

ACT No. 2006-509

1 SB305  
2 82944-4  
3 By Senator Byrne  
4 RFD: Banking and Insurance  
5 First Read: 19-JAN-06



1 SB305

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4 ENROLLED, An Act,

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

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 Section 27-31B-1. Short Title.

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

16 Section 27-31B-2. Definitions.

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

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

24 (2) ALIEN CAPTIVE INSURANCE COMPANY. Any insurance  
25 company formed to write insurance business for its parents and

1 affiliates and licensed pursuant to the laws of an alien  
2 jurisdiction which imposes statutory or regulatory standards  
3 in a form acceptable to the commissioner on companies  
4 transacting the business of insurance in that jurisdiction.

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

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

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

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

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

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

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

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

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

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

16           (9) COMMISSIONER. The Alabama Commissioner of  
17 Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14          (17) PARTICIPANT. An entity as defined in Section  
15    27-31B-24, and any affiliates thereof, that are insured by a  
16    sponsored captive insurance company, where the losses of the  
17    participant are limited through a participant contract to the  
18    participant's pro rata share of the assets of one or more  
19    protected cells identified in the participant contract.

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

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

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

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

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

19           a. The minimum capital and surplus required by  
20 applicable law is provided by one or more sponsors.

21           b. Is formed or licensed under the provisions of  
22 this chapter.

23           c. Insures the risks of separate participants  
24 through participant contracts.

1           d. Funds its liability to each participant through  
2 one or more protected cells and segregates the assets of each  
3 protected cell from the assets of other protected cells and  
4 from the assets of the sponsored captive insurance company's  
5 general account.

6           Section 27-31B-3. Licensing.

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

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

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

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

1           (4) No captive insurance company may provide  
2 personal motor vehicle or homeowner's insurance coverage or  
3 any component thereof.

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

6           (6) Any captive insurance company may provide excess  
7 workers' compensation insurance to its parent and affiliated  
8 companies, unless prohibited by the laws of the state having  
9 jurisdiction over the transaction. Any captive insurance  
10 company may reinsure workers' compensation of a qualified  
11 self-insured plan of its parent and affiliated companies.

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

15           (8) No branch captive insurance company may write  
16 any business in this state except insurance or reinsurance of  
17 the employee benefit business of its parent and affiliated  
18 companies which is subject to the provisions of the Employee  
19 Retirement Income Security Act of 1974, as amended.

20           (9) No sponsored captive insurance company may  
21 insure any risks other than those of its participants.

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

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

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

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

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

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

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

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

3 a. If formed as a corporation, it shall file with  
4 the commissioner a certified copy of its charter and bylaws, a  
5 statement under oath of its president and secretary showing  
6 its financial condition, and any other statements or documents  
7 required by the commissioner.

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

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

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

1 commissioner of any material change in rates within 30 days of  
2 the adoption of the change.

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

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

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

11 c. The overall soundness of its plan of operation.

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

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

18 (3) In addition to the information required by  
19 subdivisions (1) and (2) of subsection (c), each applicant  
20 sponsored captive insurance company shall file with the  
21 commissioner all of the following:

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

1 the commissioner and how it will report the experience to the  
2 commissioner.

3 b. A statement acknowledging that all financial  
4 records of the sponsored captive insurance company, including  
5 records pertaining to any protected cells, shall be made  
6 available for inspection or examination by the commissioner or  
7 the commissioner's designated agent.

8 c. All contracts or sample contracts between the  
9 sponsored captive insurance company and any participants.

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

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

17 a. The information may be discoverable by a party in  
18 a civil action or contested case to which the captive  
19 insurance company that submitted the information is a party,  
20 upon a showing by the party seeking to discover the  
21 information that (i) the information sought is relevant to and  
22 necessary for the furtherance of the action or case, (ii) the  
23 information sought is unavailable from other nonconfidential  
24 sources, and (iii) a subpoena issued by a judicial or  
25 administrative officer of competent jurisdiction has been

1 submitted to the commissioner. Notwithstanding the foregoing,  
2 this subdivision shall not apply to any industrial insured  
3 captive insurance company insuring the risks of an industrial  
4 insured group as defined in paragraph b. of subdivision (14)  
5 of Section 27-31B-2.

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

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

23 (e) If the commissioner is satisfied that the  
24 documents and statements filed by a captive insurance company  
25 comply with the provisions of this chapter, the commissioner

1 may grant a license authorizing the company to do insurance  
2 business in this state until April 1 thereafter, which license  
3 may be renewed.

4 Section 27-31B-4. Fees.

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

7 (1) Filing application for license, two hundred  
8 dollars (\$200).

9 (2) License fee, for initial license and each annual  
10 renewal thereof, three hundred dollars (\$300).

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

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

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

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

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

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

3           (2) In the case of an association captive insurance  
4 company, not less than seven hundred fifty thousand dollars  
5 (\$750,000).

6           (3) In the case of an industrial insured captive  
7 insurance company, not less than five hundred thousand dollars  
8 (\$500,000).

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

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

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

19           (d) Capital and surplus may be in the form of cash  
20 or, if approved by the commissioner, a clean, irrevocable, and  
21 unconditional letter of credit issued by a bank chartered by  
22 the State of Alabama or a member bank of the Federal Reserve  
23 System and approved by the commissioner. No assets of the  
24 captive insurer shall be pledged or encumbered for the payment  
25 of the letter of credit.

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

25           Section 27-31B-7. Dividends.

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

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

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

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

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

21           (2) Incorporated as a mutual insurer without capital  
22 stock, the governing body of which is elected by the member  
23 organizations of its association.

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

1           (c) A captive insurance company incorporated or  
2 organized in this state shall have not less than three  
3 incorporators or two organizers of whom not less than two  
4 shall be a resident of this state.

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

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

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

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

20           (2) The articles of incorporation, the certificate,  
21 and the organization fee shall be transmitted to the Secretary  
22 of State, who shall thereupon record both the articles of  
23 incorporation and the certificate.

24           (e) In the case of a captive insurance company  
25 formed as a reciprocal insurer, the organizers shall petition

1 the commissioner to issue a certificate setting forth the  
2 commissioner's finding that the establishment and maintenance  
3 of the proposed association will promote the general good of  
4 the state. In arriving at this finding the commissioner shall  
5 consider all of the following:

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

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

11 (3) Any other aspects as the commissioner shall deem  
12 advisable.

13 (f) In the case of a captive insurance company  
14 licensed as a branch captive insurance company, the alien  
15 captive insurance company shall petition the commissioner to  
16 issue a certificate setting forth the commissioner's finding  
17 that, after considering the character, reputation, financial  
18 responsibility, insurance experience, and business  
19 qualifications of the officers and directors of the alien  
20 captive insurance company, the licensing and maintenance of  
21 the branch operations will promote the general good of the  
22 state. The alien captive insurance company may register to do  
23 business in this state after the commissioner's certificate is  
24 issued.

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

4           (h) In the case of a captive insurance company  
5 formed as a corporation, at least one of the members of the  
6 board of directors shall be a resident of this state.

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

11           (j) Captive insurance companies formed as  
12 corporations under this chapter shall have the privileges and  
13 be subject to the general corporation law as well as the  
14 applicable provisions of this chapter. In the event of  
15 conflict between the general corporation law and this chapter,  
16 the latter shall control. The provisions of this title  
17 pertaining to mergers, consolidations, conversions,  
18 mutualizations, and redomestications shall apply in  
19 determining the procedures to be followed by captive insurance  
20 companies in carrying out any of the transactions described  
21 therein, except that the commissioner may waive or modify the  
22 requirements for public notice and hearing in accordance with  
23 rules which the commissioner may adopt addressing categories  
24 of transactions. If a notice of public hearing is required,

1 but no one requests a hearing, then the commissioner may  
2 cancel the hearing.

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

14 (2) In addition to subdivision (1), captive  
15 insurance companies organized as reciprocal insurers that are  
16 industrial insured groups as defined in paragraph b. of  
17 subdivision (14) of Section 27-31B-2 shall have the privileges  
18 and be subject to the provisions of Chapter 31A of this title  
19 in addition to the applicable provisions of this chapter.

20 (l) The articles of incorporation or bylaws of a  
21 captive insurance company formed as a corporation may  
22 authorize a quorum of a board of directors to consist of no  
23 fewer than one-third of the fixed or prescribed number of  
24 directors determined under Title 10.

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

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

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

10           (b) Prior to March 1 of each year, each captive  
11 insurance company shall submit to the commissioner a report of  
12 its financial condition, verified by oath of two of its  
13 executive officers. Except as provided in Section 27-31B-6,  
14 each captive insurance company shall report using statutory  
15 accounting principles, unless the commissioner approves the  
16 use of generally accepted accounting principles, with any  
17 useful or necessary modifications or adaptations thereof  
18 required or approved or accepted by the commissioner for the  
19 type of insurance and kinds of insurers to be reported upon,  
20 and as supplemented by additional information required by the  
21 commissioner. Except as otherwise provided, each association  
22 captive insurance company and each industrial insured captive  
23 insurance company insuring the risks of an industrial insured  
24 group defined in paragraph b. of subdivision (14) of Section  
25 27-31B-2 shall file its report in the form required by Section

1 27-3-26. The commissioner shall by rule propose the forms in  
2 which pure captive insurance companies and industrial insured  
3 captive insurance companies insuring the risks of an  
4 industrial insured group defined in paragraph a. of  
5 subdivision (14) of Section 27-31B-2 shall report. Subdivision  
6 (4) of subsection (c) of Section 27-31B-3 shall apply to each  
7 report filed pursuant to this section, except the subdivision  
8 shall not apply to reports filed by industrial insured captive  
9 insurance companies insuring the risks of industrial insured  
10 groups as defined in paragraph b. of subdivision (14) of  
11 Section 27-31B-2.

12 (c) Any pure captive insurance company or an  
13 industrial insured captive insurance company insuring the  
14 risks of industrial insured groups as defined in paragraph a.  
15 of subdivision (14) of Section 27-31B-2 may make written  
16 application for filing the required report on a fiscal  
17 year-end. If an alternative reporting date is granted, the  
18 annual report shall be due 60 days after the end of the fiscal  
19 year and, in order to provide sufficient detail to support the  
20 premium tax return, the pure captive insurance company or  
21 industrial insured captive insurance company insuring the  
22 risks of industrial insureds as defined in paragraph b. of  
23 subdivision (14) of Section 27-31B-2 shall file prior to March  
24 1 of each year for each calendar year-end, pages 1, 2, 3, and

1 5 of the "Captive Annual Statement; Pure or Industrial  
2 Insured," verified by oath of two of its executive officers.

3 (d) Sixty days after the fiscal year-end, a branch  
4 captive insurance company shall file with the commissioner a  
5 copy of all reports and statements required to be filed under  
6 the laws of the jurisdiction in which the alien captive  
7 insurance company is formed, verified by oath of two of its  
8 executive officers. If the commissioner is satisfied that the  
9 annual report filed by the alien captive insurance company in  
10 its domiciliary jurisdiction provides adequate information  
11 concerning the financial condition of the alien captive  
12 insurance company, the commissioner may waive the requirement  
13 for completion of the captive annual statement for business  
14 written in the alien jurisdiction.

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

16 (a) At least once in three years, and whenever the  
17 commissioner determines it to be prudent, the commissioner  
18 shall visit each captive insurance company and thoroughly  
19 inspect and examine its affairs to ascertain its financial  
20 condition, its ability to fulfill its obligations and whether  
21 it has complied with the provisions of this chapter. The  
22 commissioner, upon application, may enlarge the three-year  
23 period to five years, provided the captive insurance company  
24 is subject to a comprehensive annual audit during that period  
25 of a scope satisfactory to the commissioner by independent

1 auditors approved by the commissioner. The expenses and  
2 charges of the examination shall be in accordance with Section  
3 27-2-25.

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

22 (c) (1) This section applies to all business written  
23 by a captive insurance company, except that the examination  
24 for a branch captive insurance company shall be of branch  
25 business and branch operations only, as long as the branch

1 captive insurance company provides annually to the  
2 commissioner a certificate of compliance, or its equivalent,  
3 issued by or filed with the licensing authority of the  
4 jurisdiction in which the branch captive insurance company is  
5 formed, and demonstrates to the commissioner's satisfaction  
6 that it is operating in sound financial condition in  
7 accordance with all applicable laws and regulations of the  
8 jurisdiction.

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

14 (d) To the extent that the provisions of Sections  
15 27-2-22 through 27-2-32, do not contradict the provisions of  
16 this section, the sections shall apply to captive insurance  
17 companies licensed under this chapter.

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

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

23 (1) Insolvency or impairment of capital or surplus.

24 (2) Failure to meet the requirements of Section  
25 27-31B-6.

1           (3) Refusal or failure to submit an annual report,  
2 as required by Section 27-31B-9, or any other report or  
3 statement required by law or by lawful order of the  
4 commissioner.

5           (4) Failure to comply with its own charter, bylaws  
6 or other organizational document.

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

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

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

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

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

24           Section 27-31B-12. Legal investments.

1           (a) An association captive insurance company,  
2 sponsored captive insurance company, and an industrial insured  
3 captive insurance company insuring the risks of an industrial  
4 insured group defined in paragraph b. of subdivision (14) of  
5 Section 27-31B-2 shall comply with the investment requirements  
6 contained in this title, as applicable; provided, however,  
7 that compliance with these investment requirements shall be  
8 waived for sponsored captive insurance companies to the extent  
9 that credit for risks ceded to reinsurers is allowed pursuant  
10 to Section 27-31B-13 or to the extent otherwise deemed  
11 reasonable and appropriate by the commissioner. Chapter 37 of  
12 this title shall apply to association captives, sponsored  
13 captive insurance companies, and industrial insured captive  
14 insurance companies insuring the risks of industrial insured  
15 groups defined in paragraph b. of subdivision (14) of Section  
16 27-31B-2 except to the extent it is inconsistent with approved  
17 accounting standards in use by the association captive  
18 insurance company, sponsored captive insurance company, or  
19 industrial insured captive insurance company insuring the  
20 risks of an industrial insured group as defined in paragraph  
21 b. of subdivision (14) of Section 27-31B-2. Notwithstanding  
22 any other provision of this title, the commissioner may  
23 approve the use of alternative reliable methods of valuation  
24 and rating.

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

10           (c) Only a pure captive insurance company may make  
11 loans to its parent company or affiliates. No loans to a  
12 parent company or any affiliate shall be permitted without  
13 prior written approval of the commissioner and must be  
14 evidenced by a note in a form approved by the commissioner.  
15 Loans of minimum capital and surplus funds required by Section  
16 27-31B-6 are prohibited.

17           Section 27-31B-13. Reinsurance.

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

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

1 risks or portions of risks ceded to reinsurers not complying  
2 with paragraphs a through d of subdivision (2) of subsection  
3 (b) of Section 27-5-12.

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

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

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

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

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

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

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

16           (b) Each captive insurance company shall pay to the  
17 commissioner by March 1 of each year a tax at the rate of two  
18 hundred and twenty-five thousandths of one percent on the  
19 first 20 million dollars of assumed reinsurance premium, one  
20 hundred fifty thousandths of one percent on the next 20  
21 million dollars, fifty thousandths of one percent on the next  
22 20 million dollars, twenty-five thousandths of one percent of  
23 each dollar thereafter. However, no reinsurance tax applies to  
24 premiums for risks or portions of risks which are subject to  
25 taxation on a direct basis pursuant to subsection (a). No

1 reinsurance premium tax shall be payable in connection with  
2 the receipt of assets in exchange for the assumption of loss  
3 reserves and other liabilities of another insurer under common  
4 ownership and control if the transaction is part of a plan to  
5 discontinue the operations of the other insurer, and if the  
6 intent of the parties to the transaction is to renew or  
7 maintain business with the captive insurance company.

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

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

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

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

23 (1) In the case of stock corporations, the direct or  
24 indirect ownership of 80 percent or more of the outstanding

1 voting stock of two or more corporations by the same  
2 shareholder or shareholders.

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

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

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

18 Section 27-31B-17. Rules.

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

23 Section 27-31B-18. Laws applicable.

24 No provisions of this title, other than those  
25 contained in this chapter or referring specifically to captive

1 insurance companies, shall apply to captive insurance  
2 companies.

3 Section 27-31B-19. Delinquency.

4 (a) Except as otherwise provided in this section,  
5 the terms and conditions set forth in Chapter 32 and Article 2  
6 of Chapter 2, pertaining to rehabilitation, reorganization,  
7 conservation and liquidation of insurers, shall apply in full  
8 to captive insurance companies formed or licensed under this  
9 chapter.

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

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

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

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

21 The commissioner shall adopt rules establishing  
22 standards to ensure that a parent or affiliated company is  
23 able to exercise control of the risk management function of  
24 any controlled unaffiliated business to be insured by the pure  
25 captive insurance company. Until the rules under this section

1 are adopted, the commissioner may by temporary order grant  
2 authority to a pure captive insurance company to insure risks.

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

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

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

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

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

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

23 (1) The conversion shall be accomplished under a  
24 reasonable plan and procedure as may be approved by the  
25 commissioner. Notwithstanding the foregoing, the commissioner

1 may not approve any plan of conversion unless the plan  
2 satisfies subsection (b) and all of the following:

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

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

16 c. Is approved as follows:

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

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

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

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

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

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

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

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

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

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

8           (4) The commissioner shall approve the articles of  
9 merger if the commissioner finds that the merger will promote  
10 the general good of the state in conformity with those  
11 standards set forth in subsection (e) of Section 27-31B-8. If  
12 the commissioner approves the articles of merger, the  
13 commissioner shall indorse his or her approval thereon and the  
14 surviving insurer shall present the same to the Secretary of  
15 State at the Secretary of State's Office.

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

23           (6) An alien insurer may be a party to a merger  
24 authorized under subsection (a) if the requirements for a  
25 merger between a domestic and a foreign insurer under Sections

1 27-27-45 and 27-27-46 apply to a merger between a domestic and  
2 an alien insurer under this subsection. The alien insurer  
3 shall be treated as a foreign insurer under Sections 27-27-45  
4 and 27-27-46 and other jurisdictions shall be the equivalent  
5 of a state for purposes of Sections 27-27-45 and 27-27-46.

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

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

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

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

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

22 (2) Each protected cell shall be accounted for  
23 separately on the books and records of the sponsored captive  
24 insurance company to reflect the financial condition and  
25 results of operations of the protected cell, net income or

1 loss, dividends or other distributions to participants, and  
2 other factors as may be provided in the participant contract  
3 or required by the commissioner.

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

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

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

17 (6) Each sponsored captive insurance company shall  
18 annually file with the commissioner all financial reports as  
19 the commissioner shall require, which shall include, without  
20 limitation, accounting statements detailing the financial  
21 experience of each protected cell.

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

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

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

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

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

14           c. Secured by a trust fund in the United States for  
15 the benefit of policyholders and claimants funded by an  
16 irrevocable letter of credit or other asset that is acceptable  
17 to the commissioner. The amount of security provided by a  
18 trust fund shall be no less than the reserves associated with  
19 those liabilities , including reserves for losses, allocated  
20 loss adjustment expenses, incurred but not reported losses,  
21 and unearned premiums for business written through the  
22 participant's protected cell. The commissioner may require the  
23 sponsored captive to increase the funding of any trust as  
24 established under this subdivision. If the form of security in  
25 the trust is a letter of credit, the letter of credit must be

1 clean, irrevocable, and unconditional and must be issued or  
2 confirmed by a bank chartered in this state, a member of the  
3 federal reserve system, or a bank chartered by another state  
4 if the state chartered bank is acceptable to the commissioner.  
5 A trust and trust instrument maintained pursuant to this  
6 subdivision shall be established in a form and upon terms  
7 approved by the commissioner.

8 Section 27-31B-23. Qualification of sponsors.

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

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

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

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

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

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

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

5 "§27-31A-4.

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

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

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

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

22 "2. A copy of its plan of operations or feasibility  
23 study and revisions of the plan or study submitted to the  
24 state in which the risk retention group is chartered and  
25 licensed, provided that the provision relating to the

1 submission of a plan of operation or feasibility study shall  
2 not apply with respect to any line or classification of  
3 liability insurance which was both:

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

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

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

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

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

22 "a. A copy of the group's financial statement  
23 submitted to the state in which the risk retention group is  
24 chartered and licensed which shall be certified by an  
25 independent public accountant and contain a statement of

1 opinion on loss and loss adjustment expense reserves made by a  
2 member of the American Academy of Actuaries, or a qualified  
3 loss reserve specialist, under criteria established by the  
4 National Association of Insurance Commissioners.

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

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

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

14 "(3) Taxation.

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

23 "b. To the extent licensed agents or brokers are  
24 utilized pursuant to Section 27-31A-12, they shall report to  
25 the commissioner the premiums for direct business for risks

1 resident or located within this state which the licensees have  
2 placed with or on behalf of a risk retention group not  
3 chartered in this state.

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

12 "1. The limit of liability.

13 "2. The time period covered.

14 "3. The effective date.

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

17 "5. The gross premium charged.

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

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

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

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

16           "NOTICE

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

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

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

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

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

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

22            "(10) Delinquency proceedings. - A risk retention  
23 group not chartered in this state and doing business in this  
24 state shall comply with a lawful order issued in a voluntary  
25 dissolution proceeding or in a delinquency proceeding

1 commenced by a state insurance commissioner if there has been  
2 a finding of financial impairment after an examination under  
3 subdivision (5) of this section.

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

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

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

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*Lucy Baxley*

President and Presiding Officer of the Senate

*McDowell Lee*

Speaker of the House of Representatives

SB305

Senate 28-FEB-06

I hereby certify that the within Act originated in and passed the Senate.

McDowell Lee  
Secretary

House of Representatives  
Amended and passed 05-APR-06

Senate concurred in House amendment 05-APR-06

By: Senator Byrne

APPROVED 04-17-2006

TIME 2:00 P.M.

*Bob Riley*  
GOVERNOR