

SB305

By Senator Byrne

ENROLLED, An Act,

Relating to insurance, to provide for the regulation, taxation, operation, and merger and conversion of captive insurance companies, and for this purpose to add Chapter 31B to Title 27, and to amend Section 27-31A-4, Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Chapter 31B is added to Title 27, Code of Alabama 1975, to read as follows:

Section 27-31B-1. Short Title.

This chapter shall be known and may be cited as the "Alabama Captive Insurers Act."

Section 27-31B-2. Definitions

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

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

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

(3) **ASSOCIATION**. Any legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one year and meets either of the following:

a. The member organizations of which collectively, or which does itself, meet either of the following:

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

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

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

(4) ASSOCIATION CAPTIVE INSURANCE COMPANY Any company that insures risks of the member organizations of the association, and their affiliated companies.

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

(6) BRANCH CAPTIVE INSURANCE COMPANY. Any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

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

(8) CAPTIVE INSURANCE COMPANY. Any pure captive insurance company, association captive insurance company, sponsored captive insurance company or industrial insured captive insurance company formed or licensed under the provisions of this chapter. For purposes of this chapter, a branch captive insurance company shall be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner.

(9) COMMISSIONER. The Alabama Commissioner of Insurance

(10) CONTROLLED UNAFFILIATED BUSINESS. Any company that meets all of the following criteria:

a. Is not in the corporate system of a parent and affiliated companies.

b. Has an existing contractual relationship with a parent or affiliated company.

c. Whose risks are managed by a pure captive insurance company in accordance with Section 27-31B-19.

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

(12) INDUSTRIAL INSURED. As defined in subdivision (2) of Section 27-10-20.

(13) INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY. Any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.

(14) INDUSTRIAL INSURED GROUP. Any group that meets either of the following criteria:

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

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

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

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

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

(15) MEMBER ORGANIZATION. Any individual, corporation, partnership, or association that belongs to an association.

(16) PARENT. A corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the outstanding voting securities of a pure captive insurance company.

(17) PARTICIPANT. An entity as defined in Section 27-31B-24, and any affiliates thereof, that are insured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to the participant's pro rata share of the assets of one or more protected cells identified in the participant contract.

(18) PARTICIPANT CONTRACT. A contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of each participant to its pro rata share of the assets of one or more protected cells identified in the participant contract.

(19) PROTECTED CELL. A separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter, in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company to the participants as set forth in the participant contracts.

(20) PURE CAPTIVE INSURANCE COMPANY. Any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.

(21) SPONSOR. Any entity that meets the requirements of Section 27-31B-23 and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

(22) SPONSORED CAPTIVE INSURANCE COMPANY. Any captive insurance company meeting all of the following criteria:

- a. The minimum capital and surplus required by applicable law is provided by one or more sponsors.
- b. Is formed or licensed under the provisions of this chapter.
- c. Insures the risks of separate participants through participant contracts.
- d. Funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account.

Section 27-31B-3 Licensing

(a) Any captive insurance company, when permitted by its articles of association, charter, or other organizational 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 association captive insurance company may insure any risks other than those of the member organizations of its association, and their affiliated companies.
- (3) 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.
- (4) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof.
- (5) No captive insurance company may accept or cede reinsurance except as provided in Section 27-31B-13.
- (6) Any captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurance company may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies.
- (7) 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.
- (8) No branch captive insurance company may write any business in this state except insurance or reinsurance of the employee benefit business of its parent and affiliated companies which is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended.

(9) No sponsored 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 will 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 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 the principal place of business for its branch 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, 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.

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

a. If formed as a corporation, it shall file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary 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.

(2) In addition to the information required by subdivision (1) of subsection (c), 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, or industrial 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) of subsection (c), each applicant sponsored 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 sponsored captive insurance company, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner or the commissioner's designated agent.
- c. All contracts or sample contracts between the sponsored 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, (ii) the information sought is unavailable from other nonconfidential sources, 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 (14) of Section 27-31B-2.

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

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

Section 27-31B-4. Fees.

(a) The commissioner shall collect the following fees in connection with Section 27-31B-3:

- (1) Filing application for license, two hundred dollars (\$200).
- (2) License fee, for initial license and each annual renewal thereof, three hundred dollars (\$300).

(b) All fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the Insurance Department Fund.

Section 27-31B-5. Names of companies.

No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the State of Alabama.

Section 27-31B-6. Minimum capital and surplus.

(a) No pure captive insurance company, association captive insurance company, sponsored captive insurance company, or industrial insured captive insurance company shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus as follows:

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

(2) In the case of an association captive insurance company, not less than seven hundred fifty thousand dollars (\$750,000).

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

(4) In the case of a sponsored captive insurance company, not less than one million dollars (\$1,000,000).

(b) Notwithstanding the requirements of subsection (a), no captive insurance company organized as a reciprocal insurer under this chapter shall be issued a license unless it has 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 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 shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurance company through its branch operations. The amount of the security may be no less than the capital and surplus required hereunder and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations. Notwithstanding the foregoing, the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this state or a member bank of the Federal Reserve System.

Section 27-31B-7. Dividends.

No captive insurance company may pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in Section 27-29-5(g), without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner.

Section 27-31B-8. Formation of captive insurance companies in this state.

(a) A pure captive insurance company or a sponsored captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders

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

(1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(2) Incorporated as a mutual insurer without capital 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

(c) A captive insurance company incorporated or organized in this state shall have not less than three incorporators or two organizers of whom not less than two 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 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) 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 qualifications of the officers and directors of the alien captive insurance company, 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 formed as a corporation, at least one of the members of the board of directors 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, conversions, mutualizations, and redomestications shall apply in determining the 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 of this title in addition to the applicable provisions of this chapter. In the event of a conflict between the provisions of 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 (14) of Section 27-31B-2 shall have the privileges and be subject to the provisions of Chapter 31A of this title in addition to the applicable provisions of this chapter.

(l) The articles of incorporation or bylaws of a captive insurance company formed as a corporation 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.

(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.

Section 27-31B-9. Reports and statements.

(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 (14) of Section 27-31B-2 shall file its report in the form required by Section 27-3-26. 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 (14) of Section 27-31B-2 shall report. Subdivision (4) of subsection (c) of Section 27-31B-3 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 (14) of Section 27-31B-2.

(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 (14) of Section 27-31B-2 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 (14) of Section 27-31B-2 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 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.

Section 27-31B-10. Examinations and investigations.

(a) At least once in three years, and whenever the commissioner determines it to be prudent, the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has

complied with the provisions of this chapter. The commissioner, upon application, may enlarge the three-year period to five years, provided the captive insurance company is subject to a comprehensive annual audit during that period of a scope satisfactory to the commissioner by independent auditors approved by the commissioner. The expenses and charges of the examination shall be in accordance with Section 27-2-25.

(b) All examination reports, preliminary examination reports or results, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using the information in furtherance of the commissioner's regulatory authority under this title. The commissioner may grant access to the information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this state or any other state or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(c)(1) This section applies to all business written by a captive insurance company, except that the examination for a branch captive insurance company shall be of branch business and branch operations only, as long as the branch captive insurance company provides annually to the commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of the jurisdiction.

(2) As a condition of licensure, an alien captive insurance company shall grant authority to the commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

(d) To the extent that the provisions of Sections 27-2-22 through 27-2-32, do not contradict the provisions of this section, the sections shall apply to captive insurance companies licensed under this chapter.

Section 27-31B-11. Grounds and procedures for suspension or revocation of license

(a) The license of a captive insurance company to do an insurance business in this state may be suspended or revoked by the commissioner for any of the following reasons:

- (1) Insolvency or impairment of capital or surplus.
- (2) Failure to meet the requirements of Section 27-31B-6.
- (3) Refusal or failure to submit an annual report, as required by Section 27-31B-9, or any other report or statement required by law or by lawful order of the commissioner
- (4) Failure to comply with its own charter, bylaws or other organizational document

(5) Failure to submit to examination or any legal obligation relative thereto, as required by Section 27-31B-10.

(6) Refusal or failure to pay the cost of examination, as required by Section 27-31B-10.

(7) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders.

(8) Failure otherwise to comply with the laws of this state.

(b) If the commissioner finds, upon examination, hearing, or other evidence, that any captive insurance company has committed any of the acts specified in subsection (a), the commissioner may suspend or revoke the license if the commissioner deems it in the best interest of the public and the policyholders of the captive insurance company, notwithstanding any other provision of this title

Section 27-31B-12. Legal investments.

(a) An association captive insurance company, sponsored captive insurance company, and an industrial insured captive insurance company insuring the risks of an industrial insured group defined in paragraph b. of subdivision (14) of Section 27-31B-2 shall comply with the investment requirements contained in this title, as applicable; provided, however, that compliance with these investment requirements shall be waived for sponsored captive insurance companies to the extent that credit for risks ceded to reinsurers is allowed pursuant to Section 27-31B-13 or to the extent otherwise deemed reasonable and appropriate by the commissioner. Chapter 37 of this title shall apply to association captives, sponsored captive insurance companies, and industrial insured captive insurance companies insuring the risks of industrial insured groups defined in paragraph b. of subdivision (14) of Section 27-31B-2 except to the extent it is inconsistent with approved accounting standards in use by the association captive insurance company, sponsored captive insurance company, or industrial insured captive insurance company insuring the risks of an industrial insured group as defined in paragraph b. of subdivision (14) of Section 27-31B-2. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company or industrial insured captive insurance company insuring the risks of an industrial insured group as defined in paragraph b. of subdivision (14) of Section 27-31B-2 shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Chapters 37 and 41. Notwithstanding the foregoing, the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

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

Section 27-31B-13. Reinsurance.

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

(b) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the provisions of paragraphs a through d of subdivision (2) of subsection (b) of Section 27-5-12. A captive insurer shall not take credit for the reserves on risks or portions of risks ceded to reinsurers not complying with paragraphs a through d of subdivision (2) of subsection (b) of Section 27-5-12.

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

Section 27-31B-14 Rating organizations; memberships.

No captive insurance company may be required to join a rating organization.

Section 27-31B-15 Exemption from compulsory associations.

No captive insurance company, including a captive insurance company organized as a reciprocal insurer under this chapter, may join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state. No captive insurance company, or its insured, or its parent or any affiliated company, or any member organization of its association or, in the case of a captive insurance company organized as a reciprocal insurer, any subscriber thereof, may receive any benefit from any plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company

Section 27-31B-16 Tax on premiums collected.

(a) Each captive insurance company shall pay to the commissioner, by March 1 of each year, a tax at the rate of four-tenths of one percent on the first 20 million dollars, three-tenths of one percent on the next 20 million dollars, two-tenths of one percent on the next 20 million dollars, seventy-five thousandths of one percent on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders. Notwithstanding the foregoing, no tax shall be due or payable as to considerations received for annuity contracts.

(b) Each captive insurance company shall pay to the commissioner by March 1 of each year a tax at the rate of two hundred and twenty-five thousandths of one percent on the first 20 million dollars of assumed reinsurance premium, one hundred fifty thousandths of one percent on the next 20 million dollars, fifty thousandths of one percent on the next 20 million dollars, twenty-five thousandths of one percent of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (a). No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer

under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer, and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

(c) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (a) and (b) amount to less than five thousand dollars (\$5,000) in any year, the captive insurance company shall pay a tax of five thousand dollars (\$5,000) for that year.

(d) A captive insurance company failing to make returns as required by Chapter 14A of Title 40 or failing to pay within the time required all taxes assessed by this section, shall be subject to Section 27-4A-4.

(e) Two or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurance company

(f) For the purposes of this section, "common ownership and control" shall have the following meaning, as applicable:

(1) In the case of stock corporations, the direct or indirect ownership of 80 percent or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders.

(2) In the case of mutual corporations, the direct or indirect ownership of 80 percent or more of the surplus and the voting power of two or more corporations by the same member or members

(g) In the case of a branch captive insurance company, the tax provided for in this section shall apply only to the branch business of the company.

(h) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the state or any county, city, or municipality within this state, except business privilege taxes and ad valorem taxes on real and personal property used in the production of income.

Section 27-31B-17. Rules.

The commissioner may establish and from time to time amend rules relating to captive insurance companies as are necessary to enable the commissioner to carry out the provisions of this chapter.

Section 27-31B-18. Laws applicable.

No provisions of this title, other than those contained in this chapter or referring specifically to captive insurance companies, shall apply to captive insurance companies.

Section 27-31B-19. Delinquency.

(a) Except as otherwise provided in this section, the terms and conditions set forth in Chapter 32

and Article 2 of Chapter 2, pertaining to rehabilitation, reorganization, conservation and liquidation of insurers, shall apply in full to captive insurance companies formed or licensed under this chapter.

(b) In the event of an action described in subsection (a) against a sponsored captive insurance company, both of the following shall apply:

(1) The assets of a protected cell may not be used to pay any expenses or claims other than those attributable to the protected cell

(2) Its capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.

Section 27-31B-20. Rules for controlled unaffiliated business.

The commissioner shall adopt rules establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company. Until the rules under this section are adopted, the commissioner may by temporary order grant authority to a pure captive insurance company to insure risks.

Section 27-31B-21. Conversion to or merger with reciprocal insurer

(a) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefor and this section

(b) A plan for this conversion or merger shall satisfy both of the following:

(1) Be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer.

(2) Provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are accorded a dissenting shareholder under Article 13 of Chapter 2B of Title 10.

(c) A conversion authorized under subsection (a) shall satisfy all of the following:

(1) The conversion shall be accomplished under a reasonable plan and procedure as may be approved by the commissioner. Notwithstanding the foregoing, the commissioner may not approve any plan of conversion unless the plan satisfies subsection (b) and all of the following:

a. Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom shall have the right to appear at the hearing, except that the commissioner may waive or modify the requirements for the hearing. If a notice of hearing is required, but no hearing is

requested, the commissioner may cancel the hearing.

b. Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer.

c. Is approved as follows:

1. In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present.

2. In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting thereof at which a quorum is present.

(2) The commissioner shall approve the plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in subsection (e) of Section 27-31B-8.

(3) If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact.

(4) Upon the issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion shall be effective.

(5) Upon the effectiveness of the conversion the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.

(d) A merger authorized under subsection (a) shall be accomplished substantially in accordance with the procedures set forth in Sections 27-27-45 and 27-27-46, except that, solely for purposes of the merger, the plan of merger shall satisfy subsection (b) and comply with all of the following:

(1) The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company.

(2) The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company.

(3) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties shall be deemed the president or secretary of the committee.

(4) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in

subsection (e) of Section 27-31B-8. If the commissioner approves the articles of merger, the commissioner shall indorse his or her approval thereon and the surviving insurer shall present the same to the Secretary of State at the Secretary of State's Office.

(5) Notwithstanding Section 27-31B-6, the commissioner may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section as long as there is no more than one authorized insurance company surviving the merger.

(6) An alien insurer may be a party to a merger authorized under subsection (a) if the requirements for a merger between a domestic and a foreign insurer under Sections 27-27-45 and 27-27-46 apply to a merger between a domestic and an alien insurer under this subsection. The alien insurer shall be treated as a foreign insurer under Sections 27-27-45 and 27-27-46 and other jurisdictions shall be the equivalent of a state for purposes of Sections 27-27-45 and 27-27-46.

(e) A conversion or merger under this section shall have all of the effects set forth in Section 10-2B-11.06 to the extent these effects are not inconsistent with the provisions of this chapter.

Section 27-31B-22. Sponsored captive insurance companies.

(a) One or more sponsors may form a sponsored captive insurance company under this chapter.

(b) A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to all of the following conditions:

(1) The shareholders of a sponsored captive insurance company shall be limited to its participants and sponsors.

(2) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors as may be provided in the participant contract or required by the commissioner.

(3) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct.

(4) No sale, exchange, or other transfer of assets may be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells.

(5) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval and in no event shall the approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell.

(6) Each sponsored captive insurance company shall annually file with the commissioner all

financial reports as the commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(7) Each sponsored captive insurance company shall notify the commissioner in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations.

(8) No participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell shall constitute a change in the business plan requiring the commissioner's prior written approval.

(9) The business written by a sponsored captive insurance company, with respect to each cell, shall be one of the following:

a. Fronted by an insurance company licensed under the laws of any state.

b. Reinsured by a reinsurer authorized or approved by the State of Alabama.

c. Secured by a trust fund in the United States for the benefit of policyholders and claimants funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner. The amount of security provided by a trust fund shall be no less than the reserves associated with those liabilities, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell. The commissioner may require the sponsored captive to increase the funding of any trust as established under this subdivision. If the form of security in the trust is a letter of credit, the letter of credit must be clean, irrevocable, and unconditional and must be issued or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if the state chartered bank is acceptable to the commissioner. A trust and trust instrument maintained pursuant to this subdivision shall be established in a form and upon terms approved by the commissioner.

Section 27-31B-23. Qualification of sponsors

A sponsor of a sponsored captive insurance company shall be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state, or a captive insurance company formed or licensed under this chapter. A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

Section 27-31B-24. Participants in sponsored captive insurance companies.

(a) An association, corporation, limited liability company, partnership, trust, or other business entity may be a participant in a sponsored captive insurance company formed or licensed under this chapter.

(b) A sponsor may be a participant in a sponsored captive insurance company.

(c) A participant need not be a shareholder of the sponsored captive insurance company or an affiliate of the company.

(d) A participant shall insure only its own risks through a sponsored captive insurance company.

Section 2. Section 27-31A-4, Code of Alabama 1975, is amended to read as follows:

§27-31A-4.

"Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall comply with the laws of this state as follows:

"(1) Notice of operations and designation of commissioner as agent.

"a. Before offering insurance in this state, a risk retention group shall submit to the commissioner both of the following:

"1. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, charter date, its principal place of business, and other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified pursuant to subdivision (11) of Section 27-31A-2.

"2. A copy of its plan of operations or feasibility study and revisions of the plan or study submitted to the state in which the risk retention group is chartered and licensed, provided that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which was both:

"(i) Defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986.

"(ii) Offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date.

"b. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by subsection (b) of Section 27-31A-3 at the same time that the revision is submitted to the commissioner of its chartering state.

"c. The risk retention group shall designate the commissioner as its agent for the purpose of receiving service of legal documents or process with a statement of registration, for which a filing fee shall be determined by the commissioner.

"(2) Financial condition. - Any risk retention group doing business in this state shall submit to the commissioner all of the following:

"a. A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member

of the American Academy of Actuaries, or a qualified loss reserve specialist, under criteria established by the National Association of Insurance Commissioners.

"b. A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.

"c. Upon request by the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group.

"d. Information as may be required to verify its continuing qualification as a risk retention group pursuant to subdivision (11) of Section 27-31A-2.

"(3) Taxation.

"a. Each risk retention group shall be liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the commissioner the net premiums written for risks resident or located within this state. The risk retention group shall be subject to taxation, and any applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer.

"b. To the extent licensed agents or brokers are utilized pursuant to Section 27-31A-12, they shall report to the commissioner the premiums for direct business for risks resident or located within this state which the licensees have placed with or on behalf of a risk retention group not chartered in this state.

"c. To the extent that insurance agents or brokers are utilized pursuant to Section 27-31A-12, any agent or broker shall keep a complete and separate record of all policies procured from each risk retention group, which record shall be open to examination by the commissioner, as provided in Section 27-2-20. These records shall, for each policy and each kind of insurance provided thereunder, include the following:

"1. The limit of liability.

"2. The time period covered.

"3. The effective date.

"4. The name of the risk retention group which issued the policy.

"5. The gross premium charged.

"6. The amount of return premiums, if any.

"(4) Compliance with Trade Practices Law. - Any risk retention group, its agents, and representatives shall comply with the Trade Practices Law, Chapter 12 (commencing with Section 27-12-1), Title 27, regarding deceptive, false, or fraudulent acts or practices. If the commissioner seeks an injunction regarding that conduct, the injunction shall be obtained from a

court of competent jurisdiction

"(5) Examination regarding financial condition - Any risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state. The examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the Examiner Handbook of the National Association of Insurance Commissioners.

"(6) Notice to purchasers - Every application form for insurance from a risk retention group, and every policy, on its front and declaration pages, issued by a risk retention group, shall contain in ten point type the following notice:

"NOTICE

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

"(7) Prohibited acts regarding solicitation or sale. - The following acts by a risk retention group are prohibited:

"a. The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group.

"b. The solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired

"(8) Prohibition on ownership by an insurance company. - No risk retention group shall be allowed to do business in this state if an insurance company, other than an alien insurance company which is an affiliated risk retention group, captive insurer, as defined in Chapter 31B, or policyholder-owned company that does no insurance business other than to reinsure the risks of its wholly-owned risk retention group, is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

"(9) Prohibited coverage. - The terms of any insurance policy issued by any risk retention group shall not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to that policy.

"(10) Delinquency proceedings. - A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subdivision (5) of this section.

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"(11) Penalties. - A risk retention group that violates this chapter will be subject to fines and penalties including revocation of its right to do business in this state, applicable to licensed insurers generally.

"(12) Operation prior to enactment of this chapter. - In addition to complying with this section, any risk retention group operating in this state prior to enactment of this chapter shall, within 30 days after May 17, 1993, comply with subdivision (1)a of this section "

Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

Insurance

Insurance Department

Captive Insurance Companies

Business and Commerce

Taxation

Premium Taxes

Code Amended

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| Bill Status for SB305 |
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Regular Session 2006

09/18/2006 09:49 AM

1 Instrument

Not Official Information from the Legislative Offices

| Instrument | Sponsor | Subject | In Status | Comm Assigned | Comm Recomm | Last Action Date |
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Byrne Insurance Enacted 2006-509

04/06/2006

Captive insurance companies regulated and licensed by Insurance Department, fees established, premium taxes levied, Alabama Captive Insurers Act, Secs. 27-31B-1 to 27-31B-24, inclusive, added; Sec. 27-31A-4 am'd. (2006-20557)