

By Senator Diaz de la Portilla

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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 Commissioner of
11 Insurance Regulation specified information, documents,
12 and statements; requiring a captive insurance company
13 to file specific evidence with the commissioner
14 relating to the financial condition and quality of
15 management and operations of the company; requiring an
16 applicant-sponsored captive insurer to file with the
17 commissioner a business plan, certain statements,
18 sample contracts, and certain evidence relating to
19 expenses; requiring a captive insurance company to pay
20 certain fees and costs relating to an application for
21 licensure and renewal; authorizing initial licensure
22 until a date certain and requiring annual renewal
23 thereafter on such date; authorizing a foreign or
24 alien captive insurance company to become a domestic
25 captive insurance company by complying with specified
26 requirements; authorizing the commissioner to waive
27 any requirements for public hearings relating to the
28 redomestication of an alien captive insurance company;
29 amending s. 628.907, F.S.; revising capitalization and

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30 security requirements for specified captive insurance
31 companies; requiring capital of specified captive
32 insurance companies to be held in certain forms;
33 requiring contributions to captive insurance companies
34 that are nonprofit corporations to be in a certain
35 form; authorizing the commission to issue a captive
36 insurance company license conditioned upon certain
37 evidence relating to possession of specified capital;
38 authorizing revocation of a conditional license under
39 certain circumstances; authorizing the commissioner to
40 prescribe certain additional capital and net asset
41 requirements; requiring such additional requirements
42 relating to capital and net assets to be held in
43 specified forms; requiring certain security of a
44 branch captive insurance company to be trust funded by
45 specified types of assets made payable to certain
46 policyholders and insurers; providing limitations on
47 the payment of dividends by a captive insurance
48 company; prohibiting distributions by a captive
49 insurance company that is a nonprofit corporation
50 without commissioner approval; requiring certain
51 irrevocable letters of credit to meet certain
52 standards; creating s. 628.908, F.S.; prohibiting the
53 issuance of a license to specified captive insurance
54 companies unless such companies possess and maintain
55 certain levels of unimpaired surplus; requiring
56 unimpaired surplus to be in specified forms;
57 authorizing a sponsored captive insurance company that
58 does not assume risk to maintain unimpaired surplus in

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59 certain securities approved by the commissioner;
60 requiring a captive insurance company that is
61 organized as a reciprocal insurer to maintain a
62 specified amount of unimpaired surplus; authorizing
63 the commissioner to condition issuance of a captive
64 insurance company license upon the provision of
65 certain evidence relating to the possession of a
66 minimum amount of unimpaired surplus; authorizing
67 revocation of a conditional license under certain
68 circumstances; authorizing the commissioner to require
69 additional surplus in specified forms; requiring
70 dividends or distributions of capital or surplus to
71 meet certain conditions and be approved by the
72 commissioner; requiring certain letters of credit to
73 meet certain standards; amending s. 628.909, F.S.;
74 providing for applicability of certain statutory
75 provisions to specified captive insurers; creating s.
76 628.910, F.S.; providing requirements, options, and
77 conditions relating to how a pure captive insurance
78 company or a sponsored captive insurance company may
79 be incorporated or organized as a business; amending
80 s. 628.911, F.S.; providing reporting requirements for
81 specified captive insurance companies and captive
82 reinsurance companies; creating s. 628.912, F.S.;
83 authorizing a sponsored captive insurance company and
84 a captive reinsurance company to discount specified
85 losses subject to certain conditions; amending s.
86 628.913, F.S.; authorizing a captive reinsurance
87 company to apply to the commission for licensure to

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88 write reinsurance covering property and casualty
89 insurance or reinsurance contracts; authorizing the
90 commissioner to allow a captive reinsurance company to
91 write reinsurance contracts covering risks in any
92 state; specifying that a captive reinsurance company
93 is subject to specified requirements and must meet
94 specified conditions to conduct business in this
95 state; creating s. 628.914, F.S.; specifying
96 requirements and conditions relating to the
97 capitalization or maintenance of reserves by a captive
98 reinsurance company; creating s. 628.9141, F.S.;
99 specifying requirements and conditions relating to the
100 incorporation of a captive reinsurance company;
101 creating s. 628.9142, F.S.; providing for the effect
102 on reserves of certain actions taken by a captive
103 insurance company relating to providing reinsurance
104 for specified risks; creating s. 628.9143, F.S.;
105 requiring a captive reinsurance company to annually
106 pay a specified tax amount; prohibiting any other
107 taxation of a captive reinsurance company other than
108 an occupation tax and certain ad valorem taxes;
109 subjecting a captive reinsurance company to sanctions
110 for failures relating to the payment of taxes;
111 creating s. 628.918, F.S.; requiring a specified
112 percentage of a captive reinsurance company's assets
113 to be managed by an asset manager domiciled in this
114 state; creating s. 628.919, F.S.; authorizing the
115 Financial Services Commission to adopt rules
116 establishing certain standards for control of an

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117 unaffiliated business by a parent or affiliated
118 company relating to coverage by a pure captive
119 insurance company; creating s. 628.920, F.S.;
120 providing for the conversion of certain stock, mutual
121 corporations, or limited liability companies into
122 reciprocal insurers; requiring a specified plan for
123 such conversions or mergers; specifying requirements
124 and conditions for the approval of a conversion or
125 merger plan by the commissioner; creating s. 628.921,
126 F.S.; providing requirements and conditions relating
127 to the formation of a sponsored captive insurance
128 company and the establishment of protected cells;
129 creating s. 628.922, F.S.; providing requirements and
130 conditions applicable to a sponsor of a sponsored
131 captive insurance company; creating s. 628.923, F.S.;
132 authorizing specified entities to be participants in
133 sponsored captive insurance companies under certain
134 circumstances; creating s. 628.924, F.S.; requiring
135 that a licensed captive insurance company must be
136 considered for issuance of a certificate of authority
137 as an insurer under certain circumstances; providing
138 an effective date.

139

140 Be It Enacted by the Legislature of the State of Florida:

141

142 Section 1. Section 628.901, Florida Statutes, is amended to
143 read:

144 628.901 Definitions ~~"Captive insurer" defined.~~ As used in
145 ~~For the purposes of this part, unless the context requires~~

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146 ~~otherwise: except as provided in s. 628.903, a "captive insurer"~~
147 ~~is a domestic insurer established under part I to insure the~~
148 ~~risks of a specific corporation or group of corporations under~~
149 ~~common ownership owned by the corporation or corporations from~~
150 ~~which it accepts risk under a contract of insurance.~~

151 (1) "Affiliated company" means a company in the same
152 corporate system as a parent, an industrial insured, or a member
153 organization by virtue of common ownership, control, operation,
154 or management.

155 (2) "Alien captive insurance company" means an insurance
156 company formed to write insurance business for its parents and
157 affiliates and licensed under the laws of an alien jurisdiction
158 which imposes statutory or regulatory standards in a form
159 acceptable to the commissioner on companies transacting the
160 business of insurance in the alien jurisdiction.

161 (3) "Association" means a legal association of individuals,
162 corporations, limited liability companies, partnerships,
163 political subdivisions, or associations that has been in
164 continuous existence for at least 1 year:

165 (a) The member organizations of which collectively, or
166 which does itself:

167 1. Own, control, or hold with power to vote all of the
168 outstanding voting securities of an association captive
169 insurance company incorporated as a stock insurer or organized
170 as a limited liability company; or

171 2. Have complete voting control over an association captive
172 insurance company organized as a mutual insurer; or

173 (b) The member organizations of which collectively
174 constitute all of the subscribers of an association captive

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175 insurance company formed as a reciprocal insurer.

176 (4) "Association captive insurance company" means a company
177 that insures risks of the member organizations of the
178 association and their affiliated companies.

179 (5) "Branch business" means any insurance business
180 transacted by a branch captive insurance company in this state.

181 (6) "Branch captive insurance company" means an alien
182 captive insurance company licensed by the commissioner to
183 transact the business of insurance in this state through a
184 business unit with a principal place of business in this state.

185 (7) "Branch operations" means any business operations of a
186 branch captive insurance company in this state.

187 (8) "Captive insurance company" means a pure captive
188 insurance company, association captive insurance company,
189 captive reinsurance company, sponsored captive insurance
190 company, special purpose captive insurance company, or
191 industrial insured captive insurance company formed or licensed
192 under this chapter. For purposes of this chapter, a branch
193 captive insurance company must be a pure captive insurance
194 company with respect to operations in this state, unless
195 otherwise permitted by the commissioner.

196 (9) "Captive reinsurance company" means a reinsurance
197 company that is formed or licensed under this chapter and is
198 wholly owned by a qualifying reinsurance parent company. A
199 captive reinsurance company is a stock corporation.

200 (10) "Commissioner" means the Commissioner of the Office of
201 Insurance Regulation or the commissioner's designee.

202 (11) "Consolidated debt to total capital ratio" means the
203 ratio of the sum of all debts and hybrid capital instruments as

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204 described in paragraph (a) to total capital as described in
205 paragraph (b).

206 (a) Debts and hybrid capital instruments include, but are
207 not limited to, all borrowings from banks, all senior debt, all
208 subordinated debts, all trust preferred shares, and all other
209 hybrid capital instruments that are not included in the
210 determination of consolidated GAAP net worth issued and
211 outstanding.

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

216 (12) "Consolidated GAAP net worth" means the consolidated
217 owners' equity determined in accordance with generally accepted
218 accounting principles for reporting to the United States
219 Securities and Exchange Commission.

220 (13) "Controlled unaffiliated business" means a company:

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

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

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

227 (14) "GAAP" means generally accepted accounting principles.

228 (15) "Industrial insured" means an insured as defined in s.
229 628.903(1).

230 (16) "Industrial insured captive insurance company" means a
231 company that insures risks of the industrial insureds that
232 comprise the industrial insured group and their affiliated

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233 companies.

234 (17) "Industrial insured group" means a group that meets
235 either of the following criteria:

236 (a) A group of industrial insureds that collectively:

237 1. Own, control, or hold with power to vote all of the
238 outstanding voting securities of an industrial insured captive
239 insurance company incorporated as a stock insurer or limited
240 liability company; or

241 2. Have complete voting control over an industrial insured
242 captive insurance company incorporated as a mutual insurer; or

243 (b) A group which is created under the Liability Risk
244 Retention Act of 1986, 15 U.S.C. s. 3901, et seq., as amended,
245 and a corporation or other limited liability association taxable
246 as a stock insurance company or a mutual insurer under the
247 insurance code.

248 (18) "Member organization" means any individual,
249 corporation, limited liability company, partnership, or
250 association that belongs to an association.

251 (19) "Office" means the Office of Insurance Regulation.

252 (20) "Parent" means any corporation, limited liability
253 company, partnership, or individual that directly or indirectly
254 owns, controls, or holds with power to vote more than 50 percent
255 of the outstanding voting interests of a captive insurance
256 company.

257 (21) "Participant" means an entity as defined in s.
258 628.923, and any affiliates of that entity, that are insured by
259 a sponsored captive insurance company, where the losses of the
260 participant are limited through a participant contract to the
261 assets of a protected cell.

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262 (22) "Participant contract" means a contract by which a
263 sponsored captive insurance company insures the risks of a
264 participant and limits the losses of the participant to the
265 assets of a protected cell.

266 (23) "Protected cell" means a separate account established
267 and maintained by a sponsored captive insurance company for one
268 participant.

269 (24) "Pure captive insurance company" means a company that
270 insures risks of its parent, affiliated companies, controlled
271 unaffiliated business, or a combination thereof.

272 (25) "Qualifying reinsurer parent company" means a
273 reinsurer authorized to write reinsurance by this state and that
274 has a consolidated GAAP net worth of not less than \$500 million
275 and a consolidated debt to total capital ratio of not greater
276 than 0.50.

277 (26) "Special purpose captive insurance company" means a
278 captive insurance company that is formed or licensed under this
279 chapter that does not meet the definition of any other type of
280 captive insurance company defined in this section.

281 (27) "Sponsor" means an entity that meets the requirements
282 of s. 628.922, and is approved by the commissioner to provide
283 all or part of the capital and surplus required by applicable
284 law and to organize and operate a sponsored captive insurance
285 company.

286 (28) "Sponsored captive insurance company" means a captive
287 insurance company:

288 (a) In which the minimum capital and surplus required by
289 applicable law is provided by one or more sponsors;

290 (b) That is formed or licensed under this chapter;

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291 (c) That insures the risks of separate participants through
292 the contract; and

293 (d) That segregates each participant's liability through
294 one or more protected cells.

295 (29) "Treasury rates" means the United States Treasury
296 strips asked yield as published in the Wall Street Journal as of
297 a balance sheet date.

298 Section 2. Section 628.905, Florida Statutes, is amended to
299 read:

300 628.905 Licensing; authority.—

301 (1) Any captive insurer, when permitted by its charter or
302 articles of incorporation, may apply to the commissioner office
303 for a license to do any and all insurance authorized under the
304 insurance code, ~~provide commercial property, commercial~~
305 ~~casualty, and commercial marine insurance coverage~~ other than
306 workers' compensation and employer's liability insurance, except
307 that: ~~coverage, except that an industrial insured captive~~
308 ~~insurer may apply for a license to provide workers' compensation~~
309 ~~and employer's liability insurance as set forth in subsection~~
310 ~~(6).~~

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

314 (b) An association captive insurance company may not insure
315 any risks other than those of the member organizations of its
316 association and their affiliated companies.

317 (c) An industrial insured captive insurance company may not
318 insure any risks other than those of the industrial insureds
319 that comprise the industrial insured group and their affiliated

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320 companies.

321 (d) In general, a special purpose captive insurance company
322 may only insure the risks of its parent. Notwithstanding any
323 other provisions of this chapter, a special purpose captive
324 insurance company may provide insurance or reinsurance, or both,
325 for risks as approved by the commissioner.

326 (e) A captive insurance company may not provide personal
327 motor vehicle or homeowners' insurance coverage or any component
328 of such coverages.

329 (f) A captive insurance company may not accept or cede
330 reinsurance except as provided in this part.

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

335 (a) Obtain from the commissioner a license authorizing it
336 to conduct insurance business in this state;

337 (b) Hold at least one board of directors' meeting or, in
338 the case of a reciprocal insurer, a subscriber's advisory
339 committee meeting or, in the case of a limited liability
340 company, a meeting of the managing board each year in this
341 state;

342 (c) Maintain its principal place of business in this state
343 or, in the case of a branch captive insurance company, maintain
344 the principal place of business for its branch operations in
345 this state; and

346 (d) Appoint a resident registered agent to accept service
347 of process and to otherwise act on its behalf in this state. In
348 the case of a captive insurance company:

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349 1. Formed as a corporation, a nonprofit corporation, or a
350 limited liability company, whenever the registered agent cannot
351 with reasonable diligence be found at the registered office of
352 the captive insurance company, the Chief Financial Officer of
353 this state must be an agent of the captive insurance company
354 upon whom any process, notice, or demand may be served.

355 2. Formed as a reciprocal insurer, whenever the registered
356 agent cannot with reasonable diligence be found at the
357 registered office of the captive insurance company, the Chief
358 Financial Officer of this state must be an agent of the captive
359 insurance company upon whom any process, notice, or demand may
360 be served.

361 (3) (a) Before receiving a license, a captive insurance
362 company:

363 1. Formed as a corporation or a nonprofit corporation must
364 file with the commissioner a certified copy of its articles of
365 incorporation and bylaws, a statement under oath of its
366 president and secretary showing its financial condition, and any
367 other statements or documents required by the commissioner.

368 2. Formed as a limited liability company must file with the
369 commissioner a certified copy of its articles of organization
370 and operating agreement, a statement under oath by its managers
371 showing its financial condition, and any other statements or
372 documents required by the commissioner.

373 3. Formed as a reciprocal must:

374 a. File with the commissioner a certified copy of the power
375 of attorney of its attorney-in-fact, a certified copy of its
376 subscribers' agreement, a statement under oath of its attorney-
377 in-fact showing its financial condition, and any other

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378 statements or documents required by the commissioner; and

379 b. Submit to the commissioner for approval a description of
380 the coverages, deductibles, coverage limits, and rates and any
381 other information the commissioner may reasonably require. If
382 there is a subsequent material change in an item in the
383 description, the reciprocal captive insurance company must
384 submit to the commissioner for approval an appropriate revision
385 and may not offer any additional kinds of insurance until a
386 revision of the description is approved by the commissioner. The
387 reciprocal captive insurance company must inform the
388 commissioner of any material change in rates within 30 days
389 after the adoption of the change.

390 (b) In addition to the information required by paragraph
391 (a), an applicant captive insurance company must file with the
392 commissioner evidence of:

- 393 1. The amount and liquidity of the proposed captive
394 insurance company's assets relative to the risks to be assumed;
- 395 2. The adequacy of the expertise, experience, and character
396 of the person or persons who will manage the company;
- 397 3. The overall soundness of the company's plan of
398 operation;
- 399 4. The adequacy of the loss prevention programs of the
400 company's parent, member organizations, or industrial insureds,
401 as applicable; and
- 402 5. Any other factors considered relevant by the
403 commissioner in ascertaining whether the company will be able to
404 meet its policy obligations.

405 (c) In addition to the information required by paragraphs
406 (a) and (b), an applicant-sponsored captive insurance company

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407 must file with the commissioner:

408 1. A business plan demonstrating how the applicant will
409 account for the loss and expense experience of each protected
410 cell at a level of detail found to be sufficient by the
411 commissioner and how the applicant will report the experience to
412 the commissioner;

413 2. A statement acknowledging that all financial records of
414 the sponsored captive insurance company, including records
415 pertaining to any protected cells, must be made available for
416 inspection or examination by the commissioner;

417 3. All contracts or sample contracts between the sponsored
418 captive insurance company and any participants; and

419 4. Evidence that expenses will be allocated to each
420 protected cell in an equitable manner ~~In addition to information~~
421 ~~otherwise required by this code, each applicant captive insurer~~
422 ~~shall file with the office evidence of the adequacy of the loss~~
423 ~~prevention program of its insureds.~~

424 (4) (a) A captive insurance company must pay to the office a
425 nonrefundable fee of \$200 for processing its application for
426 license. In addition, the commissioner may retain legal,
427 financial, and examination services from outside the office to
428 examine and investigate the application, the reasonable cost of
429 which may be charged against the applicant, or the commissioner
430 may use internal resources to examine and investigate the
431 application for a fee of \$2,400.

432 (b) In addition, a captive insurance company must pay a
433 license fee of \$300 for 1 year of registration and an annual
434 renewal fee of \$500.

435 (c) The office may charge a fee of \$15 for any document

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436 requiring certification of authenticity or the signature of the
437 commissioner or his or her designee ~~An industrial insured~~
438 ~~captive insurer need not be incorporated in this state if it has~~
439 ~~been validly incorporated under the laws of another~~
440 ~~jurisdiction.~~

441 (5) If the commissioner is satisfied that the documents and
442 statements filed by the captive insurance company comply with
443 the provisions of this chapter, the commissioner may grant a
444 license authorizing the company to conduct insurance business in
445 this state until the next succeeding March 1, at which time the
446 license may be renewed ~~An industrial insured captive insurer is~~
447 ~~subject to all provisions of this part except as otherwise~~
448 ~~indicated.~~

449 (6) Upon approval of the commissioner or his or her
450 designee, a foreign or alien captive insurance company may
451 become a domestic captive insurance company by complying with
452 all of the requirements of law relative to the organization and
453 licensing of a domestic captive insurance company of the same or
454 equivalent type in this state and by filing with the Secretary
455 of State its articles of association, charter, or other
456 organizational documents, together with any appropriate
457 amendments that have been adopted in accordance with the laws of
458 this state to bring those articles of association, charter, or
459 other organizational documents into compliance with the laws of
460 this state, along with a certificate of good standing issued by
461 the commissioner. After this is accomplished, the captive
462 insurance company is entitled to the necessary or appropriate
463 certificates and licenses to continue transacting business in
464 this state and is subject to the authority and jurisdiction of

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465 this state. In connection with this redomestication, the
466 commissioner may waive any requirements for public hearings. It
467 is not necessary for a company redomesticating into this state
468 to merge, consolidate, transfer assets, or otherwise engage in
469 any other reorganization, other than as specified in this
470 section ~~An industrial insured captive insurer may not provide~~
471 ~~workers' compensation and employer's liability insurance except~~
472 ~~in excess of at least \$25 million in the annual aggregate.~~

473 Section 3. Section 628.907, Florida Statutes, is amended to
474 read:

475 628.907 Capitalization requirements; security requirements
476 for branch captive insurance companies; restriction on payment
477 of dividends ~~Minimum capital and surplus.-~~

478 (1) A ~~Ne~~ captive insurer may not ~~shall~~ be issued a license
479 unless it possesses and thereafter maintains unimpaired paid-in
480 capital of:

481 (a) ~~(1)~~ In the case of a pure captive insurance company, not
482 less than \$100,000. Unimpaired paid-in capital of at least
483 \$500,000; and

484 (b) ~~(2)~~ In the case of an association captive insurance
485 company incorporated as a stock insurer or organized as a
486 limited liability company, not less than \$400,000. Unimpaired
487 surplus of at least \$250,000.

488 (c) In the case of an industrial insured captive insurance
489 company incorporated as a stock insurer or organized as a
490 limited liability company, not less than \$200,000.

491 (d) In the case of a sponsored captive insurance company,
492 not less than \$500,000. However, if the sponsored captive
493 insurance company does not assume any risk, the risks insured by

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494 the protected cells are homogeneous, and there are no more than
495 10 cells, the commissioner may reduce this amount to an amount
496 not less than \$150,000.

497 (e) In the case of a special purpose captive insurance
498 company, an amount determined by the commissioner after giving
499 due consideration to the company's business plan, feasibility
500 study, and pro forma financial statements and projections,
501 including the nature of the risks to be insured.

502 (2) (a) Except for a sponsored captive insurance company
503 that does not assume any risk, the capital must be in the form
504 of cash, cash equivalent, or an irrevocable letter of credit
505 issued by a bank chartered by this state or a member bank of the
506 Federal Reserve System with a branch office in this state, or as
507 approved by the commissioner.

508 (b) For a sponsored captive insurance company that does not
509 assume any risk, the capital may also be in the form of other
510 high-quality securities as approved by the commissioner.

511 (3) The commissioner may not issue a license to a captive
512 insurance company incorporated as a nonprofit corporation unless
513 the company possesses and maintains unrestricted net assets of:

514 (a) In the case of a pure captive insurance company, not
515 less than \$250,000.

516 (b) In the case of a special purpose captive insurance
517 company, an amount determined by the commissioner after giving
518 due consideration to the company's business plan, feasibility
519 study, and pro forma financial statements and projections,
520 including the nature of the risks to be insured.

521 (4) Contributions to a captive insurance company
522 incorporated as a nonprofit corporation must be in the form of

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523 cash, cash equivalent, or an irrevocable letter of credit issued
524 by a bank chartered by this state or a member bank of the
525 Federal Reserve System with a branch office in this state, or as
526 approved by the commissioner.

527 (5) For purposes of this section, the commissioner may
528 issue a license expressly conditioned upon the captive insurance
529 company providing to the commissioner satisfactory evidence of
530 possession of the minimum required unimpaired paid-in capital.
531 Until this evidence is provided, the captive insurance company
532 may not issue any policy, assume any liability, or otherwise
533 provide coverage. The commissioner may revoke the conditional
534 license without legal recourse by the company if satisfactory
535 evidence of the required capital is not provided within a
536 maximum period of time, not to exceed 1 year, to be established
537 by the commissioner at the time the conditional license is
538 issued.

539 (6) The commissioner may prescribe additional capital or
540 net assets based upon the type, volume, and nature of insurance
541 business transacted. Contributions in connection with these
542 prescribed additional net assets or capital must be in the form
543 of:

544 (a) Cash;

545 (b) Cash equivalent;

546 (c) An irrevocable letter of credit issued by a bank
547 chartered by this state or a member bank of the Federal Reserve
548 System with a branch office in this state, or as approved by the
549 commissioner; or

550 (d) Securities invested as provided in part II of chapter
551 625.

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552 (7) In the case of a branch captive insurance company, as
553 security for the payment of liabilities attributable to branch
554 operations, the commissioner must require that a trust fund,
555 funded by an irrevocable letter of credit or other acceptable
556 asset, be established and maintained in the United States for
557 the benefit of United States policyholders and United States
558 ceding insurers under insurance policies issued or reinsurance
559 contracts issued or assumed, by the branch captive insurance
560 company through its branch operations. The amount of the
561 security may be no less than the capital and surplus required by
562 this chapter and the reserves on these insurance policies or
563 reinsurance contracts, including reserves for losses, allocated
564 loss adjustment expenses, incurred but not reported losses, and
565 unearned premiums with regard to business written through branch
566 operations. However, the commissioner may permit a branch
567 captive insurance company that is required to post security for
568 loss reserves on branch business by its reinsurer to reduce the
569 funds in the trust account required by this section by the same
570 amount as long as the security remains posted with the
571 reinsurer. If the form of security selected is a letter of
572 credit, the letter of credit must be established by, or issued
573 or confirmed by, a bank chartered in this state or a member bank
574 of the Federal Reserve System.

575 (8) (a) A captive insurance company may not pay a dividend
576 out of, or other distribution with respect to, capital or
577 surplus in excess of the limitations set forth in this chapter
578 without the prior approval of the commissioner. Approval of an
579 ongoing plan for the payment of dividends or other distributions
580 must be conditioned upon the retention, at the time of each

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581 payment, of capital or surplus in excess of amounts specified
582 by, or determined in accordance with formulas approved by, the
583 commissioner.

584 (b) A captive insurance company incorporated as a nonprofit
585 corporation may not make any distributions without the prior
586 approval of the commissioner.

587 (9) An irrevocable letter of credit, which is issued by a
588 financial institution other than a bank chartered by this state
589 or a member bank of the Federal Reserve System, must meet the
590 same standards as an irrevocable letter of credit which has been
591 issued by a bank chartered by this state or a member bank of the
592 Federal Reserve System.

593 Section 4. Section 628.908, Florida Statutes, is created to
594 read:

595 628.908 Surplus requirements; restriction on payment of
596 dividends.—

597 (1) The commissioner may not issue a license to a captive
598 insurance company unless the company possesses and maintains
599 unimpaired surplus of:

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

602 (b) In the case of an association captive insurance company
603 incorporated as a stock insurer or organized as a limited
604 liability company, not less than \$350,000.

605 (c) In the case of an industrial insured captive insurance
606 company incorporated as a stock insurer or organized as a
607 limited liability company, not less than \$300,000.

608 (d) In the case of an association captive insurance company
609 incorporated as a mutual insurer, not less than \$750,000.

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610 (e) In the case of an industrial insured captive insurance
611 company incorporated as a mutual insurer, not less than
612 \$500,000.

613 (f) In the case of a sponsored captive insurance company,
614 not less than \$500,000. However, if the sponsored captive
615 insurance company does not assume any risk, the risks insured by
616 the protected cells are homogeneous, and there are no more than
617 10 cells, the commissioner may reduce this amount to an amount
618 not less than \$150,000.

619 (g) In the case of a special purpose captive insurance
620 company, an amount determined by the commissioner after giving
621 due consideration to the company's business plan, feasibility
622 study, and pro forma financial statements and projections,
623 including the nature of the risks to be insured.

624 (2) (a) Except for a sponsored captive insurance company
625 that does not assume any risk, the surplus must be in the form
626 of cash, cash equivalent, or an irrevocable letter of credit
627 issued by a bank chartered by this state or a member bank of the
628 Federal Reserve System with the branch office in this state and
629 approved by the commissioner.

630 (b) For a sponsored captive insurance company that does not
631 assume any risk, the surplus may also be in the form of other
632 high-quality securities, as approved by the commissioner.

633 (3) Notwithstanding the requirements of this section, a
634 captive insurance company organized as a reciprocal insurer
635 under this chapter may not be issued a license unless it
636 possesses and thereafter maintains unimpaired surplus of \$1
637 million.

638 (4) For purposes of subsections (1) and (2), the

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639 commissioner may issue a license expressly conditioned upon the
640 captive insurance company providing to the commissioner
641 satisfactory evidence of possession of the minimum required
642 unimpaired surplus. Until this evidence is provided, the captive
643 insurance company may not issue any policy, assume any
644 liability, or otherwise provide coverage. The commissioner may
645 revoke the conditional license without legal recourse by the
646 company if satisfactory evidence of the required capital is not
647 provided within a maximum period of time, not to exceed 1 year,
648 to be established by the commissioner at the time the
649 conditional license is issued.

650 (5) A captive insurance company may not pay a dividend out
651 of, or other distribution with respect to, capital or surplus in
652 excess of the limitations set forth in this chapter without the
653 prior approval of the commissioner. Approval of an ongoing plan
654 for the payment of dividends or other distribution must be
655 conditioned upon the retention, at the time of each payment, of
656 capital or surplus in excess of amounts specified by, or
657 determined in accordance with formulas approved by, the
658 commissioner.

659 (6) An irrevocable letter of credit, which is issued by a
660 financial institution other than a bank chartered by this state
661 or a member bank of the Federal Reserve System, must meet the
662 same standards as an irrevocable letter of credit which has been
663 issued by a bank chartered by this state or a member bank of the
664 Federal Reserve System.

665 Section 5. Section 628.909, Florida Statutes, is amended to
666 read:

667 628.909 Applicability of other laws.-

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668 (1) The Florida Insurance Code shall not apply to captive
669 insurers or industrial insured captive insurers except as
670 provided in this part and subsections (2) and (3).

671 (2) The following provisions of the Florida Insurance Code
672 shall apply to captive insurers who are not industrial insured
673 captive insurers to the extent that such provisions are not
674 inconsistent with this part:

675 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
676 624.40851, 624.4095, 624.425, and 624.426.

677 (b) Chapter 625, part II.

678 (c) Chapter 626, part IX.

679 (d) Sections 627.730-627.7405, when no-fault coverage is
680 provided.

681 (e) Chapter 628.

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

685 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
686 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

689 (c) Chapter 626, part IX.

690 (d) Sections 627.730-627.7405 when no-fault coverage is
691 provided.

692 (e) Chapter 628, except for ss. 628.341, 628.351, and
693 628.6018.

694 Section 6. Section 628.910, Florida Statutes, is created to
695 read:

696 628.910 Incorporation options and requirements.-

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697 (1) A pure captive insurance company or a sponsored captive
698 insurance company may be:

699 (a) Incorporated as a stock insurer with its capital
700 divided into shares and held by the stockholders;

701 (b) Incorporated as a public benefit, mutual benefit, or
702 religious nonprofit corporation with members in accordance with
703 the Florida Not For Profit Corporation Act; or

704 (c) Organized as a limited liability company with its
705 capital divided into capital accounts and held by its members.

706 (2) An association captive insurance company or an
707 industrial insured captive insurance company may be:

708 (a) Incorporated as a stock insurer with its capital
709 divided into shares and held by the stockholders;

710 (b) Organized as a limited liability company with its
711 capital divided into capital accounts and held by its members;

712 (c) Incorporated as a mutual insurer without capital stock,
713 the governing body of which is elected by the member
714 organizations of its association; or

715 (d) Organized as a reciprocal insurer in accordance with
716 chapter 629.

717 (3) A captive insurance company may not have fewer than
718 three incorporators or organizers of whom not fewer than two
719 must be residents of this state.

720 (4) In the case of a captive insurance company formed as a
721 corporation, a nonprofit corporation, or a limited liability
722 company, before the articles of incorporation or articles of
723 organization are transmitted to the Secretary of State, the
724 incorporators or organizers shall petition the commissioner to
725 issue a certificate setting forth a finding that the

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726 establishment and maintenance of the proposed entity will
727 promote the general good of the state. In arriving at this
728 finding, the commissioner must consider:

729 (a) The character, reputation, financial standing, and
730 purposes of the incorporators or organizers;

731 (b) The character, reputation, financial responsibility,
732 insurance experience, and business qualifications of the
733 officers and directors or managers; and

734 (c) Other aspects as the commissioner considers advisable.

735 (5) The articles of incorporation or articles of
736 organization, the certificate issued pursuant to this section,
737 and the organization fees required by the Florida Business
738 Corporation Act or the Florida Not For Profit Corporation Act,
739 as applicable, must be transmitted to the Secretary of State,
740 who must record both the articles of incorporation or articles
741 of organization and the certificate.

742 (6) In the case of a captive insurance company formed as a
743 reciprocal insurer, the organizers must petition the
744 commissioner to issue a certificate setting forth the
745 commissioner's finding that the establishment and maintenance of
746 the proposed association will promote the general good of the
747 state. In arriving at this finding, the commissioner must
748 consider:

749 (a) The character, reputation, financial standing, and
750 purposes of the incorporators or organizers;

751 (b) The character, reputation, financial responsibility,
752 insurance experience, and business qualifications of the
753 officers and directors or managers; and

754 (c) Other aspects the commissioner considers advisable.

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755 (7) In the case of a captive insurance company licensed as
756 a branch captive insurance company, the alien captive insurance
757 company must petition the commissioner to issue a certificate
758 setting forth the commissioner's finding that, after considering
759 the character, reputation, financial responsibility, insurance
760 experience, and business qualifications of the officers and
761 directors or managers of the alien captive insurance company,
762 the licensing and maintenance of the branch operations will
763 promote the general good of the state. The alien captive
764 insurance company may register to do business in this state
765 after the commissioner's certificate has been issued.

766 (8) The capital stock or membership interests of a captive
767 insurance company incorporated as a stock insurer or limited
768 liability company must be issued at not less than par value.

769 (9) In the case of a captive insurance company formed as a
770 corporation or a nonprofit corporation, at least one of the
771 members of the board of directors of a captive insurance company
772 incorporated in this state must be a resident of this state.

773 (10) In the case of a captive insurance company formed as a
774 limited liability company, at least one of the managers of the
775 captive insurance company must be a resident of this state.

776 (11) In the case of a captive insurance company formed as a
777 reciprocal insurer, at least one of the members of the
778 subscribers' advisory committee must be a resident of this
779 state.

780 (12) A captive insurance company formed as a corporation, a
781 nonprofit corporation, or a limited liability company, pursuant
782 to the provisions of this chapter, has the privileges and is
783 subject to the provisions of the general corporation law,

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784 including the Florida Not For Profit Corporation Act for
785 nonprofit corporations and the Florida Limited Liability Company
786 Act for limited liability companies, as applicable, as well as
787 the applicable provisions contained in this chapter. If a
788 conflict occurs between a provision of the general corporation
789 law, including the Florida Not For Profit Corporation Act for
790 nonprofit corporations and the Florida Limited Liability Company
791 Act for limited liability companies, as applicable, and a
792 provision of this chapter, the latter controls. The provisions
793 of this title pertaining to mergers, consolidations,
794 conversions, mutualizations, and redomestications apply in
795 determining the procedures to be followed by a captive insurance
796 company in carrying out any of the transactions described in
797 such provisions, except the commissioner may waive or modify the
798 requirements for public notice and hearing in accordance with
799 regulations which the commissioner may adopt addressing
800 categories of transactions. If a notice of public hearing is
801 required, but no one requests a hearing, the commissioner may
802 cancel the hearing.

803 (13) A captive insurance company formed as a reciprocal
804 insurer pursuant to the provisions of this chapter has the
805 privileges and is subject to chapter 629 in addition to the
806 applicable provisions of this part. If a conflict occurs between
807 the provisions of chapter 629 and the provisions of this part,
808 the latter controls. To the extent a reciprocal insurer is made
809 subject to other provisions of this title pursuant to chapter
810 629, the provisions are not applicable to a reciprocal insurer
811 formed pursuant to the provisions of this chapter unless the
812 provisions are expressly made applicable to a captive insurance

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813 company pursuant to the provisions of this chapter.

814 (14) The articles of incorporation or bylaws of a captive
815 insurance company may authorize a quorum of a board of directors
816 to consist of no fewer than one-third of the fixed or prescribed
817 number of directors as provided for by the Florida Business
818 Corporation Act or the Florida Not For Profit Corporation Act.
819 In the case of a limited liability company, the articles of
820 organization or operating agreement of a captive insurance
821 company may authorize a quorum to consist of no fewer than one-
822 third of the managers required by the articles of organization
823 or the operating agreement.

824 Section 7. Section 628.911, Florida Statutes, is amended to
825 read:

826 628.911 Reports and statements.-

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

830 (2) Annually before March 1, a captive insurance company or
831 a captive reinsurance company ~~insurer shall, within 60 days~~
832 ~~after the end of its fiscal year and as often as the office may~~
833 ~~deem necessary,~~ submit to the commissioner office a report of
834 its financial condition verified by oath of two of its executive
835 officers. Except as provided in this part, a captive insurance
836 company or a captive reinsurance company must report using
837 generally accepted accounting principles, unless the
838 commissioner approves the use of statutory accounting
839 principles, with useful or necessary modifications or
840 adaptations required or approved or accepted by the commissioner
841 for the type of insurance and kinds of insurers to be reported

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842 upon, and as supplemented by additional information required by
843 the commissioner. The Financial Services Commission may adopt by
844 rule the form in which captive insurance companies ~~insurers~~
845 shall report.

846 (3) (a) A pure captive insurance company may make written
847 application for filing the required report on a fiscal year-end
848 that is consistent with the parent company's fiscal year. If an
849 alternative reporting date is granted, the annual report is due
850 60 days after the fiscal year-end.

851 (b) In order to provide sufficient detail to support the
852 premium tax return, the pure captive insurance company must file
853 before March 1 of each year for each calendar year-end pages 1-7
854 of the NAIC Annual Statement, verified by oath of two of its
855 executive officers.

856 (4) Sixty days after the fiscal year end, a branch captive
857 insurance company must file with the commissioner a copy of all
858 reports and statements required to be filed under the laws of
859 the jurisdiction in which the alien captive insurance company is
860 formed, verified by oath by two of its executive officers. If
861 the commissioner is satisfied that the annual report filed by
862 the alien captive insurance company in its domiciliary
863 jurisdiction provides adequate information concerning the
864 financial condition of the alien captive insurance company, the
865 commissioner may waive the requirement for completion of the
866 captive annual statement for business written in the alien
867 jurisdiction. Such waiver must be in writing and subject to
868 public inspection.

869 Section 8. Section 628.912, Florida Statutes, is created to
870 read:

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871 628.912 Discounting of loss and loss adjustment expense
872 reserves.—

873 (1) A sponsored captive insurance company and a captive
874 reinsurance company may discount its loss and loss adjustment
875 expense reserves at treasury rates applied to the applicable
876 payments projected through the use of the expected payment
877 pattern associated with the reserves.

878 (2) A sponsored captive insurance company and a captive
879 reinsurance company must file annually an actuarial opinion on
880 loss and loss adjustment expense reserves provided by an
881 independent actuary. The actuary may not be an employee of the
882 captive company or its affiliates.

883 (3) The commissioner may disallow the discounting of
884 reserves if a sponsored captive insurance company or a captive
885 reinsurance company violates a provision of this part.

886 Section 9. Section 628.913, Florida Statutes, is amended to
887 read:

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

890 628.913 Captive reinsurance companies.—

891 (1) A captive reinsurance company, if permitted by its
892 articles of incorporation or charter, may apply to the
893 commissioner for a license to write reinsurance covering
894 property and casualty insurance or reinsurance contracts. A
895 captive reinsurance company authorized by the commissioner may
896 write reinsurance contracts covering risks in any state.

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

899 (a) Obtain from the commissioner a license authorizing it

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900 to conduct business as a captive reinsurance company in this
901 state;

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

904 (c) Maintain its principal place of business in this state;
905 and

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

908 (3) Before receiving a license, a captive reinsurance
909 company must file with the commissioner:

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

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

913 (c) Other documents required by the commissioner.

914 (4) In addition to the information required by this
915 section, the captive reinsurance company must file with the
916 commissioner evidence of:

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

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

921 (c) The overall soundness of the company's plan of
922 operation; and

923 (d) Other overall factors considered relevant by the
924 commissioner in ascertaining if the company would be able to
925 meet its policy obligations.

926 Section 10. Section 628.914, Florida Statutes, is created
927 to read:

928 628.914 Minimum capitalization or reserves for captive

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929 reinsurance companies.-

930 (1) The commissioner may not issue a license to a captive
931 reinsurance company unless the company possesses and maintains
932 capital or unimpaired surplus of not less than the greater of
933 \$300 million or 10 percent of reserves. The surplus may be in
934 the form of cash or securities.

935 (2) The commissioner may prescribe additional capital or
936 surplus based upon the type, volume, and nature of the insurance
937 business transacted.

938 (3) A captive reinsurance company may not pay a dividend
939 out of, or other distribution with respect to, capital or
940 surplus in excess of the limitations without the prior approval
941 of the commissioner. Approval of an ongoing plan for the payment
942 of dividends or other distributions must be conditioned upon the
943 retention, at the time of each payment, of capital or surplus in
944 excess of amounts specified by, or determined in accordance with
945 formulas approved by, the commissioner.

946 Section 11. Section 628.9141, Florida Statutes, is created
947 to read:

948 628.9141 Incorporation of a captive reinsurance company.-

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

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

955 (3) Before the articles of incorporation are transmitted to
956 the Secretary of State, the incorporators shall petition the
957 commissioner to issue a certificate finding that the

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958 establishment and maintenance of the proposed corporation
959 promotes the general good of this state. In arriving at this
960 finding, the commissioner must consider:

961 (a) The character, reputation, financial standing, and
962 purposes of the incorporators;

963 (b) The character, reputation, financial responsibility,
964 insurance experience, and business qualifications of the
965 officers and directors; and

966 (c) Other factors the commissioner considers advisable.

967 (4) The capital stock of a captive reinsurance company must
968 be issued at par value or greater.

969 (5) At least one of the members of the board of directors
970 of a captive reinsurance company incorporated in this state must
971 be a resident of this state.

972 Section 12. Section 628.9142, Florida Statutes, is created
973 to read:

974 628.9142 Reinsurance; effect on reserves.-

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

977 (2) A captive insurance company may take credit for
978 reserves on risks or portions of risks ceded to authorized
979 insurers or reinsurers and unauthorized insurers or reinsurers
980 complying with the provisions of s. 624.610. A captive insurer
981 may not take credit for reserves on risks or portions of risks
982 ceded to an unauthorized insurer or reinsurer if the insurer or
983 reinsurer is not in compliance with s. 624.610.

984 Section 13. Section 628.9143, Florida Statutes, is created
985 to read:

986 628.9143 Annual captive reinsurance tax.-

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987 (1) A captive reinsurance company must pay to the office by
988 March 1 of each year a captive reinsurance tax of \$5,000.

989 (2) The tax provided in this section is the only tax
990 collectible under the laws of this state from a captive
991 reinsurance company, and no tax on reinsurance premiums, other
992 than occupation tax, nor any other taxes, except ad valorem
993 taxes on real and personal property used in the production of
994 income, may be levied or collected from a captive reinsurance
995 company by the state or a county, city, or municipality within
996 this state.

997 (3) A captive reinsurance company failing to make returns
998 or to pay all taxes required by this section is subject to
999 sanctions provided in this part.

1000 Section 14. Section 628.918, Florida Statutes, is created
1001 to read:

1002 628.918 Management of assets of captive reinsurance
1003 company.—At least 35 percent of the assets of a captive
1004 reinsurance company must be managed by an asset manager
1005 domiciled in this state.

1006 Section 15. Section 628.919, Florida Statutes, is created
1007 to read:

1008 628.919 Regulations establishing standards to ensure risk
1009 management control by parent company.—The Financial Services
1010 Commission shall adopt rules establishing standards to ensure
1011 that a parent or affiliated company is able to exercise control
1012 of the risk management function of any controlled unaffiliated
1013 business to be insured by the pure captive insurance company.

1014 Section 16. Section 628.920, Florida Statutes, is created
1015 to read:

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1016 628.920 Conversion of certain stock, mutual corporations,
1017 or limited liability companies into reciprocal insurers; plan
1018 for conversion.-

1019 (1) An association captive insurance company or industrial
1020 insured group formed as a stock or mutual corporation or a
1021 limited liability company may be converted to or merged with and
1022 into a reciprocal insurer in accordance with a plan and the
1023 provisions of this section.

1024 (2) A plan for this conversion or merger:

1025 (a) Must be fair and equitable to the:

- 1026 1. Shareholders, in the case of a stock insurer;
1027 2. Members, in the case of a limited liability company; or
1028 3. Policyholders, in the case of a mutual insurer; and

1029 (b) Must provide for the purchase of the shares of any
1030 nonconsenting shareholder of a stock insurer, of the member
1031 interest of any nonconsenting member of a limited liability
1032 company, of the policyholder interest of any nonconsenting
1033 policyholder of a mutual insurer in substantially the same
1034 manner and subject to the same rights and conditions as are
1035 accorded a dissenting shareholder, dissenting member, or a
1036 dissenting policyholder pursuant to the provisions of this
1037 chapter, provided the merger of a limited liability company
1038 requires the consent of all members unless waived in an
1039 operating agreement signed by all of the members of the limited
1040 liability company.

1041 (3) In the case of a conversion authorized under this
1042 section:

1043 (a) The conversion must be accomplished under a reasonable
1044 plan and procedure as may be approved by the commissioner.

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1045 However, the commissioner may not approve the plan of conversion
1046 unless the plan:

1047 1. Satisfies the provisions of this section;

1048 2. Provides for a hearing, of which notice has been given
1049 to the insurer, its directors, officers, and stockholders, in
1050 the case of a stock insurer; members and managers, in the case
1051 of a limited liability company; or policyholders, in the case of
1052 a mutual insurer, all of whom have the right to appear at the
1053 hearing, except that the director may waive or modify the
1054 requirements for the hearing. However, if a notice of hearing is
1055 required, but no hearing is requested, the commissioner may
1056 cancel the hearing;

1057 3. Provides for the conversion of existing stockholder,
1058 member, or policyholder interests into subscriber interests in
1059 the resulting reciprocal insurer, proportionate to stockholder,
1060 member, or policyholder interests in the stock or mutual insurer
1061 or limited liability company; and

1062 4. Is approved:

1063 a. In the case of a stock insurer or limited liability
1064 company, by a majority of the shares or interests entitled to
1065 vote represented in person or by proxy at a duly called regular
1066 or special meeting at which a quorum is present;

1067 b. In the case of a mutual insurer, by a majority of the
1068 voting interests of policyholders represented in person or by
1069 proxy at a duly called regular or special meeting at which a
1070 quorum is present;

1071 (b) The commissioner shall approve the plan of conversion
1072 if the commissioner finds that the conversion will promote the
1073 general good of the state in conformity with those standards

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1074 provided in this part;

1075 (c) If the commissioner approves the plan, the commissioner
1076 must amend the converting insurer's certificate of authority to
1077 reflect conversion to a reciprocal insurer and issue the amended
1078 certificate of authority to the company's attorney-in-fact;

1079 (d) Upon issuance of an amended certificate of authority of
1080 a reciprocal insurer by the commissioner, the conversion is
1081 effective; and

1082 (e) Upon the effectiveness of the conversion, the corporate
1083 existence of the converting insurer must cease and the resulting
1084 reciprocal insurer must notify the Secretary of State of the
1085 conversion.

1086 (4) A merger authorized pursuant to the provisions of this
1087 section must be accomplished substantially in accordance with
1088 the procedures provided in this part, except that, only for
1089 purposes of the merger:

1090 (a) The plan or merger must satisfy the requirements of
1091 subsection (2);

1092 (b) The subscribers' advisory committee of a reciprocal
1093 insurer must be equivalent to the board of directors of a stock
1094 or mutual insurance company or the managers of a limited
1095 liability company;

1096 (c) The subscribers of a reciprocal insurer must be the
1097 equivalent of the policyholders of a mutual insurance company;

1098 (d) If a subscribers' advisory committee does not have a
1099 president or secretary, the officers of the committee having
1100 substantially equivalent duties are considered the president and
1101 secretary of the committee;

1102 (e) The commissioner must approve the articles of merger if

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1103 the commissioner finds that the merger will promote the general
1104 good of the state in conformity with those standards provided in
1105 this part. If the commissioner approves the articles of merger,
1106 the commissioner must endorse his or her approval on the
1107 articles and the surviving insurer must present the endorsement
1108 of the commissioner to the Secretary of State at the Secretary
1109 of State's office;

1110 (f) Notwithstanding the provisions of this part, the
1111 commissioner may permit the formation, without surplus, of a
1112 captive insurance company organized as a reciprocal insurer,
1113 into which an existing captive insurance company may be merged
1114 for the purpose of facilitating a transaction provided for in
1115 this section. However, there may be no more than one authorized
1116 insurance company surviving the merger; and

1117 (g) An alien insurer may be a party to a merger authorized
1118 pursuant to the provisions of subsection (1) if the requirements
1119 for the merger between a domestic and a foreign insurer pursuant
1120 to the provisions of this chapter apply to a merger between a
1121 domestic and an alien insurer provided by this subsection. The
1122 alien insurer must be treated as a foreign insurer pursuant to
1123 the provisions of this chapter and other jurisdictions must be
1124 the equivalent of a state.

1125 Section 17. Section 628.921, Florida Statutes, is created
1126 to read:

1127 628.921 Formation of sponsored captive insurance company;
1128 establishing protected cells.—

1129 (1) One or more sponsors may form a sponsored captive
1130 insurance company under this part.

1131 (2) A sponsored captive insurance company formed or

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1132 licensed under this part may establish and maintain one or more
1133 protected cells to insure risks of one or more participants,
1134 subject to the following conditions:

1135 (a) The shareholders of a sponsored captive insurance
1136 company must be limited to its participants and sponsors;

1137 (b) Each protected cell must be accounted for separately on
1138 the books and records of the sponsored captive insurance company
1139 to reflect the financial condition and results of operations of
1140 the protected cell, net income or loss, dividends or other
1141 distributions to participants, and other factors that may be
1142 provided in the participant contract or required by the
1143 commissioner;

1144 (c) The assets of a protected cell must not be chargeable
1145 with liabilities arising out of any other insurance business the
1146 sponsored captive insurance company may conduct;

1147 (d) Sale, exchange, or other transfer of assets may not be
1148 made by the sponsored captive insurance company between or among
1149 any of its protected cells without the consent of the protected
1150 cells;

1151 (e) Sale, exchange, transfer of assets, dividend, or
1152 distribution may not be made from a protected cell to a sponsor
1153 or participant without the commissioner's approval, nor may the
1154 approval be given if the sale, exchange, transfer, dividend, or
1155 distribution would result in insolvency or impairment with
1156 respect to a protected cell;

1157 (f) A sponsored captive insurance company must annually
1158 file with the commissioner financial reports the commissioner
1159 requires, which must include, but are not limited to, accounting
1160 statements detailing the financial experience of each protected

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1161 cell;

1162 (g) A sponsored captive insurance company must notify the
1163 commissioner in writing within 10 business days after a
1164 protected cell becomes insolvent or otherwise unable to meet its
1165 claim or expense obligations; and

1166 (h) A participant contract may not take effect without the
1167 commissioner's prior written approval, and the addition of each
1168 new protected cell and withdrawal of any participant of any
1169 existing protected cell constitutes a change in the business
1170 plan, which requires the commissioner's prior written approval.

1171 Section 18. Section 628.922, Florida Statutes, is created
1172 to read:

1173 628.922 Requirements applicable to sponsors.—A sponsor of a
1174 sponsored captive insurance company must be an insurer licensed
1175 pursuant to the laws of a state, an insurance holding company
1176 that controls an insurer licensed under the laws of any state
1177 and subject to registration under the insurance holding company
1178 system laws of the state of domicile of the insurer, a reinsurer
1179 authorized or approved under the laws of a state, or a captive
1180 insurance company formed or licensed under this chapter. A risk
1181 retention group may not be either a sponsor or a participant of
1182 a sponsored captive insurance company. The business written by a
1183 sponsored captive insurance company with respect to each
1184 protected cell must be:

1185 (1) Fronted by an insurance company licensed under the laws
1186 of:

1187 (a) Any state; or

1188 (b) Any jurisdiction if the insurance company is a wholly
1189 owned subsidiary of an insurance company licensed under the laws

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1190 of any state;

1191 (2) Reinsured by a reinsurer authorized or approved by this
1192 state; or

1193 (3) Secured by a trust fund in the United States for the
1194 benefit of policyholders and claimants funded by an irrevocable
1195 letter of credit or other asset acceptable to the commissioner.
1196 The amount of security provided by the trust fund may not be
1197 less than the reserves associated with those liabilities,
1198 including reserves for losses, allocated loss adjustment
1199 expenses, incurred but unreported losses, and unearned premiums
1200 for business written through the participant's protected cell.
1201 The commissioner may require the sponsored captive to increase
1202 the funding of a trust established under this subsection. If the
1203 form of security in the trust is a letter of credit, the letter
1204 of credit must be established, issued, or confirmed by a bank
1205 chartered in this state, a member of the Federal Reserve System,
1206 or a bank chartered by another state if that state-chartered
1207 bank is acceptable to the commissioner. A trust and trust
1208 instrument maintained under this subsection must be in a form
1209 and upon terms approved by the commissioner.

1210 Section 19. Section 628.923, Florida Statutes, is created
1211 to read:

1212 628.923 Participants in sponsored captive insurance
1213 companies.—

1214 (1) An association, a corporation, a limited liability
1215 company, a partnership, a trust, or another business entity may
1216 be a participant in a sponsored captive insurance company formed
1217 or licensed under this part.

1218 (2) A sponsor may be a participant in a sponsored captive

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1219 insurance company.

1220 (3) A participant need not be a shareholder of the
1221 sponsored captive insurance company or an affiliate of the
1222 company.

1223 (4) A participant may insure only its own risks through a
1224 sponsored captive insurance company, unless otherwise approved
1225 by the commissioner.

1226 Section 20. Section 628.924, Florida Statutes, is created
1227 to read:

1228 628.924 Eligibility of licensed captive insurance company
1229 for certificate of authority to act as insurer.—A licensed
1230 captive insurance company that meets the necessary requirements
1231 of this part imposed upon an insurer must be considered for
1232 issuance of a certificate of authority to act as an insurer in
1233 this state.

1234 Section 21. This act shall take effect July 1, 2011.