

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Economic Affairs Committee  
2 Representative Nuñez offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:  
6 Section 1. Section 628.901, Florida Statutes, is amended to  
7 read:

8 628.901 Definitions ~~"Captive insurer" defined.—As used in~~  
9 ~~For the purposes of this part, unless the context requires~~  
10 ~~otherwise, the term: except as provided in s. 628.903, a~~  
11 ~~"captive insurer" is a domestic insurer established under part I~~  
12 ~~to insure the risks of a specific corporation or group of~~  
13 ~~corporations under common ownership owned by the corporation or~~  
14 ~~corporations from which it accepts risk under a contract of~~  
15 ~~insurance.~~

16 (1) "Affiliated company" means a company in the same  
17 corporate system as a parent, an industrial insured, or a member  
18 organization by virtue of common ownership, control, operation,  
19 or management.

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20 (2) "Association" means a legal association of  
21 individuals, corporations, limited liability companies,  
22 partnerships, political subdivisions, or associations that has  
23 been in continuous existence for at least 1 year, the member  
24 organizations of which collectively, or which does itself:

25 (a) Own, control, or hold with power to vote all of the  
26 outstanding voting securities of an association captive  
27 insurance company incorporated as a stock insurer; or

28 (b) Have complete voting control over an association  
29 captive insurance company organized as a mutual insurer.

30 (3) "Association captive insurance company" means a  
31 company that insures risks of the member organizations of the  
32 association and their affiliated companies.

33 (4) "Captive insurance company" means a domestic insurer  
34 established under this part. A captive insurance company  
35 includes a pure captive insurance company, association captive  
36 insurance company, special purpose captive insurance company, or  
37 industrial insured captive insurance company formed and licensed  
38 under this part.

39 (5) "Captive reinsurance company" means a reinsurance  
40 company that is formed and licensed under this part and is  
41 wholly owned by a qualifying reinsurance parent company. A  
42 captive reinsurance company is a stock corporation and may only  
43 reinsure risks. A captive reinsurance company may not directly  
44 insure risks.

45 (6) "Consolidated debt to total capital ratio" means the  
46 ratio of the sum of all debts and hybrid capital instruments as

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47 described in paragraph (a) to total capital as described in  
48 paragraph (b).

49 (a) Debts and hybrid capital instruments include, but are  
50 not limited to, all borrowings from banks, all senior debt, all  
51 subordinated debts, all trust preferred shares, and all other  
52 hybrid capital instruments that are not included in the  
53 determination of consolidated GAAP net worth issued and  
54 outstanding.

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

59 (7) "Consolidated GAAP net worth" means the consolidated  
60 owners' equity determined in accordance with generally accepted  
61 accounting principles for reporting to the United States  
62 Securities and Exchange Commission.

63 (8) "Controlled unaffiliated business" means a company:

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

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

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

70 (9) "GAAP" means generally accepted accounting principles.

71 (10) "Industrial insured" means an insured that:

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

73 (b) Procures insurance through the use of a full-time  
74 employee of the insured who acts as an insurance manager or

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75 buyer or through the services of a person licensed as a property  
76 and casualty insurance agent, broker, or consultant in such  
77 person's state of domicile;

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

79 (d) Pays annual premiums of at least \$200,000 for each  
80 line of insurance purchased from the industrial insured captive  
81 insurer or at least \$75,000 for any line of coverage in excess  
82 of at least \$25 million in the annual aggregate. The purchase of  
83 umbrella or general liability coverage in excess of \$25 million  
84 in the annual aggregate shall be deemed to be the purchase of a  
85 single line of insurance.

86 (11) "Industrial insured captive insurance company" means  
87 a captive insurance company that provides insurance only to the  
88 industrial insureds that are its stockholders or members, and  
89 affiliates thereof, or to the stockholders, and affiliates  
90 thereof, of its parent corporation. An industrial insured  
91 captive insurance company may also provide reinsurance to  
92 insurers only on risks written by such insurers for the  
93 industrial insureds who are the stockholders or members, and  
94 affiliates thereof, of the industrial insured captive insurance  
95 company, or the stockholders, and affiliates thereof, of the  
96 parent corporation of the industrial insured captive insurance  
97 company.

98 (12) "Member organization" means any individual,  
99 corporation, limited liability company, partnership, or  
100 association that belongs to an association.

101 (13) "Office" means the Office of Insurance Regulation.

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102       (14) "Parent" means any corporation, limited liability  
103 company, partnership, or individual that directly or indirectly  
104 owns, controls, or holds with power to vote more than 50 percent  
105 of the outstanding voting interests of a captive insurance  
106 company.

107       (15) "Pure captive insurance company" means a company that  
108 insures risks of its parent, affiliated companies, controlled  
109 unaffiliated businesses, or a combination thereof.

110       (16) "Qualifying reinsurer parent company" means a  
111 reinsurer that currently holds a certificate of authority or  
112 letter of eligibility or is an accredited or a satisfactory  
113 nonapproved reinsurer in this state possessing a consolidated  
114 GAAP net worth of not less than \$500 million and a consolidated  
115 debt to total capital ratio of not greater than 0.50.

116       (17) "Special purpose captive insurance company" means a  
117 captive insurance company that is formed or licensed under this  
118 chapter that does not meet the definition of any other type of  
119 captive insurance company defined in this section.

120       (18) "Treasury rates" means the United States Treasury  
121 STRIPS asked yield as published in the Wall Street Journal as of  
122 a balance sheet date.

123       Section 2. Section 628.905, Florida Statutes, is amended  
124 to read:

125       628.905 Licensing; authority.—

126       (1) Any captive insurer, when permitted by its charter or  
127 articles of incorporation, may apply to the office for a license  
128 to do any and all insurance authorized under the insurance code,  
129 ~~provide commercial property, commercial casualty, and commercial~~

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130 ~~marine insurance coverage other than workers' compensation and~~  
131 ~~employer's liability, life, health, personal motor vehicle, and~~  
132 ~~personal residential property and employer's liability insurance~~  
133 ~~coverage, except that: an industrial insured captive insurer may~~  
134 ~~apply for a license to provide workers' compensation and~~  
135 ~~employer's liability insurance as set forth in subsection (6).~~

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

139 (b) An association captive insurance company may not  
140 insure any risks other than those of the member organizations of  
141 its association and their affiliated companies. An association  
142 captive insurance company shall have stamped or written upon the  
143 first page of the policy or the certificate, cover note, or  
144 confirmation of insurance the words: "THIS INSURANCE IS ISSUED  
145 PURSUANT TO THE FLORIDA CAPTIVE INSURERS LAW. PERSONS INSURED BY  
146 CAPTIVE INSURANCE COMPANIES DO NOT HAVE THE PROTECTION OF THE  
147 FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF  
148 RECOVERY FOR THE OBLIGATION OF AN INSOLVENT INSURER." An  
149 association captive insurance company shall also have stamped or  
150 printed on the face of the policy in at least 14-point, boldface  
151 type the following statement: "CAPTIVE INSURANCE COMPANIES'  
152 POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA  
153 REGULATORY AGENCY."

154 (c) An industrial insured captive insurance company may  
155 not insure any risks other than those of the industrial insureds  
156 that comprise the industrial insured group and their affiliated  
157 companies.

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158 (d) A special purpose captive insurance company may only  
159 insure the risks of its parent.

160 (e) A captive insurance company may not accept or cede  
161 reinsurance except as provided in this part.

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

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

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

170 (c) Maintain its principal place of business in this  
171 state; and

172 (d) Appoint a resident registered agent to accept service  
173 of process and to otherwise act on its behalf in this state. In  
174 the case of a captive insurance company formed as a corporation  
175 or a nonprofit corporation, whenever the registered agent cannot  
176 with reasonable diligence be found at the registered office of  
177 the captive insurance company, the Chief Financial Officer of  
178 this state must be an agent of the captive insurance company  
179 upon whom any process, notice, or demand may be served.

180 (3) (a) Before receiving a license, a captive insurance  
181 company formed as a corporation or a nonprofit corporation must  
182 file with the office a certified copy of its articles of  
183 incorporation and bylaws, a statement under oath of its  
184 president and secretary showing its financial condition, and any  
185 other statements or documents required by the office.

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

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

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

193 3. The overall soundness of the company's plan of  
194 operation;

195 4. The adequacy of the loss prevention programs of the  
196 company's parent, member organizations, or industrial insureds,  
197 as applicable; and

198 5. Any other factors considered relevant by the office in  
199 ascertaining whether the company will be able to meet its policy  
200 obligations ~~In addition to information otherwise required by~~  
201 ~~this code, each applicant captive insurer shall file with the~~  
202 ~~office evidence of the adequacy of the loss prevention program~~  
203 ~~of its insureds.~~

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

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

209 (c) The office may charge a fee of \$5 for any document  
210 requiring certification of authenticity or the signature of the  
211 commissioner or his or her designee. ~~An industrial insured~~  
212 ~~captive insurer need not be incorporated in this state if it has~~



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213 ~~been validly incorporated under the laws of another~~  
214 ~~jurisdiction.~~

215 (5) If the commissioner is satisfied that the documents  
216 and statements filed by the captive insurance company comply  
217 with this chapter, the commissioner may grant a license  
218 authorizing the company to conduct insurance business in this  
219 state until the next succeeding March 1, at which time the  
220 license may be renewed ~~An industrial insured captive insurer is~~  
221 ~~subject to all provisions of this part except as otherwise~~  
222 ~~indicated.~~

223 (6) Upon approval of the office, a foreign or alien  
224 captive insurance company may become a domestic captive  
225 insurance company by complying with all of the requirements of  
226 law relative to the organization and licensing of a domestic  
227 captive insurance company of the same or equivalent type in this  
228 state and by filing with the Secretary of State its articles of  
229 association, charter, or other organizational documents,  
230 together with any appropriate amendments that have been adopted  
231 in accordance with the laws of this state to bring the articles  
232 of association, charter, or other organizational documents into  
233 compliance with the laws of this state, along with a certificate  
234 of good standing issued by the office. After this is  
235 accomplished, the captive insurance company is entitled to the  
236 necessary or appropriate certificates and licenses to continue  
237 transacting business in this state and is subject to the  
238 authority and jurisdiction of this state. In connection with  
239 this redomestication, the office may waive any requirements for  
240 public hearings. It is not necessary for a captive insurance

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241 company redomesticating into this state to merge, consolidate,  
242 transfer assets, or otherwise engage in any other  
243 reorganization, other than as specified in this section ~~An~~  
244 ~~industrial insured captive insurer may not provide workers'~~  
245 ~~compensation and employer's liability insurance except in excess~~  
246 ~~of at least \$25 million in the annual aggregate.~~

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

250 Section 3. Section 628.906, Florida Statutes, is created  
251 to read:

252 628.906 Application requirements; restrictions on  
253 eligibility of officers and directors.-

254 (1) To evidence competence and trustworthiness of its  
255 officers and directors, the application for a license to act as  
256 a captive insurance company or captive reinsurance company shall  
257 include, but not be limited to, background investigations,  
258 biographical affidavits, and fingerprint cards for all officers  
259 and directors. Fingerprints must be taken by a law enforcement  
260 agency or other entity approved by the office and must be  
261 accompanied by the fingerprint processing fee specified in s.  
262 624.501. Fingerprints shall be processed in accordance with s.  
263 624.34.

264 (2) The office may deny, suspend, or revoke the license to  
265 transact captive insurance or captive reinsurance in this state  
266 if any person who was an officer or director of an insurer,  
267 reinsurer, captive insurance company, captive reinsurance  
268 company, financial institution, or financial services business

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269 doing business in the United States, any state, or under the law  
270 of any other country and who served in that capacity within the  
271 2-year period before the date the insurer, reinsurer, captive  
272 insurance company, captive reinsurance company, financial  
273 institution, or financial services business became insolvent  
274 serves as an officer or director of a captive insurance company  
275 or officer or director of a captive reinsurance company licensed  
276 in this state, unless the officer or director demonstrates that  
277 his or her personal actions or omissions were not a contributing  
278 cause to the insolvency or unless the officer or director is  
279 immediately removed from the captive insurance company or  
280 captive reinsurance company.

281 (3) The office may deny, suspend, or revoke the license to  
282 transact insurance or reinsurance in this state of any captive  
283 insurance company or captive reinsurance company if any officer  
284 or director, any stockholder that owns 10% of more of the  
285 outstanding voting securities of the captive insurance company  
286 or captive reinsurance company, or incorporator has been found  
287 guilty of, or has pleaded guilty or nolo contendere to, any  
288 felony or crime involving moral turpitude, including a crime of  
289 dishonesty or breach of trust, punishable by imprisonment of 1  
290 year or more under the laws of the United States or any state  
291 thereof or under the laws of any other country without regard to  
292 whether a judgment of conviction has been entered by the court  
293 having jurisdiction in such case. However, in the case of a  
294 captive insurance company or captive reinsurance company  
295 operating under a subsisting license, the captive insurance  
296 company or captive reinsurance company shall remove any such

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297 person immediately upon discovery of the conditions set forth in  
298 this subsection when applicable to such person or upon the order  
299 of the office, and the failure to so act shall be grounds for  
300 revocation or suspension of the captive insurance company's or  
301 captive reinsurance company's license.

302 Section 4. Section 628.907, Florida Statutes, is amended  
303 to read:

304 628.907 Minimum capital and net assets requirements;  
305 restriction on payment of dividends surplus.-

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

309 (a) ~~(1)~~ In the case of a pure captive insurance company,  
310 not less than \$100,000. ~~Unimpaired paid-in capital of at least~~  
311 ~~\$500,000; and~~

312 (b) ~~(2)~~ In the case of an association captive insurance  
313 company incorporated as a stock insurer, not less than \$400,000  
314 ~~Unimpaired surplus of at least \$250,000.~~

315 (c) In the case of an industrial insured captive insurance  
316 company incorporated as a stock insurer, not less than \$200,000.

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

322 (2) The office may not issue a license to a captive  
323 insurance company incorporated as a nonprofit corporation unless  
324 the company possesses and maintains unrestricted net assets of:

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

327 (b) In the case of a special purpose captive insurance  
328 company, an amount determined by the office after giving due  
329 consideration to the company's business plan, feasibility study,  
330 and pro forma financial statements and projections, including  
331 the nature of the risks to be insured.

332 (3) Contributions to a captive insurance company  
333 incorporated as a nonprofit corporation must be in the form of  
334 cash, cash equivalent, or an irrevocable letter of credit issued  
335 by a bank chartered by this state or a member bank of the  
336 Federal Reserve System with a branch office in this state, or as  
337 approved by the office.

338 (4) For purposes of this section, the office may issue a  
339 license expressly conditioned upon the captive insurance company  
340 providing to the office satisfactory evidence of possession of  
341 the minimum required unimpaired paid-in capital. Until this  
342 evidence is provided, the captive insurance company may not  
343 issue any policy, assume any liability, or otherwise provide  
344 coverage. The office may revoke the conditional license if  
345 satisfactory evidence of the required capital is not provided  
346 within a maximum period of time, not to exceed 1 year, to be  
347 established by the office at the time the conditional license is  
348 issued.

349 (5) The office may prescribe additional capital or net  
350 assets based upon the type, volume, and nature of insurance  
351 business transacted. Contributions in connection with these

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352 prescribed additional net assets or capital must be in the form  
353 of:

354 (a) Cash;

355 (b) Cash equivalent;

356 (c) An irrevocable letter of credit issued by a bank  
357 chartered by this state or a member bank of the Federal Reserve  
358 System with a branch office in this state, or as approved by the  
359 office; or

360 (d) Securities invested as provided in part II of chapter  
361 625.

362 (6) A captive insurance company may not pay a dividend out  
363 of, or other distribution with respect to, capital or surplus in  
364 excess of the limitations set forth in this chapter without the  
365 prior approval of the office. Approval of an ongoing plan for  
366 the payment of dividends or other distributions must be  
367 conditioned upon the retention, at the time of each payment, of  
368 capital or surplus in excess of amounts specified by, or  
369 determined in accordance with formulas approved by, the office.

370 (7) An irrevocable letter of credit that is issued by a  
371 financial institution other than a bank chartered by this state  
372 or a member bank of the Federal Reserve System must meet the  
373 same standards as an irrevocable letter of credit that has been  
374 issued by a bank chartered by this state or a member bank of the  
375 Federal Reserve System.

376 Section 5. Section 628.908, Florida Statutes, is created  
377 to read:

378 628.908 Surplus requirements; restriction on payment of  
379 dividends.—

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380       (1) The office may not issue a license to a captive  
381 insurance company unless the company possesses and maintains  
382 unimpaired surplus of:

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

385       (b) In the case of an association captive insurance  
386 company incorporated as a stock insurer, not less than \$350,000.

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

389       (d) In the case of an association captive insurance  
390 company incorporated as a mutual insurer, not less than  
391 \$750,000.

392       (e) In the case of an industrial insured captive insurance  
393 company incorporated as a mutual insurer, not less than  
394 \$500,000.

395       (f) In the case of a special purpose captive insurance  
396 company, an amount determined by the office after giving due  
397 consideration to the company's business plan, feasibility study,  
398 and pro forma financial statements and projections, including  
399 the nature of the risks to be insured.

400       (2) For purposes of this section, the office may issue a  
401 license expressly conditioned upon the captive insurance company  
402 providing to the office satisfactory evidence of possession of  
403 the minimum required unimpaired surplus. Until this evidence is  
404 provided, the captive insurance company may not issue any  
405 policy, assume any liability, or otherwise provide coverage. The  
406 office may revoke the conditional license if satisfactory  
407 evidence of the required surplus is not provided within a

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408 maximum period of time, not to exceed 1 year, to be established  
409 by the office at the time the conditional license is issued.

410 (3) A captive insurance company may not pay a dividend out  
411 of, or other distribution with respect to, capital or surplus in  
412 excess of the limitations set forth in this chapter without the  
413 prior approval of the office. Approval of an ongoing plan for  
414 the payment of dividends or other distribution must be  
415 conditioned upon the retention, at the time of each payment, of  
416 capital or surplus in excess of amounts specified by, or  
417 determined in accordance with formulas approved by, the office.

418 (4) An irrevocable letter of credit that is issued by a  
419 financial institution other than a bank chartered by this state  
420 or a member bank of the Federal Reserve System must meet the  
421 same standards as an irrevocable letter of credit that has been  
422 issued by a bank chartered by this state or a member bank of the  
423 Federal Reserve System.

424 Section 6. Section 628.909, Florida Statutes, is amended  
425 to read:

426 628.909 Applicability of other laws.-

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

430 (2) The following provisions of the Florida Insurance Code  
431 ~~shall~~ apply to captive insurers who are not industrial insured  
432 captive insurers to the extent that such provisions are not  
433 inconsistent with this part:

434 (a) Chapter 624, except for ss. 624.407, 624.408,  
435 624.4085, 624.40851, 624.4095, 624.425, and 624.426.



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- 436 (b) Chapter 625, part II.
- 437 (c) Chapter 626, part IX.
- 438 (d) Sections 627.730-627.7405, when no-fault coverage is  
439 provided.
- 440 (e) Chapter 628.
- 441 (3) The following provisions of the Florida Insurance Code  
442 ~~shall~~ apply to industrial insured captive insurers to the extent  
443 that such provisions are not inconsistent with this part:
- 444 (a) Chapter 624, except for ss. 624.407, 624.408,  
445 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).
- 446 (b) Chapter 625, part II, if the industrial insured  
447 captive insurer is incorporated in this state.
- 448 (c) Chapter 626, part IX.
- 449 (d) Sections 627.730-627.7405 when no-fault coverage is  
450 provided.
- 451 (e) Chapter 628, except for ss. 628.341, 628.351, and  
452 628.6018.
- 453 Section 7. Section 628.910, Florida Statutes, is created  
454 to read:
- 455 628.910 Incorporation options and requirements.-
- 456 (1) A pure captive insurance company may be:
- 457 (a) Incorporated as a stock insurer with its capital  
458 divided into shares and held by the stockholders; or
- 459 (b) Incorporated as a public benefit, mutual benefit, or  
460 religious nonprofit corporation with members in accordance with  
461 the Florida Not For Profit Corporation Act.
- 462 (2) An association captive insurance company or an  
463 industrial insured captive insurance company may be:

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

466 (b) Incorporated as a mutual insurer without capital  
467 stock, the governing body of which is elected by the member  
468 organizations of its association.

469 (3) A captive insurance company may not have fewer than  
470 three incorporators of whom not fewer than two must be residents  
471 of this state.

472 (4) In the case of a captive insurance company formed as a  
473 corporation or a nonprofit corporation, before the articles of  
474 incorporation are transmitted to the Secretary of State, the  
475 incorporators shall file the articles of incorporation in  
476 triplicate with the office. The office shall promptly examine  
477 the articles of incorporation. If the office finds that the  
478 articles of incorporation conform to law, it shall endorse its  
479 approval on each of the triplicate originals of the articles of  
480 incorporation, retain one copy for its files, and return the  
481 remaining copies to the incorporators for filing with the  
482 Department of State.

483 (5) The articles of incorporation, the certificate issued  
484 pursuant to this section, and the organization fees required by  
485 the Florida Business Corporation Act or the Florida Not For  
486 Profit Corporation Act, as applicable, must be transmitted to  
487 the Secretary of State, who must record the articles of  
488 incorporation and the certificate.

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

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492       (7) In the case of a captive insurance company formed as a  
493 corporation or a nonprofit corporation, at least one of the  
494 members of the board of directors of a captive insurance company  
495 incorporated in this state must be a resident of this state.

496       (8) A captive insurance company formed as a corporation or  
497 a nonprofit corporation, pursuant to the provisions of this  
498 chapter, has the privileges and is subject to the provisions of  
499 the general corporation law, including the Florida Not For  
500 Profit Corporation Act for nonprofit corporations, as  
501 applicable, as well as the applicable provisions contained in  
502 this chapter. If a conflict occurs between a provision of the  
503 general corporation law, including the Florida Not For Profit  
504 Corporation Act for nonprofit corporations, as applicable, and a  
505 provision of this chapter, the latter controls. The provisions  
506 of this title pertaining to mergers, consolidations,  
507 conversions, mutualizations, and redomestications apply in  
508 determining the procedures to be followed by a captive insurance  
509 company in carrying out any of the transactions described in  
510 such provisions, except that the office may waive or modify the  
511 requirements for public notice and hearing in accordance with  
512 rules the office may adopt addressing categories of  
513 transactions. If a notice of public hearing is required, but no  
514 one requests a hearing, the office may cancel the hearing.

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

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520 Section 8. Section 628.911, Florida Statutes, is amended  
521 to read:

522 628.911 Reports and statements.—

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

526 (2) Annually no later than March 1, a captive insurance  
527 company or a captive reinsurance company ~~insurer shall, within~~  
528 ~~60 days after the end of its fiscal year and as often as the~~  
529 ~~office may deem necessary,~~ submit to the office a report of its  
530 financial condition verified by oath of two of its executive  
531 officers. Except as provided in this part, a captive insurance  
532 company or a captive reinsurance company must report using  
533 generally accepted accounting principles, unless the office  
534 approves the use of statutory accounting principles, with useful  
535 or necessary modifications or adaptations required or approved  
536 or accepted by the office for the type of insurance and kinds of  
537 insurers to be reported upon, and as supplemented by additional  
538 information required by the office. The Financial Services  
539 Commission may adopt by rule the form in which captive insurance  
540 companies ~~insurers~~ shall report.

541 (3) A captive insurance company may make written  
542 application for filing the required report on a fiscal year end  
543 that is consistent with the parent company's fiscal year. If an  
544 alternative reporting date is granted, the annual report is due  
545 60 days after the fiscal year end.

546 Section 9. Section 628.912, Florida Statutes, is created  
547 to read:

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548 628.912 Discounting of loss and loss adjustment expense  
549 reserves.-

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

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

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

560 Section 10. Section 628.913, Florida Statutes, is amended  
561 to read:

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

564 628.913 Captive reinsurance companies.-

565 (1) A captive reinsurance company, if permitted by its  
566 articles of incorporation or charter, may apply to the office  
567 for a license to write reinsurance covering property and  
568 casualty insurance or reinsurance contracts. A captive  
569 reinsurance company authorized by the office may write  
570 reinsurance contracts covering risks in any state. However, a  
571 captive reinsurance company authorized by the office may not  
572 directly insure risks.

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

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

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

579 (c) Maintain its principal place of business in this  
580 state; and

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

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

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

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

588 (c) Other documents required by the office.

589 (4) In addition to the information required by this  
590 section, the captive reinsurance company must file with the  
591 office evidence of:

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

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

596 (c) The overall soundness of the company's plan of  
597 operation; and

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

601 Section 11. Section 628.914, Florida Statutes, is created  
602 to read:

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603 628.914 Minimum capitalization or reserves for captive  
604 reinsurance companies.-

605 (1) The office may not issue a license to a captive  
606 reinsurance company unless the company possesses and maintains  
607 capital or unimpaired surplus of not less than the greater of  
608 \$300 million or 10 percent of reserves. The surplus may be in  
609 the form of cash or securities as permitted by part II of  
610 chapter 625.

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

614 (3) A captive reinsurance company may not pay a dividend  
615 out of, or other distribution with respect to, capital or  
616 surplus in excess of the limitations without the prior approval  
617 of the office. Approval of an ongoing plan for the payment of  
618 dividends or other distributions must be conditioned upon the  
619 retention, at the time of each payment, of capital or surplus in  
620 excess of amounts specified by, or determined in accordance with  
621 formulas approved by, the office.

622 Section 12. Section 628.9141, Florida Statutes, is created  
623 to read:

624 628.9141 Incorporation of a captive reinsurance company.-

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

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

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631 (3) Before the articles of incorporation are transmitted  
632 to the Secretary of State, the incorporators shall comply with  
633 all the requirements of s. 628.091.

634 (4) The capital stock of a captive reinsurance company  
635 must be issued at par value of not less than \$1 or more than  
636 \$100 per share.

637 (5) At least one of the members of the board of directors  
638 of a captive reinsurance company incorporated in this state must  
639 be a resident of this state.

640 Section 13. Section 628.9142, Florida Statutes, is created  
641 to read:

642 628.9142 Reinsurance; effect on reserves.-

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

645 (2) A captive insurance company may take credit for  
646 reserves on risks or portions of risks ceded to authorized  
647 insurers or reinsurers and unauthorized insurers or reinsurers  
648 complying with the provisions of s. 624.610. A captive insurer  
649 may not take credit for reserves on risks or portions of risks  
650 ceded to an unauthorized insurer or reinsurer if the insurer or  
651 reinsurer is not in compliance with s. 624.610.

652 Section 14. Section 628.918, Florida Statutes, is created  
653 to read:

654 628.918 Management of assets of captive reinsurance  
655 company.-At least 35 percent of the assets of a captive  
656 reinsurance company must be managed by an asset manager  
657 domiciled in this state.



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658 Section 15. Section 628.919, Florida Statutes, is created  
659 to read:

660 628.919 Standards to ensure risk management control by  
661 parent company.—The Financial Services Commission shall adopt  
662 rules establishing standards to ensure that a parent or  
663 affiliated company is able to exercise control of the risk  
664 management function of any controlled unaffiliated business to  
665 be insured by the pure captive insurance company.

666 Section 16. Section 628.920, Florida Statutes, is created  
667 to read:

668 628.920 Eligibility of licensed captive insurance company  
669 for certificate of authority to act as insurer.—A licensed  
670 captive insurance company that meets the necessary requirements  
671 of this part imposed upon an insurer must be considered for  
672 issuance of a certificate of authority to act as an insurer in  
673 this state.

674 Section 17. Paragraph (e) of subsection (2) of section  
675 626.7491, Florida Statutes, is amended to read:

676 626.7491 Business transacted with producer controlled  
677 property and casualty insurer.—

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

679 (e) "Licensed insurer" or "insurer" means any person,  
680 firm, association, or corporation licensed to transact a  
681 property or casualty insurance business in this state. The  
682 following are not licensed insurers for the purposes of this  
683 section:

684 1. Any risk retention group as defined in:

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685 a. The Superfund Amendments Reauthorization Act of 1986,  
686 Pub. L. No. 99-499, 100 Stat. 1613 (1986);

687 b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq.  
688 (1982 and Supp. 1986); or

689 c. Section 627.942(9).

690 2. Any residual market pool or joint underwriting  
691 authority or association; and

692 3. Any captive insurance company insurer as defined in s.  
693 628.901.

694 Section 18. Section 628.903, Florida Statutes, is  
695 repealed.

696 Section 19. This act shall take effect upon becoming a  
697 law.

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701 **T I T L E A M E N D M E N T**

702 Remove the entire title and insert:

703 A bill to be entitled

704 An act relating to captive insurance; amending s. 628.901, F.S.;

705 providing definitions; amending s. 628.905, F.S.; expanding the

706 kinds of insurance for which a captive insurer may seek

707 licensure; limiting the risks that certain captive insurers may

708 insure; specifying requirements and conditions relating to a

709 captive insurer's authority to conduct business; requiring that

710 before licensure certain captive insurers must file or submit to

711 the Office of Insurance Regulation specified information,

712 documents, and statements; requiring a captive insurance company

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713 to file specific evidence with the office relating to the  
714 financial condition and quality of management and operations of  
715 the company; specifying certain fees to be paid by captive  
716 insurance or reinsurance companies; authorizing the Commissioner  
717 of Insurance Regulation to grant a captive insurance company a  
718 license to conduct insurance business until a specified date  
719 under certain circumstances; authorizing a foreign or alien  
720 captive insurance company to become a domestic captive insurance  
721 company by complying with specified requirements; authorizing  
722 the office to waive any requirements for public hearings  
723 relating to the redomestication of an alien captive insurance  
724 company; creating s. 628.906, F.S.; requiring biographical  
725 affidavits and background investigations for all officers and  
726 directors; providing restrictions on officers and directors  
727 involved with insolvent insurers under certain conditions;  
728 providing restrictions on officers and directors that have been  
729 found guilty of, or that have pleaded guilty or nolo contendere  
730 to, any felony or crime involving moral turpitude, including a  
731 crime of dishonesty or breach of trust; amending s. 628.907,  
732 F.S.; revising capitalization requirements for specified captive  
733 insurance companies; requiring capital of specified captive  
734 insurance companies to be held in certain forms; requiring  
735 contributions to captive insurance companies that are nonprofit  
736 corporations to be in a certain form; authorizing the office to  
737 issue a captive insurance company license conditioned upon  
738 certain evidence relating to possession of specified capital;  
739 authorizing revocation of a conditional license under certain  
740 circumstances; authorizing the office to prescribe certain

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 379 (2012)

Amendment No. 1

741 additional capital and net asset requirements; requiring such  
742 additional requirements relating to capital and net assets to be  
743 held in specified forms; requiring dividends or distributions of  
744 capital or surplus to meet certain conditions and be approved by  
745 the office; requiring certain irrevocable letters of credit to  
746 meet certain standards; creating s. 628.908, F.S.; prohibiting  
747 the issuance of a license to specified captive insurance  
748 companies unless such companies possess and maintain certain  
749 levels of unimpaired surplus; authorizing the office to  
750 condition issuance of a captive insurance company license upon  
751 the provision of certain evidence relating to the possession of  
752 a minimum amount of unimpaired surplus; authorizing revocation  
753 of a conditional license under certain circumstances; requiring  
754 dividends or distributions of capital or surplus to meet certain  
755 conditions and be approved by the office; requiring certain  
756 irrevocable letters of credit to meet certain standards;  
757 amending s. 628.909, F.S.; providing for applicability of  
758 certain statutory provisions to specified captive insurers;  
759 creating s. 628.910, F.S.; providing requirements, options, and  
760 conditions relating to how a captive insurance company may be  
761 incorporated or organized as a business; amending s. 628.911,  
762 F.S.; providing reporting requirements for captive insurance  
763 companies and captive reinsurance companies; creating s.  
764 628.912, F.S.; authorizing a captive reinsurance company to  
765 discount specified losses subject to certain conditions;  
766 amending s. 628.913, F.S.; authorizing a captive reinsurance  
767 company to apply to the office for licensure to write  
768 reinsurance covering property and casualty insurance or

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 379 (2012)

Amendment No. 1

769 reinsurance contracts; authorizing the office to allow a captive  
770 reinsurance company to write reinsurance contracts covering  
771 risks in any state; prohibiting such captive reinsurance company  
772 from directly insuring risks; specifying that a captive  
773 reinsurance company is subject to specified requirements and  
774 must meet specified conditions to conduct business in this  
775 state; creating s. 628.914, F.S.; specifying requirements and  
776 conditions relating to the capitalization or maintenance of  
777 reserves by a captive reinsurance company; creating s. 628.9141,  
778 F.S.; specifying requirements and conditions relating to the  
779 incorporation of a captive reinsurance company; creating s.  
780 628.9142, F.S.; providing for the effect on reserves of certain  
781 actions taken by a captive insurance company relating to  
782 providing reinsurance for specified risks; creating s. 628.918,  
783 F.S.; requiring a specified percentage of a captive reinsurance  
784 company's assets to be managed by an asset manager domiciled in  
785 this state; creating s. 628.919, F.S.; authorizing the Financial  
786 Services Commission to adopt rules establishing certain  
787 standards for control of an unaffiliated business by a parent or  
788 affiliated company relating to coverage by a pure captive  
789 insurance company; creating s. 628.920, F.S.; requiring that a  
790 licensed captive insurance company must be considered for  
791 issuance of a certificate of authority as an insurer under  
792 certain circumstances; amending s. 626.7491, F.S.; conforming a  
793 cross-reference; repealing s. 628.903, F.S., relating to  
794 "industrial insured captive insurer" defined, to conform to  
795 changes made by this act; providing an effective date.