

1 A bill to be entitled
2 An act relating to captive insurance; amending s.
3 628.901, F.S.; providing definitions; amending s.
4 628.905, F.S.; expanding the kinds of insurance for
5 which a captive insurer may seek licensure; limiting
6 the risks that certain captive insurers may insure;
7 specifying requirements and conditions relating to a
8 captive insurer's authority to conduct business;
9 requiring that before licensure certain captive
10 insurers must file or submit to the Office of
11 Insurance Regulation specified information, documents,
12 and statements; requiring a captive insurance company
13 to file specific evidence with the office relating to
14 the financial condition and quality of management and
15 operations of the company; specifying certain fees to
16 be paid by captive insurance or reinsurance companies;
17 authorizing the Commissioner of Insurance Regulation
18 to grant a captive insurance company a license to
19 conduct insurance business until a specified date
20 under certain circumstances; authorizing a foreign or
21 alien captive insurance company to become a domestic
22 captive insurance company by complying with specified
23 requirements; authorizing the office to waive any
24 requirements for public hearings relating to the
25 redomestication of an alien captive insurance company;
26 specifying that industrial insured captive insurance
27 companies are not required to be incorporated in this
28 state under certain circumstances; creating s.

29 | 628.906, F.S.; requiring biographical affidavits,
30 | background investigations, and fingerprint cards for
31 | all officers and directors; providing requirements for
32 | taking and processing such fingerprints; providing
33 | restrictions on officers and directors involved with
34 | insolvent insurers under certain conditions; providing
35 | restrictions, requirements, and administrative
36 | penalties relating to officers, directors, certain
37 | stockholders, and incorporators that have been found
38 | guilty of, or that have pleaded guilty or nolo
39 | contendere to, any felony or crime involving moral
40 | turpitude, including a crime of dishonesty or breach
41 | of trust; amending s. 628.907, F.S.; revising
42 | capitalization requirements for specified captive
43 | insurance companies; requiring capital of specified
44 | captive insurance companies to be held in certain
45 | forms; requiring contributions to captive insurance
46 | companies that are nonprofit corporations to be in a
47 | certain form; authorizing the office to issue a
48 | captive insurance company license conditioned upon
49 | certain evidence relating to possession of specified
50 | capital; authorizing revocation of a conditional
51 | license under certain circumstances; authorizing the
52 | office to prescribe certain additional capital and net
53 | asset requirements; requiring such additional
54 | requirements relating to capital and net assets to be
55 | held in specified forms; requiring dividends or
56 | distributions of capital or surplus to meet certain

57 | conditions and be approved by the office; requiring
58 | certain irrevocable letters of credit to meet certain
59 | standards; creating s. 628.908, F.S.; prohibiting the
60 | issuance of a license to specified captive insurance
61 | companies unless such companies possess and maintain
62 | certain levels of unimpaired surplus; authorizing the
63 | office to condition issuance of a captive insurance
64 | company license upon the provision of certain evidence
65 | relating to the possession of a minimum amount of
66 | unimpaired surplus; authorizing revocation of a
67 | conditional license under certain circumstances;
68 | requiring dividends or distributions of capital or
69 | surplus to meet certain conditions and be approved by
70 | the office; requiring certain irrevocable letters of
71 | credit to meet certain standards; amending s. 628.909,
72 | F.S.; providing for applicability of certain statutory
73 | provisions to specified captive insurers; creating s.
74 | 628.910, F.S.; providing requirements, options, and
75 | conditions relating to how a captive insurance company
76 | may be incorporated or organized as a business;
77 | amending s. 628.911, F.S.; providing reporting
78 | requirements for captive insurance companies and
79 | captive reinsurance companies; creating s. 628.912,
80 | F.S.; authorizing a captive reinsurance company to
81 | discount specified losses subject to certain
82 | conditions; amending s. 628.913, F.S.; authorizing a
83 | captive reinsurance company to apply to the office for
84 | licensure to write reinsurance covering property and

85 | casualty insurance or reinsurance contracts;
86 | authorizing the office to allow a captive reinsurance
87 | company to write reinsurance contracts covering risks
88 | in any state; prohibiting such captive reinsurance
89 | company from directly insuring risks; specifying that
90 | a captive reinsurance company is subject to specified
91 | requirements and must meet specified conditions to
92 | conduct business in this state; creating s. 628.914,
93 | F.S.; specifying requirements and conditions relating
94 | to the capitalization or maintenance of reserves by a
95 | captive reinsurance company; creating s. 628.9141,
96 | F.S.; specifying requirements and conditions relating
97 | to the incorporation of a captive reinsurance company;
98 | creating s. 628.9142, F.S.; providing for the effect
99 | on reserves of certain actions taken by a captive
100 | insurance company relating to providing reinsurance
101 | for specified risks; creating s. 628.918, F.S.;
102 | requiring a specified percentage of a captive
103 | reinsurance company's assets to be managed by an asset
104 | manager domiciled in this state; creating s. 628.919,
105 | F.S.; authorizing the Financial Services Commission to
106 | adopt rules establishing certain standards for control
107 | of an unaffiliated business by a parent or affiliated
108 | company relating to coverage by a pure captive
109 | insurance company; creating s. 628.920, F.S.;
110 | requiring that a licensed captive insurance company
111 | must be considered for issuance of a certificate of
112 | authority as an insurer under certain circumstances;

113 amending s. 626.7491, F.S.; conforming a cross-
 114 reference; repealing s. 628.903, F.S., relating to
 115 "industrial insured captive insurer" defined, to
 116 conform to changes made by this act; providing an
 117 effective date.

118
 119 Be It Enacted by the Legislature of the State of Florida:

120
 121 Section 1. Section 628.901, Florida Statutes, is amended
 122 to read:

123 628.901 Definitions ~~"Captive insurer" defined.~~ As used in
 124 ~~For the purposes of this part, unless the context requires~~
 125 ~~otherwise, the term: except as provided in s. 628.903, a~~
 126 ~~"captive insurer" is a domestic insurer established under part I~~
 127 ~~to insure the risks of a specific corporation or group of~~
 128 ~~corporations under common ownership owned by the corporation or~~
 129 ~~corporations from which it accepts risk under a contract of~~
 130 ~~insurance.~~

131 (1) "Affiliated company" means a company in the same
 132 corporate system as a parent, an industrial insured, or a member
 133 organization by virtue of common ownership, control, operation,
 134 or management.

135 (2) "Captive insurance company" means a domestic insurer
 136 established under this part. A captive insurance company
 137 includes a pure captive insurance company, special purpose
 138 captive insurance company, or industrial insured captive
 139 insurance company formed and licensed under this part.

140 (3) "Captive reinsurance company" means a reinsurance

141 company that is formed and licensed under this part and is
142 wholly owned by a qualifying reinsurance parent company. A
143 captive reinsurance company is a stock corporation and may only
144 reinsure risks. A captive reinsurance company may not directly
145 insure risks.

146 (4) "Consolidated debt to total capital ratio" means the
147 ratio of the sum of all debts and hybrid capital instruments as
148 described in paragraph (a) to total capital as described in
149 paragraph (b).

150 (a) Debts and hybrid capital instruments include, but are
151 not limited to, all borrowings from banks, all senior debt, all
152 subordinated debts, all trust preferred shares, and all other
153 hybrid capital instruments that are not included in the
154 determination of consolidated GAAP net worth issued and
155 outstanding.

156 (b) Total capital consists of all debts and hybrid capital
157 instruments as described in paragraph (a) plus owners' equity
158 determined in accordance with GAAP for reporting to the United
159 States Securities and Exchange Commission.

160 (5) "Consolidated GAAP net worth" means the consolidated
161 owners' equity determined in accordance with generally accepted
162 accounting principles for reporting to the United States
163 Securities and Exchange Commission.

164 (6) "Controlled unaffiliated business" means a company:

165 (a) That is not in the corporate system of a parent and
166 affiliated companies;

167 (b) That has an existing contractual relationship with a
168 parent or affiliated company; and

169 (c) Whose risks are managed by a captive insurance company
170 in accordance with s. 628.919.

171 (7) "GAAP" means generally accepted accounting principles.

172 (8) "Industrial insured" means an insured that:

173 (a) Has gross assets in excess of \$50 million;

174 (b) Procures insurance through the use of a full-time
175 employee of the insured who acts as an insurance manager or
176 buyer or through the services of a person licensed as a property
177 and casualty insurance agent, broker, or consultant in such
178 person's state of domicile;

179 (c) Has at least 100 full-time employees; and

180 (d) Pays annual premiums of at least \$200,000 for each
181 line of insurance purchased from the industrial insured captive
182 insurer or at least \$75,000 for any line of coverage in excess
183 of at least \$25 million in the annual aggregate. The purchase of
184 umbrella or general liability coverage in excess of \$25 million
185 in the annual aggregate shall be deemed to be the purchase of a
186 single line of insurance.

187 (9) "Industrial insured captive insurance company" means a
188 captive insurance company that provides insurance only to the
189 industrial insureds that are its stockholders or members, and
190 affiliates thereof, or to the stockholders, and affiliates
191 thereof, of its parent corporation. An industrial insured
192 captive insurance company may also provide reinsurance to
193 insurers only on risks written by such insurers for the
194 industrial insureds who are the stockholders or members, and
195 affiliates thereof, of the industrial insured captive insurance
196 company, or the stockholders, and affiliates thereof, of the

197 parent corporation of the industrial insured captive insurance
 198 company.

199 (10) "Office" means the Office of Insurance Regulation.

200 (11) "Parent" means any corporation, limited liability
 201 company, partnership, or individual that directly or indirectly
 202 owns, controls, or holds with power to vote more than 50 percent
 203 of the outstanding voting interests of a captive insurance
 204 company.

205 (12) "Pure captive insurance company" means a company that
 206 insures risks of its parent, affiliated companies, controlled
 207 unaffiliated businesses, or a combination thereof.

208 (13) "Qualifying reinsurer parent company" means a
 209 reinsurer that currently holds a certificate of authority or
 210 letter of eligibility or is an accredited or a satisfactory
 211 nonapproved reinsurer in this state possessing a consolidated
 212 GAAP net worth of not less than \$500 million and a consolidated
 213 debt to total capital ratio of not greater than 0.50.

214 (14) "Special purpose captive insurance company" means a
 215 captive insurance company that is formed or licensed under this
 216 chapter that does not meet the definition of any other type of
 217 captive insurance company defined in this section.

218 (15) "Treasury rates" means the United States Treasury
 219 STRIPS asked yield as published in the Wall Street Journal as of
 220 a balance sheet date.

221 Section 2. Section 628.905, Florida Statutes, is amended
 222 to read:

223 628.905 Licensing; authority.—

224 (1) Any captive insurer, when permitted by its charter or

225 articles of incorporation, may apply to the office for a license
226 to do any and all insurance authorized under the insurance code,
227 ~~provide commercial property, commercial casualty, and commercial~~
228 ~~marine insurance coverage~~ other than workers' compensation and
229 employer's liability, life, health, personal motor vehicle, and
230 personal residential property and employer's liability insurance
231 coverage, except that: an industrial insured captive insurer may
232 apply for a license to provide workers' compensation and
233 employer's liability insurance as set forth in subsection (6).

234 (a) A pure captive insurance company may not insure any
235 risks other than those of its parent, affiliated companies,
236 controlled unaffiliated businesses, or a combination thereof.

237 (b) An industrial insured captive insurance company may
238 not insure any risks other than those of the industrial insureds
239 that comprise the industrial insured group and their affiliated
240 companies.

241 (c) A special purpose captive insurance company may only
242 insure the risks of its parent.

243 (d) A captive insurance company may not accept or cede
244 reinsurance except as provided in this part.

245 (2) To conduct insurance business in this state, a ~~No~~
246 captive insurer, other than an industrial insured captive
247 insurer, shall: insure or accept reinsurance on any risks other
248 than those of its parent and affiliated companies.

249 (a) Obtain from the office a license authorizing it to
250 conduct insurance business in this state;

251 (b) Hold at least one board of directors' meeting each
252 year in this state;

253 (c) Maintain its principal place of business in this
254 state; and

255 (d) Appoint a resident registered agent to accept service
256 of process and to otherwise act on its behalf in this state. In
257 the case of a captive insurance company formed as a corporation
258 or a nonprofit corporation, whenever the registered agent cannot
259 with reasonable diligence be found at the registered office of
260 the captive insurance company, the Chief Financial Officer of
261 this state must be an agent of the captive insurance company
262 upon whom any process, notice, or demand may be served.

263 (3) (a) Before receiving a license, a captive insurance
264 company formed as a corporation or a nonprofit corporation must
265 file with the office a certified copy of its articles of
266 incorporation and bylaws, a statement under oath of its
267 president and secretary showing its financial condition, and any
268 other statements or documents required by the office.

269 (b) In addition to the information required by paragraph
270 (a), an applicant captive insurance company must file with the
271 office evidence of:

272 1. The amount and liquidity of the proposed captive
273 insurance company's assets relative to the risks to be assumed;

274 2. The adequacy of the expertise, experience, and
275 character of the person or persons who will manage the company;

276 3. The overall soundness of the company's plan of
277 operation;

278 4. The adequacy of the loss prevention programs of the
279 company's parent, member organizations, or industrial insureds,
280 as applicable; and

281 5. Any other factors considered relevant by the office in
 282 ascertaining whether the company will be able to meet its policy
 283 obligations ~~In addition to information otherwise required by~~
 284 ~~this code, each applicant captive insurer shall file with the~~
 285 ~~office evidence of the adequacy of the loss prevention program~~
 286 ~~of its insureds.~~

287 (4) (a) A captive insurance company or captive reinsurance
 288 company must pay to the office a nonrefundable fee of \$1,500 for
 289 processing its application for licensure.

290 (b) In addition, a captive insurance company or captive
 291 reinsurance company must pay an annual renewal fee of \$1,000.

292 (c) The office may charge a fee of \$5 for any document
 293 requiring certification of authenticity or the signature of the
 294 commissioner or his or her designee ~~An industrial insured~~
 295 ~~captive insurer need not be incorporated in this state if it has~~
 296 ~~been validly incorporated under the laws of another~~
 297 ~~jurisdiction.~~

298 (5) If the commissioner is satisfied that the documents
 299 and statements filed by the captive insurance company comply
 300 with this chapter, the commissioner may grant a license
 301 authorizing the company to conduct insurance business in this
 302 state until the next succeeding March 1, at which time the
 303 license may be renewed ~~An industrial insured captive insurer is~~
 304 ~~subject to all provisions of this part except as otherwise~~
 305 ~~indicated.~~

306 (6) Upon approval of the office, a foreign or alien
 307 captive insurance company may become a domestic captive
 308 insurance company by complying with all of the requirements of

309 law relative to the organization and licensing of a domestic
310 captive insurance company of the same or equivalent type in this
311 state and by filing with the Secretary of State its charter or
312 other organizational documents, together with any appropriate
313 amendments that have been adopted in accordance with the laws of
314 this state to bring the charter or other organizational
315 documents into compliance with the laws of this state, along
316 with a certificate of good standing issued by the office. After
317 this is accomplished, the captive insurance company is entitled
318 to the necessary or appropriate certificates and licenses to
319 continue transacting business in this state and is subject to
320 the authority and jurisdiction of this state. In connection with
321 this redomestication, the office may waive any requirements for
322 public hearings. It is not necessary for a captive insurance
323 company redomesticating into this state to merge, consolidate,
324 transfer assets, or otherwise engage in any other
325 reorganization, other than as specified in this section ~~An~~
326 ~~industrial insured captive insurer may not provide workers'~~
327 ~~compensation and employer's liability insurance except in excess~~
328 ~~of at least \$25 million in the annual aggregate.~~

329 (7) An industrial insured captive insurance company need
330 not be incorporated in this state if it has been validly
331 incorporated under the laws of another jurisdiction.

332 Section 3. Section 628.906, Florida Statutes, is created
333 to read:

334 628.906 Application requirements; restrictions on
335 eligibility of officers and directors.—

336 (1) To evidence competence and trustworthiness of its

337 officers and directors, the application for a license to act as
338 a captive insurance company or captive reinsurance company shall
339 include, but not be limited to, background investigations,
340 biographical affidavits, and fingerprint cards for all officers
341 and directors. Fingerprints must be taken by a law enforcement
342 agency or other entity approved by the office and must be
343 accompanied by the fingerprint processing fee specified in s.
344 624.501. Fingerprints shall be processed in accordance with s.
345 624.34.

346 (2) The office may deny, suspend, or revoke the license to
347 transact captive insurance or captive reinsurance in this state
348 if any person who was an officer or director of an insurer,
349 reinsurer, captive insurance company, captive reinsurance
350 company, financial institution, or financial services business
351 doing business in the United States, any state, or under the law
352 of any other country and who served in that capacity within the
353 2-year period before the date the insurer, reinsurer, captive
354 insurance company, captive reinsurance company, financial
355 institution, or financial services business became insolvent
356 serves as an officer or director of a captive insurance company
357 or officer or director of a captive reinsurance company licensed
358 in this state, unless the officer or director demonstrates that
359 his or her personal actions or omissions were not a contributing
360 cause to the insolvency or unless the officer or director is
361 immediately removed from the captive insurance company or
362 captive reinsurance company.

363 (3) The office may deny, suspend, or revoke the license to
364 transact insurance or reinsurance in this state of any captive

365 insurance company or captive reinsurance company if any officer
 366 or director, any stockholder that owns 10 percent or more of the
 367 outstanding voting securities of the captive insurance company
 368 or captive reinsurance company, or any incorporator has been
 369 found guilty of, or has pleaded guilty or nolo contendere to,
 370 any felony or crime involving moral turpitude, including a crime
 371 of dishonesty or breach of trust, punishable by imprisonment of
 372 1 year or more under the laws of the United States or any state
 373 thereof or under the laws of any other country without regard to
 374 whether a judgment of conviction has been entered by the court
 375 having jurisdiction in such case. However, in the case of a
 376 captive insurance company or captive reinsurance company
 377 operating under a subsisting license, the captive insurance
 378 company or captive reinsurance company shall remove any such
 379 person immediately upon discovery of the conditions set forth in
 380 this subsection when applicable to such person or upon the order
 381 of the office, and the failure to so act shall be grounds for
 382 revocation or suspension of the captive insurance company's or
 383 captive reinsurance company's license.

384 Section 4. Section 628.907, Florida Statutes, is amended
 385 to read:

386 628.907 Minimum capital and net assets requirements;
 387 restriction on payment of dividends surplus.-

388 (1) A ~~No~~ captive insurer may not ~~shall~~ be issued a license
 389 unless it possesses and thereafter maintains unimpaired paid-in
 390 capital of:

391 (a) ~~(1)~~ In the case of a pure captive insurance company,
 392 not less than \$100,000. ~~Unimpaired paid-in capital of at least~~

393 ~~\$500,000;~~ and
 394 ~~(2) Unimpaired surplus of at least \$250,000.~~
 395 (b) In the case of an industrial insured captive insurance
 396 company incorporated as a stock insurer, not less than \$200,000.
 397 (c) In the case of a special purpose captive insurance
 398 company, an amount determined by the office after giving due
 399 consideration to the company's business plan, feasibility study,
 400 and pro forma financial statements and projections, including
 401 the nature of the risks to be insured.
 402 (2) The office may not issue a license to a captive
 403 insurance company incorporated as a nonprofit corporation unless
 404 the company possesses and maintains unrestricted net assets of:
 405 (a) In the case of a pure captive insurance company, not
 406 less than \$250,000.
 407 (b) In the case of a special purpose captive insurance
 408 company, an amount determined by the office after giving due
 409 consideration to the company's business plan, feasibility study,
 410 and pro forma financial statements and projections, including
 411 the nature of the risks to be insured.
 412 (3) Contributions to a captive insurance company
 413 incorporated as a nonprofit corporation must be in the form of
 414 cash, cash equivalent, or an irrevocable letter of credit issued
 415 by a bank chartered by this state or a member bank of the
 416 Federal Reserve System with a branch office in this state, or as
 417 approved by the office.
 418 (4) For purposes of this section, the office may issue a
 419 license expressly conditioned upon the captive insurance company
 420 providing to the office satisfactory evidence of possession of

421 the minimum required unimpaired paid-in capital. Until this
422 evidence is provided, the captive insurance company may not
423 issue any policy, assume any liability, or otherwise provide
424 coverage. The office may revoke the conditional license if
425 satisfactory evidence of the required capital is not provided
426 within a maximum period of time, not to exceed 1 year, to be
427 established by the office at the time the conditional license is
428 issued.

429 (5) The office may prescribe additional capital or net
430 assets based upon the type, volume, and nature of insurance
431 business transacted. Contributions in connection with these
432 prescribed additional net assets or capital must be in the form
433 of:

434 (a) Cash;

435 (b) Cash equivalent;

436 (c) An irrevocable letter of credit issued by a bank
437 chartered by this state or a member bank of the Federal Reserve
438 System with a branch office in this state, or as approved by the
439 office; or

440 (d) Securities invested as provided in part II of chapter
441 625.

442 (6) A captive insurance company may not pay a dividend out
443 of, or other distribution with respect to, capital or surplus in
444 excess of the limitations set forth in this chapter without the
445 prior approval of the office. Approval of an ongoing plan for
446 the payment of dividends or other distributions must be
447 conditioned upon the retention, at the time of each payment, of
448 capital or surplus in excess of amounts specified by, or

449 determined in accordance with formulas approved by, the office.

450 (7) An irrevocable letter of credit that is issued by a
 451 financial institution other than a bank chartered by this state
 452 or a member bank of the Federal Reserve System must meet the
 453 same standards as an irrevocable letter of credit that has been
 454 issued by a bank chartered by this state or a member bank of the
 455 Federal Reserve System.

456 Section 5. Section 628.908, Florida Statutes, is created
 457 to read:

458 628.908 Surplus requirements; restriction on payment of
 459 dividends.—

460 (1) The office may not issue a license to a captive
 461 insurance company unless the company possesses and maintains
 462 unimpaired surplus of:

463 (a) In the case of a pure captive insurance company, not
 464 less than \$150,000.

465 (b) In the case of an industrial insured captive insurance
 466 company incorporated as a stock insurer, not less than \$300,000.

467 (c) In the case of an industrial insured captive insurance
 468 company incorporated as a mutual insurer, not less than
 469 \$500,000.

470 (d) In the case of a special purpose captive insurance
 471 company, an amount determined by the office after giving due
 472 consideration to the company's business plan, feasibility study,
 473 and pro forma financial statements and projections, including
 474 the nature of the risks to be insured.

475 (2) For purposes of this section, the office may issue a
 476 license expressly conditioned upon the captive insurance company

477 providing to the office satisfactory evidence of possession of
 478 the minimum required unimpaired surplus. Until this evidence is
 479 provided, the captive insurance company may not issue any
 480 policy, assume any liability, or otherwise provide coverage. The
 481 office may revoke the conditional license if satisfactory
 482 evidence of the required surplus is not provided within a
 483 maximum period of time, not to exceed 1 year, to be established
 484 by the office at the time the conditional license is issued.

485 (3) A captive insurance company may not pay a dividend out
 486 of, or other distribution with respect to, capital or surplus in
 487 excess of the limitations set forth in this chapter without the
 488 prior approval of the office. Approval of an ongoing plan for
 489 the payment of dividends or other distribution must be
 490 conditioned upon the retention, at the time of each payment, of
 491 capital or surplus in excess of amounts specified by, or
 492 determined in accordance with formulas approved by, the office.

493 (4) An irrevocable letter of credit that is issued by a
 494 financial institution other than a bank chartered by this state
 495 or a member bank of the Federal Reserve System must meet the
 496 same standards as an irrevocable letter of credit that has been
 497 issued by a bank chartered by this state or a member bank of the
 498 Federal Reserve System.

499 Section 6. Section 628.909, Florida Statutes, is amended
 500 to read:

501 628.909 Applicability of other laws.—

502 (1) The Florida Insurance Code does ~~shall~~ not apply to
 503 captive insurers or industrial insured captive insurers except
 504 as provided in this part and subsections (2) and (3).

505 (2) The following provisions of the Florida Insurance Code
 506 ~~shall~~ apply to captive insurers who are not industrial insured
 507 captive insurers to the extent that such provisions are not
 508 inconsistent with this part:

509 (a) Chapter 624, except for ss. 624.407, 624.408,
 510 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

511 (b) Chapter 625, part II.

512 (c) Chapter 626, part IX.

513 (d) Sections 627.730-627.7405, when no-fault coverage is
 514 provided.

515 (e) Chapter 628.

516 (3) The following provisions of the Florida Insurance Code
 517 ~~shall~~ apply to industrial insured captive insurers to the extent
 518 that such provisions are not inconsistent with this part:

519 (a) Chapter 624, except for ss. 624.407, 624.408,
 520 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

521 (b) Chapter 625, part II, if the industrial insured
 522 captive insurer is incorporated in this state.

523 (c) Chapter 626, part IX.

524 (d) Sections 627.730-627.7405 when no-fault coverage is
 525 provided.

526 (e) Chapter 628, except for ss. 628.341, 628.351, and
 527 628.6018.

528 Section 7. Section 628.910, Florida Statutes, is created
 529 to read:

530 628.910 Incorporation options and requirements.-

531 (1) A pure captive insurance company may be:

532 (a) Incorporated as a stock insurer with its capital
533 divided into shares and held by the stockholders; or

534 (b) Incorporated as a public benefit, mutual benefit, or
535 religious nonprofit corporation with members in accordance with
536 the Florida Not For Profit Corporation Act.

537 (2) An industrial insured captive insurance company may
538 be:

539 (a) Incorporated as a stock insurer with its capital
540 divided into shares and held by the stockholders; or

541 (b) Incorporated as a mutual insurer without capital
542 stock, the governing body of which is elected by its members.

543 (3) A captive insurance company may not have fewer than
544 three incorporators of whom not fewer than two must be residents
545 of this state.

546 (4) In the case of a captive insurance company formed as a
547 corporation or a nonprofit corporation, before the articles of
548 incorporation are transmitted to the Secretary of State, the
549 incorporators shall file the articles of incorporation in
550 triplicate with the office. The office shall promptly examine
551 the articles of incorporation. If the office finds that the
552 articles of incorporation conform to law, it shall endorse its
553 approval on each of the triplicate originals of the articles of
554 incorporation, retain one copy for its files, and return the
555 remaining copies to the incorporators for filing with the
556 Department of State.

557 (5) The articles of incorporation, the certificate issued
558 pursuant to this section, and the organization fees required by
559 the Florida Business Corporation Act or the Florida Not For

560 Profit Corporation Act, as applicable, must be transmitted to
561 the Secretary of State, who must record the articles of
562 incorporation and the certificate.

563 (6) The capital stock of a captive insurance company
564 incorporated as a stock insurer must be issued at par value of
565 not less than \$1 or more than \$100 per share.

566 (7) In the case of a captive insurance company formed as a
567 corporation or a nonprofit corporation, at least one of the
568 members of the board of directors of a captive insurance company
569 incorporated in this state must be a resident of this state.

570 (8) A captive insurance company formed as a corporation or
571 a nonprofit corporation, pursuant to the provisions of this
572 chapter, has the privileges and is subject to the provisions of
573 the general corporation law, including the Florida Not For
574 Profit Corporation Act for nonprofit corporations, as
575 applicable, as well as the applicable provisions contained in
576 this chapter. If a conflict occurs between a provision of the
577 general corporation law, including the Florida Not For Profit
578 Corporation Act for nonprofit corporations, as applicable, and a
579 provision of this chapter, the latter controls. The provisions
580 of this title pertaining to mergers, consolidations,
581 conversions, mutualizations, and redomestications apply in
582 determining the procedures to be followed by a captive insurance
583 company in carrying out any of the transactions described in
584 such provisions, except that the office may waive or modify the
585 requirements for public notice and hearing in accordance with
586 rules the office may adopt addressing categories of

587 transactions. If a notice of public hearing is required, but no
 588 one requests a hearing, the office may cancel the hearing.

589 (9) The articles of incorporation or bylaws of a captive
 590 insurance company may authorize a quorum of a board of directors
 591 to consist of no fewer than one-third of the fixed or prescribed
 592 number of directors as provided for by the Florida Business
 593 Corporation Act or the Florida Not For Profit Corporation Act.

594 Section 8. Section 628.911, Florida Statutes, is amended
 595 to read:

596 628.911 Reports and statements.—

597 (1) A captive insurance company may ~~insurer shall~~ not be
 598 required to make any annual report except as provided in this
 599 part section.

600 (2) Annually no later than March 1, a captive insurance
 601 company or a captive reinsurance company ~~insurer shall, within~~
 602 ~~60 days after the end of its fiscal year and as often as the~~
 603 ~~office may deem necessary,~~ submit to the office a report of its
 604 financial condition verified by oath of two of its executive
 605 officers. Except as provided in this part, a captive insurance
 606 company or a captive reinsurance company must report using
 607 generally accepted accounting principles, unless the office
 608 approves the use of statutory accounting principles, with useful
 609 or necessary modifications or adaptations required or approved
 610 or accepted by the office for the type of insurance and kinds of
 611 insurers to be reported upon, and as supplemented by additional
 612 information required by the office. The Financial Services
 613 Commission may adopt by rule the form in which captive insurance
 614 companies ~~insurers~~ shall report.

615 (3) A captive insurance company may make written
616 application for filing the required report on a fiscal year end
617 that is consistent with the parent company's fiscal year. If an
618 alternative reporting date is granted, the annual report is due
619 60 days after the fiscal year end.

620 Section 9. Section 628.912, Florida Statutes, is created
621 to read:

622 628.912 Discounting of loss and loss adjustment expense
623 reserves.—

624 (1) A captive reinsurance company may discount its loss
625 and loss adjustment expense reserves at treasury rates applied
626 to the applicable payments projected through the use of the
627 expected payment pattern associated with the reserves.

628 (2) A captive reinsurance company must file annually an
629 actuarial opinion on loss and loss adjustment expense reserves
630 provided by an independent actuary. The actuary may not be an
631 employee of the captive reinsurance company or its affiliates.

632 (3) The office may disallow the discounting of reserves if
633 a captive reinsurance company violates a provision of this part.

634 Section 10. Section 628.913, Florida Statutes, is amended
635 to read:

636 (Substantial rewording of section. See
637 s. 628.913, F.S., for present text.)

638 628.913 Captive reinsurance companies.—

639 (1) A captive reinsurance company, if permitted by its
640 articles of incorporation or charter, may apply to the office
641 for a license to write reinsurance covering property and
642 casualty insurance or reinsurance contracts. A captive

643 reinsurance company authorized by the office may write
 644 reinsurance contracts covering risks in any state. However, a
 645 captive reinsurance company authorized by the office may not
 646 directly insure risks.

647 (2) To conduct business in this state, a captive
 648 reinsurance company must:

649 (a) Obtain from the office a license authorizing it to
 650 conduct business as a captive reinsurance company in this state;

651 (b) Hold at least one board of directors' meeting each
 652 year in this state;

653 (c) Maintain its principal place of business in this
 654 state; and

655 (d) Appoint a registered agent to accept service of
 656 process and act otherwise on its behalf in this state.

657 (3) Before receiving a license, a captive reinsurance
 658 company must file with the office:

659 (a) A certified copy of its charter and bylaws;

660 (b) A statement under oath of its president and secretary
 661 showing its financial condition; and

662 (c) Other documents required by the office.

663 (4) In addition to the information required by this
 664 section, the captive reinsurance company must file with the
 665 office evidence of:

666 (a) The amount and liquidity of the captive reinsurance
 667 company's assets relative to the risks to be assumed;

668 (b) The adequacy of the expertise, experience, and
 669 character of the person who manages the company;

670 (c) The overall soundness of the company's plan of
671 operation; and

672 (d) Other overall factors considered relevant by the
673 office in ascertaining if the company would be able to meet its
674 policy obligations.

675 Section 11. Section 628.914, Florida Statutes, is created
676 to read:

677 628.914 Minimum capitalization or reserves for captive
678 reinsurance companies.—

679 (1) The office may not issue a license to a captive
680 reinsurance company unless the company possesses and maintains
681 capital or unimpaired surplus of not less than the greater of
682 \$300 million or 10 percent of reserves. The surplus may be in
683 the form of cash or securities as permitted by part II of
684 chapter 625.

685 (2) The office may prescribe additional capital or surplus
686 based upon the type, volume, and nature of the insurance
687 business transacted.

688 (3) A captive reinsurance company may not pay a dividend
689 out of, or other distribution with respect to, capital or
690 surplus in excess of the limitations without the prior approval
691 of the office. Approval of an ongoing plan for the payment of
692 dividends or other distributions must be conditioned upon the
693 retention, at the time of each payment, of capital or surplus in
694 excess of amounts specified by, or determined in accordance with
695 formulas approved by, the office.

696 Section 12. Section 628.9141, Florida Statutes, is created
697 to read:

698 628.9141 Incorporation of a captive reinsurance company.-

699 (1) A captive reinsurance company must be incorporated as
 700 a stock insurer with its capital divided into shares and held by
 701 its shareholders.

702 (2) A captive reinsurance company may not have fewer than
 703 three incorporators of whom at least two must be residents of
 704 this state.

705 (3) Before the articles of incorporation are transmitted
 706 to the Secretary of State, the incorporators shall comply with
 707 all the requirements of s. 628.091.

708 (4) The capital stock of a captive reinsurance company
 709 must be issued at par value of not less than \$1 or more than
 710 \$100 per share.

711 (5) At least one of the members of the board of directors
 712 of a captive reinsurance company incorporated in this state must
 713 be a resident of this state.

714 Section 13. Section 628.9142, Florida Statutes, is created
 715 to read:

716 628.9142 Reinsurance; effect on reserves.-

717 (1) A captive insurance company may provide reinsurance,
 718 as authorized in this part, on risks ceded by any other insurer.

719 (2) A captive insurance company may take credit for
 720 reserves on risks or portions of risks ceded to authorized
 721 insurers or reinsurers and unauthorized insurers or reinsurers
 722 complying with the provisions of s. 624.610. A captive insurer
 723 may not take credit for reserves on risks or portions of risks
 724 ceded to an unauthorized insurer or reinsurer if the insurer or
 725 reinsurer is not in compliance with s. 624.610.

726 Section 14. Section 628.918, Florida Statutes, is created
727 to read:

728 628.918 Management of assets of captive reinsurance
729 company.—At least 35 percent of the assets of a captive
730 reinsurance company must be managed by an asset manager
731 domiciled in this state.

732 Section 15. Section 628.919, Florida Statutes, is created
733 to read:

734 628.919 Standards to ensure risk management control by
735 parent company.—The Financial Services Commission shall adopt
736 rules establishing standards to ensure that a parent or
737 affiliated company is able to exercise control of the risk
738 management function of any controlled unaffiliated business to
739 be insured by the pure captive insurance company.

740 Section 16. Section 628.920, Florida Statutes, is created
741 to read:

742 628.920 Eligibility of licensed captive insurance company
743 for certificate of authority to act as insurer.—A licensed
744 captive insurance company that meets the necessary requirements
745 of this part imposed upon an insurer must be considered for
746 issuance of a certificate of authority to act as an insurer in
747 this state.

748 Section 17. Paragraph (e) of subsection (2) of section
749 626.7491, Florida Statutes, is amended to read:

750 626.7491 Business transacted with producer controlled
751 property and casualty insurer.—

752 (2) DEFINITIONS.—As used in this section:

753 (e) "Licensed insurer" or "insurer" means any person,

754 firm, association, or corporation licensed to transact a
755 property or casualty insurance business in this state. The
756 following are not licensed insurers for the purposes of this
757 section:

- 758 1. Any risk retention group as defined in:
- 759 a. The Superfund Amendments Reauthorization Act of 1986,
760 Pub. L. No. 99-499, 100 Stat. 1613 (1986);
- 761 b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq.
762 (1982 and Supp. 1986); or
- 763 c. Section 627.942(9).
- 764 2. Any residual market pool or joint underwriting
765 authority or association; and
- 766 3. Any captive insurance company ~~insurer~~ as defined in s.
767 628.901.

768 Section 18. Section 628.903, Florida Statutes, is
769 repealed.

770 Section 19. This act shall take effect upon becoming a
771 law.