this
22 chapter, the commissioner may issue a provisional license to
23 any applicant captive insurance company for a period not to
24 exceed 60 days if the commissioner deems that the public

1 interest will be served by the issuance of the provisional
2 license.

3 "(2) As a condition precedent to the issuance of a
4 provisional license under this subsection, the applicant shall
5 have filed a complete application containing all information
6 required by this section, paid all fees required for
7 licensure, and the commissioner shall have made a preliminary
8 finding that the expertise, experience, and character of the
9 person or persons who will control and manage the captive
10 insurer are acceptable.

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

22 "§27-31B-6.

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

1 "(1) In the case of a pure captive insurance
2 company, not less than ~~two hundred fifty thousand dollars~~
3 ~~(\$250,000)~~ one hundred thousand dollars (\$100,000) or such
4 other amount determined by the commissioner and actuarially
5 supported by a feasibility study.

6 "(2) In the case of an agency captive insurance
7 company, not less than five hundred thousand dollars
8 (\$500,000) or such other amount determined by the commissioner
9 and actuarially supported by a feasibility study.

10 "~~(2)~~ (3) In the case of an association captive
11 insurance company or risk retention group, not less than five
12 hundred thousand dollars (\$500,000) or such other amount
13 determined by the commissioner and actuarially supported by a
14 feasibility study.

15 "~~(3)~~ (4) In the case of an industrial insured captive
16 insurance company, not less than five hundred thousand dollars
17 (\$500,000).

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

22 "~~(4)~~ (6) In the case of a protected cell captive
23 insurance company, not less than ~~two hundred fifty thousand~~
24 ~~dollars (\$250,000)~~ one hundred thousand dollars (\$100,000) or

1 such other amount determined by the commissioner and
2 actuarially supported by a feasibility study.

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

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

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

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

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

23 "(f) Any captive formed under this chapter may be
24 capitalized with a surplus note. Any captive issuing a surplus

1 note pursuant to this section must execute a written agreement
2 with the creditor providing the following:

3 "a. The creditor may only be paid out of the portion
4 of the captive's surplus that exceeds the minimum stated in
5 the agreement.

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

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

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

15 "§27-31B-8.

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

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

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

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

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

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

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

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

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

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

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

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

24 "(j) Captive insurance companies formed as
25 corporations under this chapter shall have the privileges and

1 be subject to the general corporation law as well as the
2 applicable provisions of this chapter. In the event of
3 conflict between the general corporation law and this chapter,
4 the latter shall control. The provisions of this title
5 pertaining to mergers, consolidations, and conversions,
6 ~~mutualizations, and redomestications~~ shall apply in
7 determining the procedures to be followed by captive insurance
8 companies in carrying out any of the transactions described
9 therein, except that the commissioner may waive or modify the
10 requirements for public notice and hearing in accordance with
11 rules which the commissioner may adopt addressing categories
12 of transactions. If a notice of public hearing is required,
13 but no one requests a hearing, then the commissioner may
14 cancel the hearing.

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

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

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

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

17 "§27-31B-12.

18 "(a) An association captive insurance company, risk
19 retention group, and an industrial insured captive insurance
20 company insuring the risks of an industrial insured group
21 defined in paragraph b. of subdivision (18) of Section
22 27-31B-2 shall comply with the investment requirements
23 contained in this title, as applicable; provided, however,
24 that compliance with these investment requirements shall be
25 waived for risk retention groups to the extent that credit for

1 risks ceded to reinsurers is allowed pursuant to Section
2 27-31B-13 or to the extent otherwise deemed reasonable and
3 appropriate by the commissioner. Chapter 37 of this title
4 shall apply to association captives, risk retention groups,
5 and industrial insured captive insurance companies insuring
6 the risks of industrial insured groups defined in paragraph b.
7 of subdivision (18) of Section 27-31B-2 except to the extent
8 it is inconsistent with approved accounting standards in use
9 by the association captive insurance company, risk retention
10 group, or industrial insured captive insurance company
11 insuring the risks of an industrial insured group as defined
12 in paragraph b. of subdivision (18) of Section 27-31B-2.
13 Notwithstanding any other provision of this title, the
14 commissioner may approve the use of alternative reliable
15 methods of valuation and rating.

16 "(b) No pure captive insurance company, agency
17 captive insurance company, reinsurance captive company,
18 special purpose financial captive insurance company, and
19 industrial insured captive insurance company insuring the
20 risks of an industrial insured group as defined in paragraph
21 b. of subdivision (18) of Section 27-31B-2, or protected cell
22 captive insurance company shall be subject to any restrictions
23 on allowable investments whatever, including those limitations
24 contained in Chapters 37 and 41. Notwithstanding the
25 foregoing, the commissioner may prohibit or limit any

1 investment that threatens the solvency or liquidity of the
2 company.

3 "(c) Only a pure captive insurance company or a
4 protected cell captive insurance company may make loans to its
5 parent company or affiliates. No loans to a parent company or
6 any affiliate shall be permitted without prior written
7 approval of the commissioner and must be evidenced by a note
8 in a form approved by the commissioner. Loans of minimum
9 capital and surplus funds required by Section 27-31B-6 are
10 prohibited. Any loan made by a protected cell captive
11 insurance company must be made from funds in the company's
12 general account.

13 "§27-31B-13.

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

17 "(b) A captive insurance company may take credit for
18 reserves on risks or portions of risks ceded to reinsurers
19 complying with ~~subdivisions (1) through (4) of subsection (c)~~
20 ~~of Section 27-5-12~~ Sections 27-5B-4 through 27-5B-9. A captive
21 insurer shall not take credit for the reserves on risks or
22 portions of risks ceded to reinsurers not complying with
23 ~~subdivisions (1) through (4) of subsection (c) of Section~~
24 ~~27-5-12~~ Sections 27-5B-4 through 27-5B-9.

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

5 Section 2. Sections 27-31B-26, 27-31B-27, and
6 27-31B-28, are added to the Code of Alabama 1975, to read as
7 follows:

8 §27-31B-26.

9 A stock captive insurer may become a mutual captive
10 insurer under such plan or procedure as may be approved by the
11 commissioner. The commissioner shall not approve any such
12 plan, procedure, or mutualization unless:

13 (1) It is equitable to stockholders and
14 policyholders;

15 (2) It is subject to approval by the holders of a
16 majority of the insurer's outstanding capital stock having
17 voting rights and by a majority of the insurer's policyholders
18 who vote on such plan in person, by proxy, by mail or e-mail
19 pursuant to such notice and procedure as included in the plan
20 or procedures approved by the commissioner. For purposes of
21 this section a majority vote is one where, based on the number
22 of votes returned, there are more votes for approval of the
23 mutualization than there are for denial;

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

4 (4) The plan provides for the purchase of the shares
5 of any nonconsenting stockholder in the same manner and
6 subject to the same applicable conditions as provided by the
7 general corporation laws of the state as to rights of
8 nonconsenting stockholders with respect to consolidation or
9 merger of private corporations;

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

13 (6) The mutualization leaves the insurer with
14 surplus funds reasonably adequate for the security of its
15 policyholders and to enable it to continue successfully under
16 an approved plan of operation.

17 §27-31B-27

18 (a) Notwithstanding any other method authorized by
19 law, a foreign or alien captive insurance company may become a
20 domestic captive insurance company by complying with all of
21 the requirements of this chapter relative to the organization
22 and licensing of a domestic captive insurance company of the
23 same type with the approval of the commissioner. A company
24 redomesticating to this state pursuant to this section may be

1 organized under any lawful corporate form permitted by this
2 chapter.

3 (b) A redomestication pursuant to this section shall
4 be authorized for captive insurance companies domiciled in
5 foreign or alien jurisdictions that authorize the
6 redomestication of captive insurance companies where, as a
7 result of the actions taken by the company pursuant to this
8 section to redomesticate to this state, shall no longer be a
9 domestic legal entity of foreign or alien jurisdiction. A
10 company seeking to redomesticate under this section must also
11 provide evidence in a form satisfactory to the commissioner
12 that the applicable regulatory authority of its domicile
13 consents to the redomestication.

14 (c) Upon the completion of a redomestication under
15 this section, the captive insurance company shall be subject
16 to the laws of this state and shall be considered domiciled in
17 this state. The captive insurance company shall be deemed to
18 have a formation date corresponding to its original formation
19 date in the foreign or alien domicile.

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

1 (e) This section shall not be the exclusive means of
2 redomesticating an insurance company to this state and shall
3 not restrict the ability of an insurance company to undergo a
4 merger, consolidation, transfer of assets and liabilities, or
5 utilize any other means permitted by law to effect the
6 transfer of operations of a foreign or alien insurance company
7 to this state.

8 §27-31B-28

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB23
Senate 11-FEB-21
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 01-APR-21

By: Senator Shelnut