

**ACT No. 2008-391**

1 SB3  
2 102282-5  
3 By Senator Brooks  
4 RFD: Banking and Insurance  
5 First Read: 05-FEB-08  
6 PFD: 07/20/2007



1 SB3

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4 ENROLLED, An Act,

5 To amend Section 27-31B-3, Code of Alabama 1975,  
6 relating to captive insurance companies being prohibited from  
7 providing personal motor vehicle or homeowner's insurance  
8 coverage or any component thereof, to remove that prohibition.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 27-31B-3, Code of Alabama 1975,  
11 is amended to read as follows:

12 "§27-31B-3.

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

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

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

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

8           "(4) No captive insurance company may provide  
9 personal motor vehicle coverage or any component thereof.  
10 Homeowner's insurance coverage may be written by an Alabama  
11 Coastal Captive Insurance Company as defined in this act, but  
12 only in the gulf front, beach, and seacoast areas as  
13 designated by the Insurance Services Office, Inc.

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

16           "(6) Any captive insurance company may provide  
17 excess workers' compensation insurance to its parent and  
18 affiliated companies, unless prohibited by the laws of the  
19 state having jurisdiction over the transaction. Any captive  
20 insurance company may reinsure workers' compensation of a  
21 qualified self-insured plan of its parent and affiliated  
22 companies.

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

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

6           "(9) No sponsored captive insurance company may  
7 insure any risks other than those of its participants.

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

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

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

16           "(3) It must maintain its principal place of  
17 business in this state, or in the case of a branch captive  
18 insurance company, maintain the principal place of business  
19 for its branch operations in this state.

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

23           "a. If formed as a corporation, whenever the  
24 registered agent cannot with reasonable diligence be found at  
25 the registered office of the captive insurance company, the

1 Secretary of State shall be an agent of the captive insurance  
2 company upon whom any process, notice, or demand may be  
3 served.

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

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

12 "a. If formed as a corporation, it shall file with  
13 the commissioner a certified copy of its charter and bylaws, a  
14 statement under oath of its president and secretary showing  
15 its financial condition, and any other statements or documents  
16 required by the commissioner.

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

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

24 "2. Submit to the commissioner for approval a  
25 description of the coverages, deductibles, coverage limits,

1 and rates, together with any additional information as the  
2 commissioner may reasonably require. In the event of any  
3 subsequent material change in any item in the description, the  
4 reciprocal captive insurance company shall submit to the  
5 commissioner for approval an appropriate revision and shall  
6 not offer any additional kinds of insurance until a revision  
7 of the description is approved by the commissioner. The  
8 reciprocal captive insurance company shall inform the  
9 commissioner of any material change in rates within 30 days of  
10 the adoption of the change.

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

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

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

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

20 "d. The adequacy of the loss prevention programs of  
21 its parent, member organizations, or industrial insureds as  
22 applicable.

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

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

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

10           "b. A statement acknowledging that all financial  
11 records of the sponsored captive insurance company, including  
12 records pertaining to any protected cells, shall be made  
13 available for inspection or examination by the commissioner or  
14 the commissioner's designated agent.

15           "c. All contracts or sample contracts between the  
16 sponsored captive insurance company and any participants.

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

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

24           "a. The information may be discoverable by a party  
25 in a civil action or contested case to which the captive

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

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

20 "(d) Each captive insurance company shall pay to the  
21 commissioner a nonrefundable fee as set forth in Section  
22 27-31B-4 for examining, investigating, and processing its  
23 application for license, and the commissioner is authorized to  
24 retain legal, financial, and examination services from outside  
25 the department, the reasonable cost of which may be charged

1 against the applicant in accordance with Section 27-2-25. In  
2 addition, each captive insurance company shall pay a license  
3 fee for the year of registration and a renewal fee for each  
4 year thereafter as set forth in Section 27-31B-4.

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

10 Section 2. Chapter 31C of Title 27 consisting of  
11 Sections 27-31C-1, 27-31C-2, 27-31C-3, 27-31C-4, 27-31C-5,  
12 27-31-6, 27-31C-7, 27-31C-8, and 27-31C-9, are added to the  
13 Code of Alabama 1975, to read as follows:

14 §27-31C-1.

15 This article may be cited as the Alabama Coastal  
16 Captive Insurance Company Act.

17 §27-31C-2. For the purpose of this article:

18 (1) ALABAMA COASTAL CAPTIVE INSURANCE COMPANY. A  
19 captive insurance company, as is defined by Section  
20 27-31B-2(8), that is specifically formed to provide homeowners  
21 insurance coverage as limited in Section 27-31B-3(a)(4) and as  
22 defined and limited in the standard real property and contents  
23 insurance forms as approved by the commissioner.

24 (2) COMMISSIONER. The Commissioner of Insurance of  
25 the State of Alabama.

1 (3) DEPARTMENT. The Alabama Department of Insurance.

2 (4) PERIL. The cause of an insured loss.

3 (5) STATE. The State of Alabama.

4 §27-31C-3.

5 (a) An Alabama Coastal Captive Insurance Company, if  
6 permitted by its articles of incorporation or organization,  
7 operating agreements, or charter, may apply to the  
8 commissioner for a license to write homeowners insurance  
9 coverage as limited in Section 27-31B-3(a)(4) and as defined  
10 and limited in the standard real property and contents  
11 insurance forms as approved by the commissioner.

12 (b) An Alabama Coastal Captive Insurance Company  
13 that qualified as an association captive under the provisions  
14 of Section 27-31B-8 is exempt from the requirement that the  
15 association be in existence for one year so long as the  
16 association is in good standing as an entity before becoming  
17 an owner of an Alabama Coastal Captive Insurance Company.

18 (c) An Alabama Coastal Captive Insurance Company may  
19 write homeowners insurance coverage as limited in Section  
20 27-31B-3(a)(4) and as limited to Perils described in  
21 subsection (a) above.

22 (d)(1) An Alabama Coastal Captive Insurance Company  
23 formed as a sponsored captive insurance company:

24 a. Is exempt from the provisions of Section  
25 27-31B-22(9)(a) that require that the business written by a

1 sponsor captive insurance company, with respect to each  
2 protected cell, must be fronted by an insurance company  
3 license pursuant to the laws of a state.

4 b. May create a protected cell as a legal person  
5 separate from the protected cell company and may organize a  
6 protected cell under any incorporation or organization option  
7 available under Section 27-31B-8, unless the commissioner  
8 finds such option is not feasible under Section 27-31C-5.

9 c. May have as its sponsor an association formed to  
10 address coastal property and insurance issues.

11 (2) An Alabama Coastal Captive Insurance Company may  
12 issue directly its own policies to the insureds.

13 (e) Any Alabama Coastal Captive Insurance Company  
14 that otherwise qualifies for the limited exemption from the  
15 provisions of Section 27-31B-22(9)(a) pursuant to subsection  
16 (d)(1) of this section and any Alabama Coastal Captive  
17 Insurance Company, regardless of form, that issues policies  
18 directly to the public shall comply with the following:

19 (1) It shall not expose itself to loss on one risk  
20 in an amount exceeding 10 percent of its surplus to  
21 policyholders and any risk or portion of it which has been  
22 reinsured must be deducted in determining this limitation of  
23 risk;

24 (2) It shall not have loss reserves in excess of  
25 five times its surplus to policyholders;

1           (3) It shall not have net premiums written in excess  
2 of three times its surplus to policyholders and any risk or  
3 portion of it which has been reinsured must be deducted in  
4 determining this limitation of risk; and

5           (4) It shall file quarterly and annual statements  
6 with the department in accordance with statutory accounting  
7 principles on forms and in the manner prescribed by Section  
8 27-31B-9.

9           (f) To conduct business in this state, an Alabama  
10 Coastal Captive Insurance Company shall:

11           (1) Obtain from the commissioner a license  
12 authorizing it to conduct business as an Alabama Coastal  
13 Captive Insurance Company in this state;

14           (2) Hold at least one meeting of its governing body  
15 each year in this state;

16           (3) Maintain its principal place of business in this  
17 state;

18           (4) Appoint a registered agent to accept service of  
19 process and act otherwise on its behalf in this state; and

20           (5) Name the commissioner as the agent for the  
21 Alabama Coastal Captive Insurance Company upon whom process,  
22 notice, or demands may be served if a registered agent, with  
23 reasonable diligence, is not located and served.

24           (g) Before receiving a license, an Alabama Coastal  
25 Captive Insurance Company shall file with the commissioner:

1                   (1) A certified copy of its organizational  
2 documents;

3                   (2) A statement under oath of its president and  
4 secretary or other persons considered appropriate by the  
5 commissioner showing its financial condition; and

6                   (3) Other documents required by the commissioner.

7                   (h) In addition to the information required by  
8 subsection (g), the applicant Alabama Coastal Captive  
9 Insurance Company shall file with the commissioner evidence  
10 of:

11                   (1) The amount and liquidity of its assets relative  
12 to the risk to be assumed;

13                   (2) The adequacy of the expertise, experience, and  
14 character of the person who manages it;

15                   (3) The overall soundness of its plan of operation;

16                   (4) The adequacy of loss prevention programs;

17                   (5) Other overall factors considered relevant by the  
18 commissioner in ascertaining if the proposed Alabama Coastal  
19 Captive Insurance Company is able to meet its policy  
20 obligations;

21                   (6) Any information required by Section 27-31B-8  
22 specifically applicable to the form of the Alabama Coastal  
23 Captive Insurance Company, and fees prescribed by Section  
24 27-31B-4 along with any other required fees.

1           (i) Information submitted pursuant to this section  
2 is confidential as provided in Section 27-31B-3, except that  
3 information is discoverable by a party in a civil action or  
4 contested case to which the Alabama Coastal Captive Insurance  
5 Company that submitted the information is a party, upon  
6 finding by the court that:

7           (1) The information may be discoverable by a party  
8 in a civil action or contested case to which the captive  
9 insurance company that submitted the information is a party;

10           (2) The information sought is relevant and necessary  
11 for the furtherance of the action or case;

12           (3) The information sought is unavailable from other  
13 non-confidential sources; and

14           (4) A subpoena issued by a judicial or  
15 administrative officer of competent jurisdiction has been  
16 submitted to the commissioner.

17           §27-31C-4.

18           (a)(1) The commissioner may not issue a license to  
19 an Alabama Coastal Captive Insurance Company unless the  
20 company possesses and maintains unimpaired paid-in capital of  
21 not less than one million dollars (\$1,000,000); however, in  
22 the case of an Alabama Coastal Captive Insurance Company  
23 formed as a sponsored captive insurance company that does not  
24 assume any risk, where the risks insured by the protected  
25 cells are homogenous, the commissioner may reduce this amount

1 to an amount not less than five hundred thousand dollars  
2 (\$500,000).

3 (2) a. Except for an Alabama Coastal Captive  
4 Insurance Company formed as a sponsored captive insurance  
5 company that does not assume any risk, the capital must be in  
6 the form of cash, cash equivalent, or an irrevocable letter of  
7 credit issued by a bank chartered by this state or a member  
8 bank of the Federal Reserve System with a branch office in  
9 this state or as approved by the commissioner.

10 b. For an Alabama Coastal Captive Insurance Company  
11 formed as a sponsored captive insurance company that does not  
12 assume any risk, the capital also may be in the form of other  
13 high quality securities as approved by the commissioner.

14 (b) For the purposes of subsection (a), the  
15 commissioner may issue a license expressly conditioned upon  
16 the Alabama Coastal Captive Insurance Company providing to the  
17 commissioner satisfactory evidence of possession of the  
18 minimum required unimpaired paid-in capital. Until this  
19 evidence is provided, the captive insurance company may not  
20 issue a policy, assume any liability, or otherwise provide  
21 coverage. The commissioner summarily may revoke the  
22 conditional license without legal recourse by the company if  
23 satisfactory evidence of the required capital is not provided  
24 within a maximum period of time, not to exceed one year, to be

1 established by the commissioner at the time the conditioned  
2 license is issued.

3 (c) The commissioner may prescribe additional  
4 capital or net assets based upon the type, volume, and nature  
5 of insurance business transacted. Contributions in connection  
6 with these prescribed additional net assets or capital must be  
7 in the form of:

8 (1) Cash;

9 (2) Cash equivalent;

10 (3) An irrevocable letter of credit issued by a bank  
11 chartered in this state or a member bank of the Federal  
12 Reserve System with a branch office in this state or as  
13 approved by the commissioner.

14 (d) Section 27-31B-12(c) does not apply and loans to  
15 its parent company and affiliates are prohibited.

16 (e) (1) An Alabama Coastal Captive Insurance Company  
17 may not pay a dividend out of, or other distribution with  
18 respect to, capital or surplus, in excess of the limitations  
19 set forth in Section 27-31B-7, without the prior approval of  
20 the commissioner. Approval of an ongoing plan for the payment  
21 of dividends or other distributions must be conditioned upon  
22 retention, at the time of each payment, of capital or surplus  
23 in excess of amounts specified by, or determined in accordance  
24 with formulas approved by the commissioner.

1           (2) A captive insurance company incorporated as a  
2 nonprofit corporation may not make any distributions without  
3 the prior approval of the commissioner.

4           (f) An irrevocable letter of credit, which is issued  
5 by a financial institution other than a bank chartered by this  
6 state or a member bank of the Federal Reserve System, shall  
7 meet the same standards as an irrevocable letter of credit  
8 which has been issued by either entity.

9           §27-31C-5.

10          (a) The requirements of Section 27-31B-8 apply to an  
11 Alabama Coastal Captive Insurance Company.

12          (b) The commissioner has discretion to restrict the  
13 form of an Alabama Coastal Captive Insurance Company to one or  
14 more of the types of defined captives listed in Section  
15 27-31B-8, and has the discretion to accept or deny an  
16 application based on a finding that one or more of the  
17 incorporation or organization options available are not  
18 feasible for an Alabama Coastal Captive Insurance Company.

19          §27-31C-6. The commissioner, by rule, regulation, or  
20 order, may exempt an Alabama Coastal Captive Insurance  
21 Company, on a case-by-case basis, from provisions of this  
22 chapter that are determined to be inappropriate given the  
23 nature of the risks to be insured and the intent of this  
24 article.

1           §27-31C-7. The confidentiality provisions of Section  
2 27-31B-9(b) and 27-31B-10 do not extend to final reports of  
3 its financial condition produced by the commissioner in  
4 inspecting or examining an Alabama Coastal Captive Insurance  
5 Company and do not extend to reports submitted by an Alabama  
6 Coastal Captive Insurance Company. All work papers, recorded  
7 information, documents, and their copies produced by, obtained  
8 by, or disclosed to the commissioner, his or her designee, or  
9 other persons made under this chapter must be given  
10 confidential treatment as provided in Sections 27-31-3(4),  
11 27-31B-9(b), and 27-31B-10.

12           §27-31C-8.

13           (a) An Alabama Coastal Captive Insurance Company  
14 shall include the following notice on each application form  
15 for insurance, as well as the declaration page of each policy,  
16 in no less than fourteen-point bold type:

17           "NOTICE

18           This policy is issued by a captive insurance company  
19 which is not subject to all of the insurance laws and  
20 regulations of the State of Alabama. Insurance solvency  
21 guaranty funds are not available for a captive insurance  
22 company."

23           (b) An Alabama Coastal Captive Insurance Company  
24 shall include the following acknowledgement on each  
25 application form for insurance, as well as in each policy, in

1 no less than fourteen-point bold type and directly above the  
2 applicants's or insured's signature:

3 "I have read the notice contained in this  
4 application (or policy) and understand that State of Alabama  
5 insurance insolvency guaranty funds are not available for an  
6 Alabama Coastal Captive Insurance Company."

7 §27-31C-9. The commissioner may not issue a license  
8 to an Alabama Coastal Captive Insurance Company unless the  
9 commissioner finds that the:

10 (1) Coastal captive insurance company is capitalized  
11 adequately or properly reinsured or both, after giving due  
12 consideration to the business plan, feasibility study, and pro  
13 formas, including the level of risk to be retained by the  
14 coastal captive insurance company;

15 (2) Proposed business plan of the coastal captive  
16 insurance company provides for a reasonable and expected  
17 successful operation and is not hazardous to any policyholder;

18 (3) Proposed business plan, including any contracts  
19 or agreements to which the coastal captive insurance company  
20 is a party, and the intended operation of the coastal captive  
21 insurance company comply with this article and with any other  
22 applicable provisions of this title; and

23 (4) Proposed business plan and intended operation of  
24 the coastal captive insurance company satisfy the purpose of  
25 this article.

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

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*Jim Johnson*

\_\_\_\_\_  
President and Presiding Officer of the Senate

*McDowell Lee*

\_\_\_\_\_  
Speaker of the House of Representatives

SB3

Senate 30-APR-08

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

McDowell Lee  
Secretary

\_\_\_\_\_  
House of Representatives  
Amended and passed 08-MAY-08

\_\_\_\_\_  
Senate concurred in House amendment 08-MAY-08

By: Senator Brooks

APPROVED *May 16, 2008*  
TIME *8:00 a.m.*  
*Bob Riley*  
GOVERNOR