

1 SB5
2 98767-4
3 By Senators Brooks and Glover
4 RFD: Banking and Insurance
5 First Read: 05-FEB-08
6 PFD: 09/20/2007

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to property insurance, to add a new Chapter
12 22A to Title 27, Code of Alabama 1975, consisting of Sections
13 27-22A-1, 27-22A-2, 27-22A-3, 27-22A-4, 27-22A-5, 27-22A-6,
14 and 27-22A-7 and to add Section 35-8-23 to the Code of Alabama
15 1975, in order to create the Alabama Coastal Insurance
16 Authority to provide essential property insurance for
17 residential and commercial properties in the Gulf Front,
18 Beach, and Seacoast zones of Baldwin and Mobile Counties, as
19 designated by the Insurance Services Office, Incorporated; to
20 provide for certain tax credits; and to create the Alabama
21 Coastal Insurance Authority Board to promulgate rules for the
22 Authority; to allow condominium associations organized under
23 the Condominium Ownership Act to elect to be governed instead
24 by the Uniform Condominium Act; and to amend Section
25 35-8A-313, Code of Alabama 1975, to allow condominium
26 associations to obtain property insurance coverage from a
27 captive insurance company.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall be known and may be cited
3 as the Alabama Coastal Property Insurance Reform Act.

4 Section 2. Chapter 22A of Title 27 consisting of
5 Sections 27-22A-1, 27-22A-2, 27-22A-3, 27-22A-4, 27-22A-5,
6 27-22A-6, and 27-22A-7, are added to the Code of Alabama 1975,
7 to read as follows:

8 Chapter 22A

9 Alabama Coastal Property Insurance Reform

10 §27-22A-1.

11 The purpose for this act is to encourage market
12 participation by private insurance carriers and an adequate
13 market for essential property insurance for residential and
14 commercial property to applicants in the Gulf Front, Beach,
15 and Seacoast zones of Baldwin and Mobile Counties, as
16 designated by the Insurance Services Office, Incorporated.

17 §27-22A-2.

18 For purposes of this chapter, the following terms
19 shall have the following meanings:

20 (1) AUTHORITY. The Alabama Coastal Insurance
21 Authority.

22 (2) BOARD. The Alabama Coastal Insurance Authority
23 Board.

24 (3) COMMISSIONER. The Commissioner of the Alabama
25 Department of Insurance.

26 (4) ESSENTIAL PROPERTY INSURANCE. Insurance against
27 direct loss to insurable property as limited in the standard

1 fire policy and extended coverage endorsement thereon, as may
2 be approved by the Commissioner of Insurance.

3 (5) INSURABLE PROPERTY. Real property, including
4 mobile and manufactured homes, at fixed locations in the Gulf
5 Front, Beach, and Seacoast zones, and tangible personal
6 property located in it, which property is determined by the
7 Authority, after inspection and pursuant to the Authority's
8 underwriting standards to be insurable. Insurable Property
9 shall not include any property deemed ineligible. Structures
10 built after January 1, 1971, must be constructed in accordance
11 with the Southern Standard Building Code, in compliance with
12 adopted building codes, or standards promulgated under the
13 National Manufactured Housing Construction Standards and
14 Safety Act for manufactured homes, all must include
15 design-wind requirements to be eligible for coverage. A
16 structure must comply with any construction and zoning
17 requirements affecting the structure, promulgated or adopted
18 pursuant to the requirements of the Federal Flood Insurance
19 Program.

20 (6) INSURER. As defined in Section 27-1-2. For the
21 purposes of this act, the term "insurer" shall not include
22 counties, municipalities, municipal corporations, political
23 subdivisions of the state, instrumentalities of counties,
24 municipalities, municipal corporations, or the State of
25 Alabama, or corporations or associations owned solely by
26 counties, municipalities, or the State of Alabama, so long as

1 the entities continue to offer coverage in the geographic area
2 covered by this act.

3 (7) NET DIRECT PREMIUMS. Gross direct premiums,
4 excluding reinsurance assumed and ceded, received for Fire,
5 Extended Coverage, and Vandalism/Malicious Mischief Insurance,
6 including those components of Homeowners, Mobile and
7 Manufactured Homeowners, and Commercial Multiple Peril Package
8 Policies, as computed by the Commissioner, excluding return
9 premiums upon canceled contracts, dividends paid or credited
10 to policyholders on the unused or unabsorbed portion of
11 premium deposits, premiums on ineligible properties, premiums
12 for farm coverage, and Fire, Extended Coverage,
13 Vandalism/Malicious Mischief Insurance, including those
14 components of Homeowners, Mobile and Manufactured Homeowners,
15 and Commercial Multiple Peril Package Policies, excluding wind
16 and hail coverage written in the Gulf Front, Beach, and
17 Seacoast zones. The formula for establishing Net Direct
18 Premiums shall be described in the Rules and Procedures for
19 Reporting Voluntary Writings established by the Board.

20 §27-22A-3.

21 (a) There is hereby created and established an
22 Alabama Coastal Insurance Authority Board that shall consist
23 of the following members chosen as follows:

24 (1) Two domestic insurers appointed by the
25 Commissioner to serve one-year terms and who are eligible for
26 reappointment. The domestic insurers may continue to serve
27 until their successors are appointed.

1 (2) Seven members elected annually by cumulative
2 voting by the member insurers of the Authority whose votes in
3 such election shall be weighted in accordance with the
4 proportion of each member insurer's Net Direct Premiums
5 written in the State during the most recent calendar year for
6 which data is available that bears to the aggregate Net Direct
7 Premiums written by all member insurers. Not more than one
8 insurer in a group under the same management or ownership
9 shall serve on the Board at the same time. The member insurer
10 may continue to serve until a successor is elected.

11 (3) Two additional individuals not connected with
12 the insurance industry, except that they may be independent
13 insurance agents, one of whom has his or her primary residence
14 in Baldwin County and one of whom has his or her primary
15 residence in Mobile County. All such individuals not connected
16 with the insurance industry shall be citizens of the State of
17 Alabama. The Commissioner shall appoint these members.

18 (4) One additional member from each congressional
19 district not including Mobile or Baldwin Counties, three
20 appointed by the Speaker of the House of Representatives and
21 three appointed by the Lieutenant Governor, all of whom shall
22 be residential or commercial insurance consumers.

23 (b) Appointed members of the Board shall serve a
24 term of one year each and are eligible for reappointment. The
25 members shall continue to serve until their successors are
26 appointed.

1 (c) The board shall promulgate rules and procedures
2 for the Alabama Coastal Insurance Authority to follow in a
3 plan of operation.

4 (d) There is no liability on the part of the board
5 or any member except when the board, or any member of the
6 board, acts willfully, maliciously, fraudulently, in bad
7 faith, beyond the board's authority or board member's
8 authority, or under a mistaken interpretation of the law.

9 (e) The Authority shall indemnify all of the
10 following:

11 (1) Each person on a governing committee, or other
12 board or committee, empowered to act in the capacity of the
13 Board, each person on any other committee or any subcommittee
14 of the Board, each officer or employee of the Authority, or
15 both, and the estate, executor, administrator, any heirs,
16 legatees, and devisees of any such member.

17 (2) Every member insurer of the Authority, both as a
18 member insurer and by reason of such member insurer having one
19 or more personal representatives or employees serving in any
20 of the capacities or positions specified in subdivision (1).

21 (3) Every officer or employee of the Authority, or
22 both, and the estate, executor, administrator, any heirs,
23 legatees, and devisees of any such person.

24 The indemnification shall be against all judgments,
25 including interest, fines, amounts paid or agreed upon in
26 settlement, reasonable costs and expenses including attorney
27 fees, and any other liability that may be incurred as a result

1 of any claim, action, suit, or proceeding, whether civil,
2 criminal, administrative, or other prosecuted or threatened to
3 be prosecuted, for or on account of any act performed or
4 omitted or obligation entered into, if done or omitted in good
5 faith without the intent to defraud and within what he or she
6 reasonably believed to be in the scope of his or her
7 employment or authority and for a purpose which he or she
8 reasonably believed to be in the best interest of and in
9 connection with the administration, management, conduct of
10 affairs of the Authority, and with respect to any criminal
11 actions or proceedings, and in addition he or she had no
12 reasonable cause to believe that such conduct was unlawful.
13 Provided, however, that if any such claim, action, suit, or
14 proceeding is compromised or settled, it must be done so with
15 prior express approval of the Board of Directors.

16 §27-22A-4.

17 (a) There is hereby created and established the
18 Alabama Coastal Insurance Authority for the purpose of
19 providing essential property insurance coverage for
20 residential and commercial properties in the Gulf Front,
21 Beach, and Seacoast zones, as designated by the Insurance
22 Services Office, Incorporated, in Mobile and Baldwin Counties.
23 The Authority shall be comprised of all insurers authorized to
24 write property insurance in Alabama. Each insurer must be a
25 member of the Authority and remain a member as long as the
26 Authority is in existence as a condition to conduct and
27 transact business of insurance in this state.

1 (b) A person having an insurable interest in
2 insurable property is entitled to apply to the Authority for
3 coverage and for an inspection of the property.

4 (c) If the Authority determines that the property is
5 insurable and there is no unpaid premium due from the
6 applicant for prior insurance on the property, the Authority,
7 upon receipt of the premium, or a portion of it, shall cause
8 to be issued a policy of essential property insurance for a
9 term of at least one year.

10 (d) The board shall develop a plan of operation for
11 the Authority, which, along with any revisions thereto, shall
12 be submitted to and approved by the Commissioner of Insurance
13 before the effective date thereof. A copy of the approved plan
14 of operation, together with any approved revisions thereto,
15 shall be maintained for public inspection in the Department of
16 Insurance.

17 (e) The Authority shall be exempt from all state and
18 local taxes based on insurance premiums and from state income
19 tax. To the extent possible, the Authority shall be structured
20 so as to be exempt from federal income taxes.

21 (f) The Authority shall carry over any unexpended
22 monies and any unexpended surplus to subsequent fiscal years.
23 These funds shall be maintained in a special fund to be
24 designated as the Alabama Coastal Insurance Authority Trust
25 Fund. Monies in this fund shall not lapse, shall not be
26 subject to transfer to the General Fund or other state funds,
27 and shall not be redistributed. Any interest earned or

1 investment earnings on amounts in the fund shall be deposited
2 to the credit of the fund. Monies in the special trust fund
3 may be used only for the purpose of assisting the Authority in
4 defraying expenses, paying claims, and paying reinsurance
5 costs.

6 §27-22A-5.

7 (a) All members of the Authority shall participate
8 in its writings, expenses, profits, and losses in the
9 proportion that the net direct premium of the member written
10 in Alabama during the preceding calendar year bears to the
11 aggregate net direct premiums written in Alabama by all
12 members of the Authority, as certified to the Authority.
13 Credit for voluntary writings in the Gulf Front, Beach and
14 Seacoast Zones shall be calculated separately for each zone on
15 the basis of 100 percent credit for fire policies, 75 percent
16 credit for homeowners and mobile homeowners policies, and 50
17 percent credit for commercial multi-perils policies. The
18 "Total Credit" for each zone shall be allowed a credit
19 separately for Gulf Front, Beach and Seacoast property
20 premiums. Premiums for policies excluding wind and hail are
21 not eligible for credit. Farm premiums are not eligible for
22 credit. Participation shall be determined separately for each
23 zone using credits as calculated separately for each zone.

24 (b) The assessment of a member insurer may be
25 ordered deferred in whole or in part upon application by the
26 insurer if, in the opinion of the board, payment of the
27 assessment would render the insurer insolvent or in danger of

1 insolventy or produce a hazard to its policy holders,
2 creditors, or the public. The deferral must be repaid to the
3 Authority by the impaired insurer with interest in a manner
4 prescribed by the board.

5 (c) A member company that perceives an assessment by
6 the Authority to be unjust or illegal shall pay the assessment
7 or interest under protest in writing within 30 days of the
8 assessment. If determined by the board that the assessment was
9 collected unjustly or illegally, the Authority shall refund
10 the assessment. If the member fails to pay an assessment
11 within 30 days, the member is subject to disciplinary actions
12 prescribed by the board.

13 §27-22A-6.

14 The board shall have the general powers and
15 authority granted under the laws of this state to property
16 insurers and in addition thereto, the specific authority to do
17 all of the following:

18 (1) Enter into contracts as are necessary or proper
19 to carry out the provisions and purposes of this act,
20 including the authority, with the approval of the
21 commissioner, to enter into contracts with persons or other
22 organizations for the performance of administrative functions
23 or with similar plans of other states for the joint
24 performance of common administrative functions.

25 (2) Sue or be sued, including taking any legal
26 actions necessary or proper to recover or collect monies due
27 the Authority.

1 (3) Take legal action as necessary to do any of the
2 following:

3 a. To avoid the payment of improper claims against
4 the Authority or the coverage provided by or through the
5 Authority.

6 b. To recover any amounts erroneously or improperly
7 paid by the Authority.

8 c. To recover any amounts paid by the Authority as a
9 result of mistake of fact or law.

10 d. To recover other amounts due the Authority.

11 (4) Establish and modify from time to time as
12 appropriate, rates, rate schedules, rate adjustments, expense
13 allowances, claim reserve formulas, and any other actuarial
14 function appropriate to the operation of the Authority. Rates
15 and rate schedules may be adjusted for appropriate factors
16 such as type of construction and geographic variation in claim
17 cost and shall take into consideration appropriate factors in
18 accordance with established actuarial and underwriting
19 practices.

20 (5) Issue policies of insurance in accordance with
21 the requirements of this act and regulations issued pursuant
22 thereto.

23 (6) Appoint appropriate legal, actuarial, and other
24 committees as necessary to provide technical assistance in the
25 operation of the Authority, policy, and other contract design,
26 and any other function within the authority of the Authority.

1 (7) Borrow money to effect the purposes of the
2 Authority. Any notes or other evidence of indebtedness of the
3 Authority not in default shall be legal investments for
4 insurers and may be carried as admitted assets.

5 (8) Establish rules, conditions, and procedures for
6 member insurers to receive credit for essential property
7 insurance voluntarily written in the beach area.

8 (9) Employ and fix the compensation of employees
9 pursuant to the Merit System Act of Alabama.

10 (10) Provide for reinsurance of risks incurred by
11 the Authority.

12 (11) Provide for wind mitigation credits.

13 (12) Adopt policies and procedures as may be
14 necessary or convenient for the implementation of this act and
15 the plan of operation of the Authority.

16 (13) Perform all acts that relate to the function
17 and purpose of the Authority, whether or not specifically
18 designated in this act.

19 (14) Establish a trust account or similar account in
20 which to maintain and carry over any surplus or unexpended
21 monies which may exist or be created.

22 (15) Issue bonds, surplus notes, or other
23 debentures.

24 §27-22A-7.

25 The Commissioner, by regulation, may establish
26 additional powers and duties of the Authority and may adopt

1 rules and regulations as necessary and proper to implement
2 this act.

3 Section 3. Section 35-8-23, is added to the Code of
4 Alabama 1975 to read as follows.

5 §35-8-23.

6 Condominium property may be removed from the
7 provisions of this chapter and placed under the provisions of
8 Title 35, Chapter 8A, the Alabama Uniform Condominium Act,
9 provided that two-thirds of all unit owners of a condominium
10 agree. Such a conversion may be effectuated by a vote at a
11 called meeting, or by petition with each signature of a unit
12 owner witnessed on the petition by someone other than a unit
13 owner, such conversion being duly recorded as a change to the
14 bylaws of the association.

15 Section 4. Section 35-8A-313, Code of Alabama 1975,
16 is amended to read as follows:

17 "§35-8A-313.

18 "(a) Commencing not later than the time of the first
19 conveyance of a unit to a person other than a declarant, the
20 association shall maintain, to the extent reasonably
21 available:

22 "(1) Property insurance on the common elements
23 insuring against all risks of direct physical loss commonly
24 insured against or, in the case of a conversion building,
25 against fire and extended coverage perils. The total amount of
26 insurance after application of any deductibles shall be not
27 less than the greater of 80 percent of the actual cash value

1 of the insured property at the time the insurance is purchased
2 or such greater percentage of such actual cash value as may be
3 necessary to prevent the applicability of any co-insurance
4 provision and at each renewal date, exclusive of land,
5 excavations, foundations and other items normally excluded
6 from property policies; and

7 "(2) Liability insurance, including medical payments
8 insurance, in an amount determined by the board but not less
9 than any amount specified in the declaration, covering all
10 occurrences commonly insured against for death, bodily injury,
11 and property damage arising out of or in connection with the
12 use, ownership, or maintenance of the common elements.

13 "(b) In the case of a building containing units
14 having horizontal boundaries described in the declaration, the
15 insurance maintained under subdivision (a)(1), to the extent
16 reasonably available, must include the units, but need not
17 include improvements and betterments installed by unit owners.

18 "(c) The insurance described in subsections (a) and
19 (b) may be provided by a captive insurance company defined in
20 Title 27, Chapter 31B, the Alabama Captive Insurers Act. If
21 the insurance described in subsections (a) and (b) is not
22 reasonably available, the association promptly shall cause
23 notice of that fact to be hand-delivered or sent prepaid by
24 United States mail to all unit owners. The declaration may
25 require the association to carry any other insurance, and the
26 association in any event may carry any other insurance it

1 deems appropriate to protect the association or the unit
2 owners.

3 "(d) Insurance policies carried pursuant to
4 subsection (a) must provide that:

5 "(1) Each unit owner is an insured person under the
6 policy with respect to liability arising out of his interest
7 in the common elements or membership in the association;

8 "(2) The insurer waives its right to subrogation
9 under the policy against any unit owner or member of his
10 household;

11 "(3) No act or omission by any unit owner, unless
12 acting within the scope of his authority on behalf of the
13 association, will void the policy or be a condition to
14 recovery under the policy; and

15 "(4) If, at the time of a loss under the policy,
16 there is other insurance in the name of a unit owner covering
17 the same risk covered by the policy, the association's policy
18 provides primary insurance.

19 "(e) Any loss covered by the property policy under
20 subsections (a) (1) and (b) must be adjusted with the
21 association, but the insurance proceeds for that loss are
22 payable to any insurance trustee designated for that purpose,
23 or otherwise to the association, and not to any holder of a
24 security interest. The insurance trustee or the association
25 shall hold any insurance proceeds in trust for unit owners and
26 lien holders as their interests may appear. Subject to the
27 provisions of subsection (h), the proceeds must be disbursed

1 first for the repair or restoration of the damaged property,
2 and the association unit owners and lien holders are not
3 entitled to receive payment of any portion of the proceeds
4 unless there is a surplus of proceeds after the property has
5 been completely repaired or restored, or the condominium is
6 terminated.

7 "(f) An insurance policy issued to the association
8 does not prevent a unit owner from obtaining insurance for his
9 own benefit.

10 "(g) An insurer that has issued an insurance policy
11 under this section shall issue certificates or memoranda of
12 insurance to the association and, upon written request, to any
13 unit owner, or holder of a security interest. The insurer
14 issuing the policy may not cancel or refuse to renew it until
15 30 days after notice of the proposed cancellation or
16 nonrenewal has been mailed to the association, each unit owner
17 and each mortgagee or beneficiary under a deed of trust to
18 whom a certificate or memorandum of insurance has been issued
19 at their respective last known addresses.

20 "(h) Any portion of the condominium for which
21 insurance is required under this section which is damaged or
22 destroyed must be repaired or replaced promptly by the
23 association unless:

24 "(1) The condominium is terminated, in which case
25 section 35-8A-218 applies,

1 "(2) Repair or replacement would be illegal under
2 any state or local statute or ordinance governing health or
3 safety, or

4 "(3) Eighty percent of the unit owners, including
5 every owner of a unit or assigned limited common element which
6 will not be rebuilt, vote not to rebuild. The cost of repair
7 or replacement in excess of insurance proceeds and reserves is
8 a common expense.

9 "If the entire condominium is not repaired or
10 replaced, (i) the insurance proceeds attributable to the
11 damaged common elements must be used to restore the damaged
12 area to a condition compatible with the remainder of the
13 condominium, (ii) except to the extent that other persons will
14 be distributees under section 35-8A-205(a)(12)(ii),

15 "(1) The insurance proceeds attributable to units
16 and limited common elements which are not rebuilt must be
17 distributed to the owners of those units and the owners of the
18 units to which those limited common elements were allocated,
19 or to lienholders, as their interests may appear, and

20 "(2) The remainder of the proceeds must be
21 distributed to all the unit owners or lienholders, as their
22 interests may appear, in proportion to the common element
23 interests of all the units.

24 "If the unit owners vote not to rebuild any unit,
25 that unit's allocated interests are automatically reallocated
26 upon the vote as if the unit had been condemned under section
27 35-8A-107(a), and the association promptly shall prepare,

1 execute, and record an amendment to the declaration reflecting
2 the reallocations.

3 "(i) The provisions of this section may be varied or
4 waived in the case of a condominium all of whose units are
5 restricted to nonresidential use."

6 Section 5. This act shall become effective on
7 November 1, 2008, following its passage and approval by the
8 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 with 1 substitute and 28-FEB-08

Read for the third time and passed as amended ... 01-MAY-08

Yeas 28
Nays 1

McDowell Lee
Secretary