

1 A bill to be entitled
2 An act relating to captive insurance; amending s.
3 628.901, F.S.; providing definitions; amending s.
4 628.905, F.S.; expanding the kinds of insurance for
5 which a captive insurer may seek licensure; limiting
6 the risks that certain captive insurers may insure;
7 specifying requirements and conditions relating to a
8 captive insurer's authority to conduct business;
9 requiring that before licensure certain captive
10 insurers must file or submit to the Office of
11 Insurance Regulation specified information, documents,
12 and statements; requiring a captive insurance company
13 to file specific evidence with the office relating to
14 the financial condition and quality of management and
15 operations of the company; authorizing a foreign or
16 alien captive insurance company to become a domestic
17 captive insurance company by complying with specified
18 requirements; authorizing the office to waive any
19 requirements for public hearings relating to the
20 redomestication of an alien captive insurance company;
21 amending s. 628.907, F.S.; revising capitalization
22 requirements for specified captive insurance
23 companies; requiring capital of specified captive
24 insurance companies to be held in certain forms;
25 requiring contributions to captive insurance companies
26 that are stock insurer corporations to be in a certain
27 form; authorizing the office to issue a captive
28 insurance company license conditioned upon certain

29 | evidence relating to possession of specified capital;
30 | authorizing revocation of a conditional license under
31 | certain circumstances; authorizing the office to
32 | prescribe certain additional capital and net asset
33 | requirements; requiring such additional requirements
34 | relating to capital and net assets to be held in
35 | specified forms; requiring dividends or distributions
36 | of capital or surplus to meet certain conditions and
37 | be approved by the office; requiring certain
38 | irrevocable letters of credit to meet certain
39 | standards; creating s. 628.908, F.S.; prohibiting the
40 | issuance of a license to specified captive insurance
41 | companies unless such companies possess and maintain
42 | certain levels of unimpaired surplus; authorizing the
43 | office to condition issuance of a captive insurance
44 | company license upon the provision of certain evidence
45 | relating to the possession of a minimum amount of
46 | unimpaired surplus; authorizing revocation of a
47 | conditional license under certain circumstances;
48 | requiring dividends or distributions of capital or
49 | surplus to meet certain conditions and be approved by
50 | the office; requiring certain irrevocable letters of
51 | credit to meet certain standards; amending s. 628.909,
52 | F.S.; providing for applicability of certain statutory
53 | provisions to specified captive insurers; creating s.
54 | 628.910, F.S.; providing requirements, options, and
55 | conditions relating to how a captive insurance company
56 | may be incorporated or organized as a business;

57 | amending s. 628.911, F.S.; providing reporting
58 | requirements for specified captive insurance companies
59 | and captive reinsurance companies; creating s.
60 | 628.912, F.S.; authorizing a captive reinsurance
61 | company to discount specified losses subject to
62 | certain conditions; amending s. 628.913, F.S.;
63 | authorizing a captive reinsurance company to apply to
64 | the office for licensure to write reinsurance covering
65 | property and casualty insurance or reinsurance
66 | contracts; authorizing the office to allow a captive
67 | reinsurance company to write reinsurance contracts
68 | covering risks in any state; specifying that a captive
69 | reinsurance company is subject to specified
70 | requirements and must meet specified conditions to
71 | conduct business in this state; creating s. 628.914,
72 | F.S.; specifying requirements and conditions relating
73 | to the capitalization or maintenance of reserves by a
74 | captive reinsurance company; creating s. 628.9141,
75 | F.S.; specifying requirements and conditions relating
76 | to the incorporation of a captive reinsurance company;
77 | creating s. 628.9142, F.S.; providing for the effect
78 | on reserves of certain actions taken by a captive
79 | insurance company relating to providing reinsurance
80 | for specified risks; creating s. 628.9143, F.S.;
81 | requiring a captive reinsurance company to annually
82 | pay a specified tax amount; prohibiting any other
83 | taxation of a captive reinsurance company other than
84 | an occupation tax and certain ad valorem taxes;

85 | subjecting a captive reinsurance company to sanctions
 86 | for failures relating to the payment of taxes;
 87 | creating s. 628.918, F.S.; requiring a specified
 88 | percentage of a captive reinsurance company's assets
 89 | to be managed by an asset manager domiciled in this
 90 | state; creating s. 628.919, F.S.; authorizing the
 91 | Financial Services Commission to adopt rules
 92 | establishing certain standards for control of an
 93 | unaffiliated business by a parent or affiliated
 94 | company relating to coverage by a pure captive
 95 | insurance company; creating s. 628.920, F.S.;
 96 | requiring that a licensed captive insurance company
 97 | must be considered for issuance of a certificate of
 98 | authority as an insurer under certain circumstances;
 99 | amending s. 626.7491, F.S.; conforming a cross-
 100 | reference; repealing s. 628.903, F.S., relating to
 101 | "industrial insured captive insurer" defined, to
 102 | conform to changes made by this act; providing an
 103 | effective date.

104 |

105 | Be It Enacted by the Legislature of the State of Florida:

106 |

107 | Section 1. Section 628.901, Florida Statutes, is amended
 108 | to read:

109 | 628.901 Definitions ~~"Captive insurer" defined.~~ As used in
 110 | ~~For the purposes of this part, unless the context requires~~
 111 | ~~otherwise, the term: except as provided in s. 628.903, a~~
 112 | ~~"captive insurer" is a domestic insurer established under part I~~

113 ~~to insure the risks of a specific corporation or group of~~
114 ~~corporations under common ownership owned by the corporation or~~
115 ~~corporations from which it accepts risk under a contract of~~
116 ~~insurance.~~

117 (1) "Affiliated company" means a company in the same
118 corporate system as a parent, an industrial insured, or a member
119 organization by virtue of common ownership, control, operation,
120 or management.

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

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

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

131 (3) "Association captive insurance company" means a
132 company that insures risks of the member organizations of the
133 association and their affiliated companies.

134 (4) "Captive insurance company" means a pure captive
135 insurance company, association captive insurance company,
136 captive reinsurance company, special purpose captive insurance
137 company, or industrial insured captive insurance company formed
138 or licensed under this chapter.

139 (5) "Captive reinsurance company" means a reinsurance
140 company that is formed or licensed under this chapter and is

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141 wholly owned by a qualifying reinsurance parent company. A
142 captive reinsurance company is a stock corporation.

143 (6) "Consolidated debt to total capital ratio" means the
144 ratio of the sum of all debts and hybrid capital instruments as
145 described in paragraph (a) to total capital as described in
146 paragraph (b).

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

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

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

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

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

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

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

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

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- 169 (10) "Industrial insured" means an insured that:
170 (a) Has gross assets in excess of \$50 million;
171 (b) Procures insurance through the use of a full-time
172 employee of the insured who acts as an insurance manager or
173 buyer or through the services of a person licensed as a property
174 and casualty insurance agent, broker, or consultant in such
175 person's state of domicile;
176 (c) Has at least 100 full-time employees; and
177 (d) Pays annual premiums of at least \$200,000 for each
178 line of insurance purchased from the industrial insured captive
179 insurer or at least \$75,000 for any line of coverage in excess
180 of at least \$25 million in the annual aggregate. The purchase of
181 umbrella or general liability coverage in excess of \$25 million
182 in the annual aggregate shall be deemed to be the purchase of a
183 single line of insurance.
- 184 (11) "Industrial insured captive insurance company" means
185 a company that insures risks of the industrial insureds that
186 comprise the industrial insured group and their affiliated
187 companies.
- 188 (12) "Member organization" means any individual,
189 corporation, limited liability company, partnership, or
190 association that belongs to an association.
- 191 (13) "Office" means the Office of Insurance Regulation.
- 192 (14) "Parent" means any corporation, limited liability
193 company, partnership, or individual that directly or indirectly
194 owns, controls, or holds with power to vote more than 50 percent
195 of the outstanding voting interests of a captive insurance
196 company.

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

200 (16) "Qualifying reinsurer parent company" means a
 201 reinsurer authorized to write reinsurance by this state that has
 202 a consolidated GAAP net worth of not less than \$500 million and
 203 a consolidated debt to total capital ratio of not greater than
 204 0.50.

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

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

212 Section 2. Section 628.905, Florida Statutes, is amended
 213 to read:

214 628.905 Licensing; authority.—

215 (1) Any captive insurer, when permitted by its charter or
 216 articles of incorporation, may apply to the office for a license
 217 to do any and all insurance authorized under the insurance code,
 218 ~~provide commercial property, commercial casualty, and commercial~~
 219 ~~marine insurance coverage~~ other than workers' compensation and
 220 health employer's liability insurance coverage, except that: an
 221 ~~industrial insured captive insurer may apply for a license to~~
 222 ~~provide workers' compensation and employer's liability insurance~~
 223 ~~as set forth in subsection (6).~~

224 (a) A pure captive insurance company may not insure any

225 risks other than those of its parent, affiliated companies,
 226 controlled unaffiliated businesses, or a combination thereof.

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

230 (c) An industrial insured captive insurance company may
 231 not insure any risks other than those of the industrial insureds
 232 that comprise the industrial insured group and their affiliated
 233 companies.

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

236 (e) A captive insurance company may not provide personal
 237 motor vehicle or homeowners' insurance coverage or any component
 238 of such coverages.

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

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

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

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

249 (c) Maintain its principal place of business in this
 250 state; and

251 (d) Appoint a resident registered agent to accept service
 252 of process and to otherwise act on its behalf in this state. In

253 the case of a captive insurance company formed as a corporation
254 or a nonprofit corporation, whenever the registered agent cannot
255 with reasonable diligence be found at the registered office of
256 the captive insurance company, the Chief Financial Officer of
257 this state must be an agent of the captive insurance company
258 upon whom any process, notice, or demand may be served.

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

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

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

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

272 3. The overall soundness of the company's plan of
273 operation;

274 4. The adequacy of the loss prevention programs of the
275 company's parent, member organizations, or industrial insureds,
276 as applicable; and

277 5. Any other factors considered relevant by the office in
278 ascertaining whether the company will be able to meet its policy
279 obligations ~~In addition to information otherwise required by~~
280 ~~this code, each applicant captive insurer shall file with the~~

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281 ~~office evidence of the adequacy of the loss prevention program~~
282 ~~of its insureds.~~

283 (4) Upon approval of the office, a foreign or alien
284 captive insurance company may become a domestic captive
285 insurance company by complying with all of the requirements of
286 law relative to the organization and licensing of a domestic
287 captive insurance company of the same or equivalent type in this
288 state and by filing with the Secretary of State its articles of
289 association, charter, or other organizational documents,
290 together with any appropriate amendments that have been adopted
291 in accordance with the laws of this state to bring the articles
292 of association, charter, or other organizational documents into
293 compliance with the laws of this state, along with a certificate
294 of good standing issued by the office. After this is
295 accomplished, the captive insurance company is entitled to the
296 necessary or appropriate certificates and licenses to continue
297 transacting business in this state and is subject to the
298 authority and jurisdiction of this state. In connection with
299 this redomestication, the office may waive any requirements for
300 public hearings. It is not necessary for a captive insurance
301 company redomesticating into this state to merge, consolidate,
302 transfer assets, or otherwise engage in any other
303 reorganization, other than as specified in this section ~~An~~
304 ~~industrial insured captive insurer need not be incorporated in~~
305 ~~this state if it has been validly incorporated under the laws of~~
306 ~~another jurisdiction.~~

307 ~~(5) An industrial insured captive insurer is subject to~~
308 ~~all provisions of this part except as otherwise indicated.~~

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309 ~~(6) An industrial insured captive insurer may not provide~~
310 ~~workers' compensation and employer's liability insurance except~~
311 ~~in excess of at least \$25 million in the annual aggregate.~~

312 Section 3. Section 628.907, Florida Statutes, is amended
313 to read:

314 628.907 Minimum capital and net assets requirements;
315 restriction on payment of dividends surplus.-

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

319 (a) ~~(1)~~ In the case of a pure captive insurance company,
320 not less than \$100,000. ~~Unimpaired paid-in capital of at least~~
321 \$500,000; and

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

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

327 (d) 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 (2) The office may not issue a license to a captive
333 insurance company incorporated as a stock insurer unless the
334 company possesses and maintains unrestricted net assets of:

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

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

342 (3) Contributions to a captive insurance company
343 incorporated as a stock insurer must be in the form of cash,
344 cash equivalent, or an irrevocable letter of credit issued by a
345 bank chartered by this state or a member bank of the Federal
346 Reserve System with a branch office in this state, or as
347 approved by the office.

348 (4) For purposes of this section, the office may issue a
349 license expressly conditioned upon the captive insurance company
350 providing to the office satisfactory evidence of possession of
351 the minimum required unimpaired paid-in capital. Until this
352 evidence is provided, the captive insurance company may not
353 issue any policy, assume any liability, or otherwise provide
354 coverage. The office may revoke the conditional license if
355 satisfactory evidence of the required capital is not provided
356 within a maximum period of time, not to exceed 1 year, to be
357 established by the office at the time the conditional license is
358 issued.

359 (5) The office may prescribe additional capital or net
360 assets based upon the type, volume, and nature of insurance
361 business transacted. Contributions in connection with these
362 prescribed additional net assets or capital must be in the form
363 of:

364 (a) Cash;

365 (b) Cash equivalent;
 366 (c) An irrevocable letter of credit issued by a bank
 367 chartered by this state or a member bank of the Federal Reserve
 368 System with a branch office in this state, or as approved by the
 369 office; or
 370 (d) Securities invested as provided in part II of chapter
 371 625.
 372 (6) A captive insurance company may not pay a dividend out
 373 of, or other distribution with respect to, capital or surplus in
 374 excess of the limitations set forth in this chapter without the
 375 prior approval of the office. Approval of an ongoing plan for
 376 the payment of dividends or other distributions must be
 377 conditioned upon the retention, at the time of each payment, of
 378 capital or surplus in excess of amounts specified by, or
 379 determined in accordance with formulas approved by, the office.
 380 (7) An irrevocable letter of credit that is issued by a
 381 financial institution other than a bank chartered by this state
 382 or a member bank of the Federal Reserve System must meet the
 383 same standards as an irrevocable letter of credit that has been
 384 issued by a bank chartered by this state or a member bank of the
 385 Federal Reserve System.
 386 Section 4. Section 628.908, Florida Statutes, is created
 387 to read:
 388 628.908 Surplus requirements; restriction on payment of
 389 dividends.—
 390 (1) The office may not issue a license to a captive
 391 insurance company unless the company possesses and maintains
 392 unimpaired surplus of:

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

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

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

399 (d) In the case of an association captive insurance
400 company incorporated as a mutual insurer, not less than
401 \$750,000.

402 (e) In the case of an industrial insured captive insurance
403 company incorporated as a mutual insurer, not less than
404 \$500,000.

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

410 (2) For purposes of this section, the office may issue a
411 license expressly conditioned upon the captive insurance company
412 providing to the office satisfactory evidence of possession of
413 the minimum required unimpaired surplus. Until this evidence is
414 provided, the captive insurance company may not issue any
415 policy, assume any liability, or otherwise provide coverage. The
416 office may revoke the conditional license if satisfactory
417 evidence of the required surplus is not provided within a
418 maximum period of time, not to exceed 1 year, to be established
419 by the office at the time the conditional license is issued.

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420 (3) A captive insurance company may not pay a dividend out
421 of, or other distribution with respect to, capital or surplus in
422 excess of the limitations set forth in this chapter without the
423 prior approval of the office. Approval of an ongoing plan for
424 the payment of dividends or other distribution must be
425 conditioned upon the retention, at the time of each payment, of
426 capital or surplus in excess of amounts specified by, or
427 determined in accordance with formulas approved by, the office.

428 (4) An irrevocable letter of credit that is issued by a
429 financial institution other than a bank chartered by this state
430 or a member bank of the Federal Reserve System must meet the
431 same standards as an irrevocable letter of credit that has been
432 issued by a bank chartered by this state or a member bank of the
433 Federal Reserve System.

434 Section 5. Section 628.909, Florida Statutes, is amended
435 to read:

436 628.909 Applicability of other laws.—

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

440 (2) The following provisions of the Florida Insurance Code
441 ~~shall~~ apply to captive insurers who are not industrial insured
442 captive insurers to the extent that such provisions are not
443 inconsistent with this part:

444 (a) Chapter 624, except for ss. 624.407, 624.408,
445 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

446 (b) Chapter 625, part II.

447 (c) Chapter 626, part IX.

448 (d) Sections 627.730-627.7405, when no-fault coverage is
 449 provided.

450 (e) Chapter 628.

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

454 (a) Chapter 624, except for ss. 624.407, 624.408,
 455 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

458 (c) Chapter 626, part IX.

459 (d) Sections 627.730-627.7405 when no-fault coverage is
 460 provided.

461 (e) Chapter 628, except for ss. 628.341, 628.351, and
 462 628.6018.

463 Section 6. Section 628.910, Florida Statutes, is created
 464 to read:

465 628.910 Incorporation options and requirements.-

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

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

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

472 (2) An association captive insurance company or an
 473 industrial insured captive insurance company may be:

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

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

479 (3) A captive insurance company may not have fewer than
480 three incorporators of whom not fewer than two must be residents
481 of this state.

482 (4) In the case of a captive insurance company formed as a
483 corporation or a nonprofit corporation, before the articles of
484 incorporation are transmitted to the Secretary of State, the
485 incorporators shall petition the office to issue a certificate
486 setting forth a finding that the establishment and maintenance
487 of the proposed entity will promote the general good of the
488 state. In arriving at this finding, the office must consider:

489 (a) The character, reputation, financial standing, and
490 purposes of the incorporators;

491 (b) The character, reputation, financial responsibility,
492 insurance experience, and business qualifications of the
493 officers and directors; and

494 (c) Other aspects as the office considers advisable.

495 (5) The articles of incorporation, the certificate issued
496 pursuant to this section, and the organization fees required by
497 the Florida Business Corporation Act or the Florida Not For
498 Profit Corporation Act, as applicable, must be transmitted to
499 the Secretary of State, who must record the articles of
500 incorporation and the certificate.

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

504 (7) In the case of a captive insurance company formed as a
505 corporation or a nonprofit corporation, at least one of the
506 members of the board of directors of a captive insurance company
507 incorporated in this state must be a resident of this state.

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

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

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532 Section 7. Section 628.911, Florida Statutes, is amended
533 to read:

534 628.911 Reports and statements.—

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

538 (2) Annually no later than March 1, a captive insurance
539 company or a captive reinsurance company ~~insurer shall, within~~
540 ~~60 days after the end of its fiscal year and as often as the~~
541 ~~office may deem necessary,~~ submit to the office a report of its
542 financial condition verified by oath of two of its executive
543 officers. Except as provided in this part, a captive insurance
544 company or a captive reinsurance company must report using
545 generally accepted accounting principles, unless the office
546 approves the use of statutory accounting principles, with useful
547 or necessary modifications or adaptations required or approved
548 or accepted by the office for the type of insurance and kinds of
549 insurers to be reported upon, and as supplemented by additional
550 information required by the office. The Financial Services
551 Commission may adopt by rule the form in which captive insurance
552 companies ~~insurers~~ shall report.

553 (3) (a) A pure captive insurance company may make written
554 application for filing the required report on a fiscal year end
555 that is consistent with the parent company's fiscal year. If an
556 alternative reporting date is granted, the annual report is due
557 60 days after the fiscal year end.

558 (b) In order to provide sufficient detail to support the
559 premium tax return, the pure captive insurance company must file

560 no later than March 1 of each year for each calendar year end
 561 pages 1-7 of the National Association of Insurance Commissioners
 562 (NAIC) Annual Statement, verified by oath of two of its
 563 executive officers.

564 Section 8. Section 628.912, Florida Statutes, is created
 565 to read:

566 628.912 Discounting of loss and loss adjustment expense
 567 reserves.—

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

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

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

578 Section 9. Section 628.913, Florida Statutes, is amended
 579 to read:

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

582 628.913 Captive reinsurance companies.—

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

587 reinsurance company authorized by the office may write
588 reinsurance contracts covering risks in any state.

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

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

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

595 (c) Maintain its principal place of business in this
596 state; and

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

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

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

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

604 (c) Other documents required by the office.

605 (4) In addition to the information required by this
606 section, the captive reinsurance company must file with the
607 office evidence of:

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

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

612 (c) The overall soundness of the company's plan of
613 operation; and

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

617 Section 10. Section 628.914, Florida Statutes, is created
618 to read:

619 628.914 Minimum capitalization or reserves for captive
620 reinsurance companies.-

621 (1) The office may not issue a license to a captive
622 reinsurance company unless the company possesses and maintains
623 capital or unimpaired surplus of not less than the greater of
624 \$300 million or 10 percent of reserves. The surplus may be in
625 the form of cash or securities as permitted by part II of
626 chapter 625.

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

630 (3) A captive reinsurance company may not pay a dividend
631 out of, or other distribution with respect to, capital or
632 surplus in excess of the limitations without the prior approval
633 of the office. Approval of an ongoing plan for the payment of
634 dividends or other distributions must be conditioned upon the
635 retention, at the time of each payment, of capital or surplus in
636 excess of amounts specified by, or determined in accordance with
637 formulas approved by, the office.

638 Section 11. Section 628.9141, Florida Statutes, is created
639 to read:

640 628.9141 Incorporation of a captive reinsurance company.-

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

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

647 (3) Before the articles of incorporation are transmitted
648 to the Secretary of State, the incorporators shall comply with
649 all the requirements of s. 628.091.

650 (4) The capital stock of a captive reinsurance company
651 must be issued at par value of not less than \$1 or more than
652 \$100 per share.

653 (5) At least one of the members of the board of directors
654 of a captive reinsurance company incorporated in this state must
655 be a resident of this state.

656 Section 12. Section 628.9142, Florida Statutes, is created
657 to read:

658 628.9142 Reinsurance; effect on reserves.—

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

661 (2) A captive insurance company may take credit for
662 reserves on risks or portions of risks ceded to authorized
663 insurers or reinsurers and unauthorized insurers or reinsurers
664 complying with the provisions of s. 624.610. A captive insurer
665 may not take credit for reserves on risks or portions of risks
666 ceded to an unauthorized insurer or reinsurer if the insurer or
667 reinsurer is not in compliance with s. 624.610.

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668 Section 13. Section 628.9143, Florida Statutes, is created
669 to read:

670 628.9143 Annual captive reinsurance tax.-

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

673 (2) The tax provided in this section is the only tax
674 collectible under the laws of this state from a captive
675 reinsurance company, and no tax on reinsurance premiums, other
676 than occupation tax, nor any other taxes, except ad valorem
677 taxes on real and personal property used in the production of
678 income, may be levied or collected from a captive reinsurance
679 company by this state or a county, city, or municipality within
680 this state.

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

684 Section 14. Section 628.918, Florida Statutes, is created
685 to read:

686 628.918 Management of assets of captive reinsurance
687 company.-At least 35 percent of the assets of a captive
688 reinsurance company must be managed by an asset manager
689 domiciled in this state.

690 Section 15. Section 628.919, Florida Statutes, is created
691 to read:

692 628.919 Standards to ensure risk management control by
693 parent company.-The Financial Services Commission shall adopt
694 rules establishing standards to ensure that a parent or
695 affiliated company is able to exercise control of the risk

696 management function of any controlled unaffiliated business to
 697 be insured by the pure captive insurance company.

698 Section 16. Section 628.920, Florida Statutes, is created
 699 to read:

700 628.920 Eligibility of licensed captive insurance company
 701 for certificate of authority to act as insurer.—A licensed
 702 captive insurance company that meets the necessary requirements
 703 of this part imposed upon an insurer must be considered for
 704 issuance of a certificate of authority to act as an insurer in
 705 this state.

706 Section 17. Paragraph (e) of subsection (2) of section
 707 626.7491, Florida Statutes, is amended to read:

708 626.7491 Business transacted with producer controlled
 709 property and casualty insurer.—

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

711 (e) "Licensed insurer" or "insurer" means any person,
 712 firm, association, or corporation licensed to transact a
 713 property or casualty insurance business in this state. The
 714 following are not licensed insurers for the purposes of this
 715 section:

- 716 1. Any risk retention group as defined in:
 - 717 a. The Superfund Amendments Reauthorization Act of 1986,
 - 718 Pub. L. No. 99-499, 100 Stat. 1613 (1986);
 - 719 b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq.
 - 720 (1982 and Supp. 1986); or
 - 721 c. Section 627.942(9).
- 722 2. Any residual market pool or joint underwriting
- 723 authority or association; and

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724 3. Any captive insurance company ~~insurer~~ as defined in s.
725 628.901.

726 Section 18. Section 628.903, Florida Statutes, is
727 repealed.

728 Section 19. This act shall take effect upon becoming a
729 law.