

**ALABAMA DEPARTMENT OF INSURANCE
INSURANCE REGULATION**

CHAPTER 482-1-138

CAPTIVE INSURERS

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Rule 482-1-138-.01 Authority. This chapter is promulgated by the Commissioner of Insurance pursuant to Sections 27-2-17, and 27-31B-17, Code of Alabama 1975.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.02 Purpose and Scope. The purpose of this chapter is to set forth the financial and reporting requirements which the Commissioner deems necessary for the regulation of captive insurance companies, as authorized by Sections 27-31B-1, et seq., Code of Alabama 1975. Reference hereunder to “company” shall mean captive insurance company or companies, unless otherwise specified.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.03 Annual Reporting Requirements.

(1) An association captive insurance company doing business in this state shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that required by Section 27-31B-9 Code of Alabama, 1975.

(2) A pure or industrial insured captive insurance company doing business in this state shall annually submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the commissioner as “Captive Annual Statement: Pure or Industrial Insured”.

(3) Association and industrial insured captives having direct premiums written of less than \$1,200,000 in any calendar year and less than 1,000 policyholders or certificate holders at the end of the calendar year or assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,200,000 or less may make written application to the Commissioner seeking approval for the use of an alternative financial reporting format other than that specified in Section 27-3-26 Code of Alabama 1975 and Ala. Admin. Code 482-1-097. Any association or industrial insured captive utilizing the Federal Liability Risk Retention Act to write or reinsure business either directly or indirectly outside the State of Alabama shall not be granted approval for the use of an alternative reporting format.

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(4) A captive risk retention group doing business in this state shall submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers, on the same basis as a casualty insurer organized and licensed in this state and in accordance with 482-1-097-.04 and 482-1-097-.05.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006; Revised: August 11, 2009; Effective August 24, 2009; Revised July 21, 2016, Effective July 31, 2016

Rule 482-1-138-.04 Annual Audit.

(1) All companies shall have an annual audit by an independent certified public accountant, authorized by the commissioner and shall file such audited financial report with the commissioner on or before June 30 for the year ending December 31 immediately preceding. The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.

(2) The annual audit shall consist of the following:

(a) Opinion of Independent Certified Public Accountant. Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants. The opinion of the independent certified public accountant shall cover all years presented. The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(b) Report of Evaluation of Internal Controls. This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties. The review shall be conducted in accordance with generally accepted auditing standards and the report filed with the commissioner.

(c) Accountant's Letter. The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

1. That he or she is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.

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2. The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

3. That the accountant understands that the audited annual report and his or her opinions thereon will be filed in compliance with this chapter with the Department of Insurance.

4. That the accountant consents to the requirements of Rule 482-1-138-.07 and that the accountant consents and agrees to make available for review by the commissioner, his or her designee or appointed agent, the work papers as defined in Rule 482-1-138-.07.

5. That the accountant is properly licensed by an appropriate state licensing authority and that he or she is a member in good standing in the American Institute of Certified Public Accountants.

(d) Financial Statements. Statements required shall be as follows:

1. Balance sheet.

2. Statement of gain or loss from operations.

3. Statement of changes in financial position.

4. Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus).

5. Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, and shall include:

(i) A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner.

(ii) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

(iii) A narrative explanation of all material transactions and balances with the company.

(e) Certification of Loss Reserves and Loss Expense Reserves. The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves. The individual who certifies as to the adequacy of reserves shall be approved by the commissioner and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his or her competence in loss reserve evaluation to the commissioner. Certification shall be in such form as the commissioner deems appropriate.

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(3) A consolidated financial statement is not acceptable for captive insurance companies.

(4) Captives, with the exception of captive risk retention groups, having direct premiums written of less than \$2,200,000 in any calendar year and less than 1,000 policyholders or certificate holders at the end of the calendar year or assumed premiums pursuant to contracts and/or treaties of reinsurance of \$2,200,000 or less may make written application to the Commissioner to be exempt from having an annual audit by a certified public accountant. Exemptions granted pursuant to this chapter must be renewed annually and in no way prohibit, preclude, or in any way limit the Commissioner from ordering or conducting or performing examinations of captives pursuant to the authority granted in Section 27-31B-10 Code of Alabama 1975.

(5) Upon written application of any captive risk retention group, the Commissioner may grant an exemption from the requirement to file an annual audit by certified public accountant if the Commissioner finds, upon review of the application, that compliance with this requirement would constitute a financial or organizational hardship on the captive risk retention group. The approval of the request for exemption from filing an annual audit will not negate the requirement to obtain a certification of loss reserves and loss expense reserves. The exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an application for exemption, the captive risk retention group may file a written request for a hearing on the denial. The hearing will be held in accordance with Chapter 482-1-065.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006; Revised August 11, 2009, Effective August 24, 2009; Revised July 21, 2016, Effective July 31, 2016; Revised June 14, 2017, Effective June 24, 2017

Rule 482-1-138-.05 Designation of Independent Certified Public Accountant.

Companies, after becoming subject to this chapter, shall within ninety (90) days provide a written report to the commissioner indicating the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this chapter.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.06 Notification of Adverse Financial Condition. A company shall require the certified public accountant to immediately notify in writing an officer and all

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members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner. The company shall furnish such notification to the commissioner within five (5) working days of receipt thereof.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.07 Availability and Maintenance of Work Papers of the Independent Certified Public Accountant. Each company shall require the independent certified public accountant to make available for review by the commissioner or his appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon. The aforementioned review by the commissioner shall be considered investigations and all work papers obtained during the course of such investigations shall be confidential. The company shall require that the independent certified public accountant provide photocopies of any of the work papers which the Department of Insurance considers relevant. These work papers may be retained by the Department. “Work Papers” as referred to in this rule include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his or her employees in the conduct of their examination of the company.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.08 Deposit Requirement. Whenever the commissioner deems that the financial condition of the company warrants additional security, the commissioner may require a company to deposit with the Treasurer of this state cash or securities approved by the commissioner or, alternatively, to furnish the commissioner a clean, irrevocable letter of credit issued by a bank chartered by the State of Alabama or a member bank of the Federal Reserve System and approved by the commissioner. The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the commissioner. If the company discontinues business, the commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

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Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.09 Organizational Examination. In addition to processing of the application, an organizational investigation or examination may be performed before an applicant is licensed. Such investigation or examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the commissioner deems necessary.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.10 Reinsurance. Any captive insurance company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(a) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

(b) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer. Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance. The commissioner in his discretion may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.11 Insurance Managers & Intermediaries. No person shall, in or from within this state, act as an insurance manager, broker, agent, salesman, or reinsurance

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intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.12 Directors. Every company shall report to the commissioner within thirty (30) days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity. Any profit or gain received by or on behalf of any person in violation of this rule shall inure to and be recoverable by the company. Reports concerning captive risk retention groups shall be in compliance with Chapter 482-1-142.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006; Amended June 10, 2021, Effective July 1, 2021

Rule 482-1-138-.13. Conflict of Interest. Each company chartered in this state is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from his or her duty to further the interests of the company he or she represents but this shall not preclude the individual from being a director or officer in more than one insurance company. Each officer, director, and key employee shall file such disclosure with the Board of Directors yearly.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

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Rule 482-1-138-.14 Rescission of Captive License.

(1) The commissioner may, subject to the provisions of this rule, by order rescind the license of the company for any of the following:

(a) If the company has not commenced business according to its plan of operation within two(2)years of being licensed.

(b) If the company ceases to carry on insurance business in or from within Alabama.

(c) At the request of the company.

(d) For any reason provided in Sections 27-31B-1, et seq., Code of Alabama 1975.

(2) Before the commissioner rescinds the license of a company under Subparagraphs (a) or (b) in Paragraph (1), the commissioner shall give the company notice in writing of the grounds on which he or she proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty (30) days after receipt of notice. The commissioner shall take into consideration any objection received by him or her within that period and, if the commissioner decides to cancel the license, cause the order of cancellation to be served on the company.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.15 Acquisition of Control of or Merger with Domestic Company. No person other than the issuer shall make a tender offer of or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic company if, after the consummation thereof, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the commissioner. In considering any application for acquisition of control or merger with a domestic company, the commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in this chapter.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

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Rule 482-1-138-.16 Change of Business. Any change in the nature of the captive business from that stated in the company's plan of operation filed with the commissioner upon application requires prior approval from the commissioner. Any change in any other information filed with the application must be filed with the commissioner but does not require prior approval.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.17 Surplus. A captive insurer's initial free surplus is the minimum additional assets required of a captive insurer over and above the minimum required basic surplus for the lines of insurance authorized to be written.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-.17.1 Captive Risk Retention Groups.

(1) In addition to any requirements in Ala. Code Sections §§ 27-31B-1, et. seq., Alabama domiciled risk retention groups formed as captives are subject to the following chapters and sections of the Alabama Insurance Code, Title 27, Code of Alabama 1975:

(a) The following sections in Chapter 2, Examinations:

1. §27-2-20. Examinations - Power Generally.
2. §27-2-22. Examinations - Examiners.
3. §27-2-23. Examinations - How Conducted.
4. §27-2-24. Examinations - Report; confidentiality of information.
5. §27-2-26. Witnesses and evidence for examination, investigation or hearing -

Generally.

(b) All of Chapter 2A, Disclosure of Material Transactions, but only in the event the transaction did not require disclosure pursuant to Rule 482-1-138-.16.

(c) The following sections in Chapter 2B, Risk-Based Capital for Insurers:

1. §27-2B-2. Definitions.
2. §27-2B-3. Preparation and submission of RBC report; formulas; desirability of excess capital; adjustment of inaccurate RBC report.

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3. §27-2B-4. Company action level event; preparation and submission of RBC plan or revised RBC plan; notification of unsatisfactory filing; copies of plans.
4. §27-2B-5. Regulatory action level event; commissioner's duties; determination of corrective actions; retention of consultants.
5. §27-2B-6. Authorized control level event; commissioner's duties.
6. §27-2B-7. Mandatory control level event; commissioner's duties.
7. §27-2B-8. Right to departmental hearing; notification of request for hearing.
8. §27-2B-9. Confidentiality of reports and plans; information sharing agreements; publication of RBC levels prohibited; use of reports and plans by commissioner.
9. §27-2B-10. Relationship to other laws; adoption of rules; exemptions.
10. §27-2B-12. Liability of commissioner or Department of Insurance.
11. §27-2B-13. Effectiveness of notice to insurer.

(d) The following section in Chapter 3, Authorization of Insurers:

1. §27-3-26.1. Annual statement to include statement of qualified independent loss reserve specialist.

(e) The following section in Chapter 5, Kinds of Insurance; Limits of Risk; Reinsurance:

1. §27-5-11 Limits of Risk.

(f) The following sections in Chapter 5B, Credit for Reinsurance:

1. §27-5B-4. Licensed Reinsurer.
2. §27-5B-5. Accredited Reinsurer.
3. §27-5B-6. Reinsurer domiciled in state with substantially similar law.
4. §27-5B-7. Reinsurer maintaining a trust fund.
5. §27-5B-8. Certified Reinsurer.
6. §27-5B-10. Reinsurer not licensed, accredited or certified - Additional reinsurance agreement requirements.
7. §27-5B-13. Concentration risk.

(g) All of Chapter 6A, Managing General Agents.

(h) All of Chapter 6B, Business Transacted with Producer Controlled Property and Casualty Insurer Law.

(i) The following sections in Chapter 27, Organization and Corporate Procedures of Stock and Mutual Insurers:

1. §27-27-37. Dividends - Domestic stock insurers.
2. §27-27-38. Dividends - Domestic mutual insurers.

(j) The following sections in Chapter 29, Insurance Holding Company Systems:

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1. §27-29-1. Definitions.
2. §27-29-2. Subsidiaries and affiliates of domestic insurers.
3. §27-29-3. Acquisition of control of, or merger with, domestic insurers.
4. §27-29-3.1. Acquisition involving change in control of insurer authorized to do business in Alabama; pre-acquisition notification; violation of competitive standards.
5. §27-29-4. Registration of insurers.
6. §27-29-5. Transactions of insurers with affiliates; adequacy of surplus; dividends and other distributions.
7. §27-29-6. Registered insurers - Examination of records, etc., of insurer or affiliates.
 8. §27-29-6.1. Registered insurers - Supervisory colleges.
 9. §27-29-6.2. Group-wide supervisor for internationally active insurance group.
10. §27-29-7. Confidentiality of documents, materials, or other information; powers of commissioner; disclosure and sharing of documents, etc.
11. §27-29-9. Injunctions; prohibitions against voting securities; sequestration of voting securities.
12. §27-29-11.1. Recovery rights of receivers.

(k) The following sections in Chapter 31A, Risk Retention Act:

1. §27-31A-3.1 Risk retention groups to comply with governance standards.
2. §27-31A-4(4), (6) and (7) Risk retention groups not chartered in this state.

(l) All of Chapter 32, Rehabilitation, Reorganization, Conservation, and Liquidation of Insurers.

(m) The following sections in Chapter 36, Liabilities:

1. §27-36-1 Liabilities generally.
2. §27-36-3 Unearned premium reserve - Property, general casualty and surety insurance.
3. §27-36-4 Unearned premium reserve - Marine and transportation insurance.
4. §27-36-6 Increase of inadequate loss reserves.

(n) All of Chapter 37, Assets.

(o) All of Chapter 41, Investments of Domestic Insurers and Health Maintenance Organizations.

(p) All of Chapter 62, Insurance Data Security Law.

(2) The following regulations shall also be applicable to Alabama domiciled risk retention groups formed as captives:

(a) Chapter 482-1-055, Insurance Holding Company System Regulation with Reporting Forms and Instructions.

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(b) Chapter 482-1-060, Only Admissible Assets Shall be Reported on Annual Statements.

(c) Chapter 482-1-094, Surplus Notes.

(d) Chapter 482-1-097, NAIC Accounting Practices and Procedures and Insurer Reporting Requirements.

(e) Chapter 482-1-098, Valuation of Investments.

(f) Chapter 482-1-100, Requirement for Annual Audited Financial Reports.

(g) Chapter 482-1-101, Standards for Determining Hazardous Financial Condition.

(h) Chapter 482-1-102, Participation in the NAIC Insurance Regulatory Information System (IRIS).

(i) Chapter 482-1-103, Conduct of Examinations and Filing of Reports of Examination.

(j) Chapter 482-1-106, Managing General Agents.

(k) Chapter 482-1-118, Record Retention for Financial Audits and Time Limits for Response to Inquiries from Examiners.

(l) All of Chapter 482-1-141, Annual Financial Reporting, with the exception of Rule 482-1-141-.14.

(m) Chapter 482-1-142, Biographical Data Relating to Company Officers and Directors.

(n) Chapter 482-1-149, Property and Casualty Actuarial Opinion on Loss Reserves.

(o) Chapter 482-1-156, Credit for Reinsurance.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-2-17 & 27-31B-17

History: New June 10, 2021, Effective July 1, 2021

Rule 482-1-138-.18 Severability. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this chapter which can be given effect without the

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invalid provision or application, and to that end the provisions of this chapter are severable.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

Rule 482-1-138-19 Effective Date. This chapter shall be effective upon its approval by the Commissioner of Insurance and upon its having been on file as a public document in the office of the Secretary of State for ten days.

Author: Commissioner of Insurance

Statutory Authority: Code of Alabama 1975, §§ 27-2-17, 27-7-43 & 27-31B-17

History: New August 1, 2006, Effective August 11, 2006

482-1-138-20 Captive Insurer Application and License Fees.

(1) The Commissioner of Insurance hereby sets the following fees as are declared necessary for the administration and enforcement of Chapter 31B of Title 27, Code of Alabama 1975, relating to the regulation of captive insurers, adjusted according to Ala. Code §41-1-11:

- (a) Application fee. \$240.00
- (b) License fee, initial and annual renewal. \$360.00

(2) This rule shall become effective January 1, 2022, upon its approval by the Commissioner of Insurance, and upon publication of notice in the Alabama Administrative Monthly that the certified rule has been filed for 45 days with the Legislative Services Agency, Legal Division, subject to review by the Joint Committee on Administrative Rule Review.

Author: Commissioner of Insurance

Statutory Authority: Ala. Code §§ 27-2-17, 27-31B-4, 27-31B-17, 41-1-11 & 41-22-6(c)

History: New October 14, 2021, Effective January 1, 2022