

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

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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11 To amend Section 27-31B-3, Code of Alabama 1975,  
12 relating to captive insurance companies being prohibited from  
13 providing personal motor vehicle or homeowner's insurance  
14 coverage or any component thereof, to remove that prohibition.  
15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18 "§27-31B-3.

19 "(a) Any captive insurance company, when permitted  
20 by its articles of association, charter, or other  
21 organizational document, may apply to the commissioner for a  
22 license to do any and all insurance defined in Sections  
23 27-5-2, 27-5-4, and 27-5-5, in subdivisions (1), (2), (4),  
24 (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) of  
25 subsection (a) of Section 27-5-6, in Sections 27-5-7, 27-5-8,  
26 27-5-9, and 27-5-10, and to grant annuity contracts as defined  
27 in Section 27-5-3, subject, however, to all of the following:

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

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

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

11           "(4) No captive insurance company may provide  
12 personal motor vehicle ~~or homeowner's insurance~~ coverage or  
13 any component thereof. Homeowner's insurance coverage may be  
14 written, but only in the gulf front, beach, and seacoast areas  
15 as designated by the Insurance Services Office, Inc.

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

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

25           "(7) Any captive insurance company which insures  
26 risks described in Sections 27-5-2 and 27-5-4 shall comply  
27 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  
26 Secretary of State shall be an agent of the captive insurance

1 company upon whom any process, notice, or demand may be  
2 served.

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

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

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

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

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

23 "2. Submit to the commissioner for approval a  
24 description of the coverages, deductibles, coverage limits,  
25 and rates, together with any additional information as the  
26 commissioner may reasonably require. In the event of any  
27 subsequent material change in any item in the description, the

1 reciprocal captive insurance company shall submit to the  
2 commissioner for approval an appropriate revision and shall  
3 not offer any additional kinds of insurance until a revision  
4 of the description is approved by the commissioner. The  
5 reciprocal captive insurance company shall inform the  
6 commissioner of any material change in rates within 30 days of  
7 the adoption of the change.

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

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

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

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

17           "d. The adequacy of the loss prevention programs of  
18 its parent, member organizations, or industrial insureds as  
19 applicable.

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

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

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

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

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

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

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

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

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

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

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

24 "(e) If the commissioner is satisfied that the  
25 documents and statements filed by a captive insurance company  
26 comply with this chapter, the commissioner may grant a license

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

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

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Senate

Read for the first time and referred to the Senate  
committee on Banking and Insurance ..... 05-FEB-08

Read for the second time and placed on the calen-  
dar ..... 28-FEB-08

Read for the third time and passed as amended ... 30-APR-08

Yeas 30  
Nays 0

McDowell Lee  
Secretary