

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

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

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

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

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

118  
 119 Be It Enacted by the Legislature of the State of Florida:  
 120

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

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

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

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

140 (a) Own, control, or hold with power to vote all of the

141 outstanding voting securities of an association captive  
 142 insurance company incorporated as a stock insurer; or

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

145 (3) "Association captive insurance company" means a  
 146 company that insures risks of the member organizations of the  
 147 association and their affiliated companies.

148 (4) "Captive insurance company" means a domestic insurer  
 149 established under this part. A captive insurance company  
 150 includes a pure captive insurance company, association captive  
 151 insurance company, special purpose captive insurance company, or  
 152 industrial insured captive insurance company formed and licensed  
 153 under this part.

154 (5) "Captive reinsurance company" means a reinsurance  
 155 company that is formed and licensed under this part and is  
 156 wholly owned by a qualifying reinsurance parent company. A  
 157 captive reinsurance company is a stock corporation and may only  
 158 reinsure risks. A captive reinsurance company may not directly  
 159 insure risks.

160 (6) "Consolidated debt to total capital ratio" means the  
 161 ratio of the sum of all debts and hybrid capital instruments as  
 162 described in paragraph (a) to total capital as described in  
 163 paragraph (b).

164 (a) Debts and hybrid capital instruments include, but are  
 165 not limited to, all borrowings from banks, all senior debt, all  
 166 subordinated debts, all trust preferred shares, and all other  
 167 hybrid capital instruments that are not included in the  
 168 determination of consolidated GAAP net worth issued and

169 outstanding.

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

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

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

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

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

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

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

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

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

188 (b) Procures insurance through the use of a full-time  
189 employee of the insured who acts as an insurance manager or  
190 buyer or through the services of a person licensed as a property  
191 and casualty insurance agent, broker, or consultant in such  
192 person's state of domicile;

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

194 (d) Pays annual premiums of at least \$200,000 for each  
195 line of insurance purchased from the industrial insured captive  
196 insurer or at least \$75,000 for any line of coverage in excess

197 of at least \$25 million in the annual aggregate. The purchase of  
 198 umbrella or general liability coverage in excess of \$25 million  
 199 in the annual aggregate shall be deemed to be the purchase of a  
 200 single line of insurance.

201 (11) "Industrial insured captive insurance company" means  
 202 a captive insurance company that provides insurance only to the  
 203 industrial insureds that are its stockholders or members, and  
 204 affiliates thereof, or to the stockholders, and affiliates  
 205 thereof, of its parent corporation. An industrial insured  
 206 captive insurance company may also provide reinsurance to  
 207 insurers only on risks written by such insurers for the  
 208 industrial insureds who are the stockholders or members, and  
 209 affiliates thereof, of the industrial insured captive insurance  
 210 company, or the stockholders, and affiliates thereof, of the  
 211 parent corporation of the industrial insured captive insurance  
 212 company.

213 (12) "Member organization" means any individual,  
 214 corporation, limited liability company, partnership, or  
 215 association that belongs to an association.

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

217 (14) "Parent" means any corporation, limited liability  
 218 company, partnership, or individual that directly or indirectly  
 219 owns, controls, or holds with power to vote more than 50 percent  
 220 of the outstanding voting interests of a captive insurance  
 221 company.

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



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

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

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

238           Section 2. Section 628.905, Florida Statutes, is amended  
 239 to read:

240           628.905 Licensing; authority.—

241           (1) Any captive insurer, when permitted by its charter or  
 242 articles of incorporation, may apply to the office for a license  
 243 to do any and all insurance authorized under the insurance code,  
 244 ~~provide commercial property, commercial casualty, and commercial~~  
 245 ~~marine insurance coverage~~ other than workers' compensation and  
 246 employer's liability, life, health, personal motor vehicle, and  
 247 personal residential property and employer's liability insurance  
 248 coverage, except that: an industrial insured captive insurer may  
 249 apply for a license to provide workers' compensation and  
 250 employer's liability insurance as set forth in subsection (6).

251           (a) A pure captive insurance company may not insure any  
 252 risks other than those of its parent, affiliated companies,

253 controlled unaffiliated businesses, or a combination thereof.

254 (b) An association captive insurance company may not  
 255 insure any risks other than those of the member organizations of  
 256 its association and their affiliated companies. An association  
 257 captive insurance company shall have stamped or written upon the  
 258 first page of the policy or the certificate, cover note, or  
 259 confirmation of insurance the words: "THIS INSURANCE IS ISSUED  
 260 PURSUANT TO THE FLORIDA CAPTIVE INSURERS LAW. PERSONS INSURED BY  
 261 CAPTIVE INSURANCE COMPANIES DO NOT HAVE THE PROTECTION OF THE  
 262 FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF  
 263 RECOVERY FOR THE OBLIGATION OF AN INSOLVENT INSURER." An  
 264 association captive insurance company shall also have stamped or  
 265 printed on the face of the policy in at least 14-point, boldface  
 266 type the following statement: "CAPTIVE INSURANCE COMPANIES'  
 267 POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA  
 268 REGULATORY AGENCY."

269 (c) An industrial insured captive insurance company may  
 270 not insure any risks other than those of the industrial insureds  
 271 that comprise the industrial insured group and their affiliated  
 272 companies.

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

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

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

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

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

285 (c) Maintain its principal place of business in this  
286 state; and

287 (d) Appoint a resident registered agent to accept service  
288 of process and to otherwise act on its behalf in this state. In  
289 the case of a captive insurance company formed as a corporation  
290 or a nonprofit corporation, whenever the registered agent cannot  
291 with reasonable diligence be found at the registered office of  
292 the captive insurance company, the Chief Financial Officer of  
293 this state must be an agent of the captive insurance company  
294 upon whom any process, notice, or demand may be served.

295 (3)(a) Before receiving a license, a captive insurance  
296 company formed as a corporation or a nonprofit corporation must  
297 file with the office a certified copy of its articles of  
298 incorporation and bylaws, a statement under oath of its  
299 president and secretary showing its financial condition, and any  
300 other statements or documents required by the office.

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

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

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

308 3. The overall soundness of the company's plan of

309 operation;

310 4. The adequacy of the loss prevention programs of the  
 311 company's parent, member organizations, or industrial insureds,  
 312 as applicable; and

313 5. Any other factors considered relevant by the office in  
 314 ascertaining whether the company will be able to meet its policy  
 315 obligations ~~In addition to information otherwise required by~~  
 316 ~~this code, each applicant captive insurer shall file with the~~  
 317 ~~office evidence of the adequacy of the loss prevention program~~  
 318 ~~of its insureds.~~

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

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

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

330 (5) If the commissioner is satisfied that the documents  
 331 and statements filed by the captive insurance company comply  
 332 with this chapter, the commissioner may grant a license  
 333 authorizing the company to conduct insurance business in this  
 334 state until the next succeeding March 1, at which time the  
 335 license may be renewed ~~An industrial insured captive insurer is~~  
 336 ~~subject to all provisions of this part except as otherwise~~

337 ~~indicated.~~

338       (6) Upon approval of the office, a foreign or alien  
339 captive insurance company may become a domestic captive  
340 insurance company by complying with all of the requirements of  
341 law relative to the organization and licensing of a domestic  
342 captive insurance company of the same or equivalent type in this  
343 state and by filing with the Secretary of State its articles of  
344 association, charter, or other organizational documents,  
345 together with any appropriate amendments that have been adopted  
346 in accordance with the laws of this state to bring the articles  
347 of association, charter, or other organizational documents into  
348 compliance with the laws of this state, along with a certificate  
349 of good standing issued by the office. After this is  
350 accomplished, the captive insurance company is entitled to the  
351 necessary or appropriate certificates and licenses to continue  
352 transacting business in this state and is subject to the  
353 authority and jurisdiction of this state. In connection with  
354 this redomestication, the office may waive any requirements for  
355 public hearings. It is not necessary for a captive insurance  
356 company redomesticating into this state to merge, consolidate,  
357 transfer assets, or otherwise engage in any other  
358 reorganization, other than as specified in this section. ~~An~~  
359 ~~industrial insured captive insurer may not provide workers'~~  
360 ~~compensation and employer's liability insurance except in excess~~  
361 ~~of at least \$25 million in the annual aggregate.~~

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

365 Section 3. Section 628.906, Florida Statutes, is created  
366 to read:

367 628.906 Application requirements; restrictions on  
368 eligibility of officers and directors.—

369 (1) To evidence competence and trustworthiness of its  
370 officers and directors, the application for a license to act as  
371 a captive insurance company or captive reinsurance company shall  
372 include, but not be limited to, background investigations,  
373 biographical affidavits, and fingerprint cards for all officers  
374 and directors. Fingerprints must be taken by a law enforcement  
375 agency or other entity approved by the office and must be  
376 accompanied by the fingerprint processing fee specified in s.  
377 624.501. Fingerprints shall be processed in accordance with s.  
378 624.34.

379 (2) The office may deny, suspend, or revoke the license to  
380 transact captive insurance or captive reinsurance in this state  
381 if any person who was an officer or director of an insurer,  
382 reinsurer, captive insurance company, captive reinsurance  
383 company, financial institution, or financial services business  
384 doing business in the United States, any state, or under the law  
385 of any other country and who served in that capacity within the  
386 2-year period before the date the insurer, reinsurer, captive  
387 insurance company, captive reinsurance company, financial  
388 institution, or financial services business became insolvent  
389 serves as an officer or director of a captive insurance company  
390 or officer or director of a captive reinsurance company licensed  
391 in this state, unless the officer or director demonstrates that  
392 his or her personal actions or omissions were not a contributing

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393 cause to the insolvency or unless the officer or director is  
 394 immediately removed from the captive insurance company or  
 395 captive reinsurance company.

396 (3) The office may deny, suspend, or revoke the license to  
 397 transact insurance or reinsurance in this state of any captive  
 398 insurance company or captive reinsurance company if any officer  
 399 or director, any stockholder that owns 10 percent or more of the  
 400 outstanding voting securities of the captive insurance company  
 401 or captive reinsurance company, or any incorporator has been  
 402 found guilty of, or has pleaded guilty or nolo contendere to,  
 403 any felony or crime involving moral turpitude, including a crime  
 404 of dishonesty or breach of trust, punishable by imprisonment of  
 405 1 year or more under the laws of the United States or any state  
 406 thereof or under the laws of any other country without regard to  
 407 whether a judgment of conviction has been entered by the court  
 408 having jurisdiction in such case. However, in the case of a  
 409 captive insurance company or captive reinsurance company  
 410 operating under a subsisting license, the captive insurance  
 411 company or captive reinsurance company shall remove any such  
 412 person immediately upon discovery of the conditions set forth in  
 413 this subsection when applicable to such person or upon the order  
 414 of the office, and the failure to so act shall be grounds for  
 415 revocation or suspension of the captive insurance company's or  
 416 captive reinsurance company's license.

417 Section 4. Section 628.907, Florida Statutes, is amended  
 418 to read:

419 628.907 Minimum capital and net assets requirements;  
 420 restriction on payment of dividends ~~surplus.~~

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

424        (a) ~~(1)~~ In the case of a pure captive insurance company,  
425 not less than \$100,000. ~~Unimpaired paid-in capital of at least~~  
426 \$500,000; and

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

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

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

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

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

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

447        (3) Contributions to a captive insurance company  
448 incorporated as a nonprofit corporation must be in the form of



449 cash, cash equivalent, or an irrevocable letter of credit issued  
450 by a bank chartered by this state or a member bank of the  
451 Federal Reserve System with a branch office in this state, or as  
452 approved by the office.

453 (4) For purposes of this section, the office may issue a  
454 license expressly conditioned upon the captive insurance company  
455 providing to the office satisfactory evidence of possession of  
456 the minimum required unimpaired paid-in capital. Until this  
457 evidence is provided, the captive insurance company may not  
458 issue any policy, assume any liability, or otherwise provide  
459 coverage. The office may revoke the conditional license if  
460 satisfactory evidence of the required capital is not provided  
461 within a maximum period of time, not to exceed 1 year, to be  
462 established by the office at the time the conditional license is  
463 issued.

464 (5) The office may prescribe additional capital or net  
465 assets based upon the type, volume, and nature of insurance  
466 business transacted. Contributions in connection with these  
467 prescribed additional net assets or capital must be in the form  
468 of:

469 (a) Cash;

470 (b) Cash equivalent;

471 (c) An irrevocable letter of credit issued by a bank  
472 chartered by this state or a member bank of the Federal Reserve  
473 System with a branch office in this state, or as approved by the  
474 office; or

475 (d) Securities invested as provided in part II of chapter  
476 625.

477       (6) A captive insurance company may not pay a dividend out  
478 of, or other distribution with respect to, capital or surplus in  
479 excess of the limitations set forth in this chapter without the  
480 prior approval of the office. Approval of an ongoing plan for  
481 the payment of dividends or other distributions must be  
482 conditioned upon the retention, at the time of each payment, of  
483 capital or surplus in excess of amounts specified by, or  
484 determined in accordance with formulas approved by, the office.

485       (7) An irrevocable letter of credit that is issued by a  
486 financial institution other than a bank chartered by this state  
487 or a member bank of the Federal Reserve System must meet the  
488 same standards as an irrevocable letter of credit that has been  
489 issued by a bank chartered by this state or a member bank of the  
490 Federal Reserve System.

491       Section 5. Section 628.908, Florida Statutes, is created  
492 to read:

493       628.908 Surplus requirements; restriction on payment of  
494 dividends.—

495       (1) The office may not issue a license to a captive  
496 insurance company unless the company possesses and maintains  
497 unimpaired surplus of:

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

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

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

504        (d) In the case of an association captive insurance  
505 company incorporated as a mutual insurer, not less than  
506 \$750,000.

507        (e) In the case of an industrial insured captive insurance  
508 company incorporated as a mutual insurer, not less than  
509 \$500,000.

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

515        (2) For purposes of this section, the office may issue a  
516 license expressly conditioned upon the captive insurance company  
517 providing to the office satisfactory evidence of possession of  
518 the minimum required unimpaired surplus. Until this evidence is  
519 provided, the captive insurance company may not issue any  
520 policy, assume any liability, or otherwise provide coverage. The  
521 office may revoke the conditional license if satisfactory  
522 evidence of the required surplus is not provided within a  
523 maximum period of time, not to exceed 1 year, to be established  
524 by the office at the time the conditional license is issued.

525        (3) A captive insurance company may not pay a dividend out  
526 of, or other distribution with respect to, capital or surplus in  
527 excess of the limitations set forth in this chapter without the  
528 prior approval of the office. Approval of an ongoing plan for  
529 the payment of dividends or other distribution must be  
530 conditioned upon the retention, at the time of each payment, of

531 capital or surplus in excess of amounts specified by, or  
 532 determined in accordance with formulas approved by, the office.

533 (4) An irrevocable letter of credit that is issued by a  
 534 financial institution other than a bank chartered by this state  
 535 or a member bank of the Federal Reserve System must meet the  
 536 same standards as an irrevocable letter of credit that has been  
 537 issued by a bank chartered by this state or a member bank of the  
 538 Federal Reserve System.

539 Section 6. Section 628.909, Florida Statutes, is amended  
 540 to read:

541 628.909 Applicability of other laws.—

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

545 (2) The following provisions of the Florida Insurance Code  
 546 ~~shall~~ apply to captive insurers who are not industrial insured  
 547 captive insurers to the extent that such provisions are not  
 548 inconsistent with this part:

549 (a) Chapter 624, except for ss. 624.407, 624.408,  
 550 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

551 (b) Chapter 625, part II.

552 (c) Chapter 626, part IX.

553 (d) Sections 627.730-627.7405, when no-fault coverage is  
 554 provided.

555 (e) Chapter 628.

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

559 (a) Chapter 624, except for ss. 624.407, 624.408,  
560 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

563 (c) Chapter 626, part IX.

564 (d) Sections 627.730-627.7405 when no-fault coverage is  
565 provided.

566 (e) Chapter 628, except for ss. 628.341, 628.351, and  
567 628.6018.

568 Section 7. Section 628.910, Florida Statutes, is created  
569 to read:

570 628.910 Incorporation options and requirements.-

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

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

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

577 (2) An association captive insurance company or an  
578 industrial insured captive insurance company may be:

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

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

584 (3) A captive insurance company may not have fewer than  
585 three incorporators of whom not fewer than two must be residents  
586 of this state.

587       (4) In the case of a captive insurance company formed as a  
588 corporation or a nonprofit corporation, before the articles of  
589 incorporation are transmitted to the Secretary of State, the  
590 incorporators shall file the articles of incorporation in  
591 triplicate with the office. The office shall promptly examine  
592 the articles of incorporation. If the office finds that the  
593 articles of incorporation conform to law, it shall endorse its  
594 approval on each of the triplicate originals of the articles of  
595 incorporation, retain one copy for its files, and return the  
596 remaining copies to the incorporators for filing with the  
597 Department of State.

598       (5) The articles of incorporation, the certificate issued  
599 pursuant to this section, and the organization fees required by  
600 the Florida Business Corporation Act or the Florida Not For  
601 Profit Corporation Act, as applicable, must be transmitted to  
602 the Secretary of State, who must record the articles of  
603 incorporation and the certificate.

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

607       (7) In the case of a captive insurance company formed as a  
608 corporation or a nonprofit corporation, at least one of the  
609 members of the board of directors of a captive insurance company  
610 incorporated in this state must be a resident of this state.

611       (8) A captive insurance company formed as a corporation or  
612 a nonprofit corporation, pursuant to the provisions of this  
613 chapter, has the privileges and is subject to the provisions of  
614 the general corporation law, including the Florida Not For

615 Profit Corporation Act for nonprofit corporations, as  
616 applicable, as well as the applicable provisions contained in  
617 this chapter. If a conflict occurs between a provision of the  
618 general corporation law, including the Florida Not For Profit  
619 Corporation Act for nonprofit corporations, as applicable, and a  
620 provision of this chapter, the latter controls. The provisions  
621 of this title pertaining to mergers, consolidations,  
622 conversions, mutualizations, and redomestications apply in  
623 determining the procedures to be followed by a captive insurance  
624 company in carrying out any of the transactions described in  
625 such provisions, except that the office may waive or modify the  
626 requirements for public notice and hearing in accordance with  
627 rules the office may adopt addressing categories of  
628 transactions. If a notice of public hearing is required, but no  
629 one requests a hearing, the office may cancel the hearing.

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

635 Section 8. Section 628.911, Florida Statutes, is amended  
636 to read:

637 628.911 Reports and statements.—

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

641 (2) Annually no later than March 1, a captive insurance  
642 company or a captive reinsurance company ~~insurer shall, within~~

643 ~~60 days after the end of its fiscal year and as often as the~~  
644 ~~office may deem necessary,~~ submit to the office a report of its  
645 financial condition verified by oath of two of its executive  
646 officers. Except as provided in this part, a captive insurance  
647 company or a captive reinsurance company must report using  
648 generally accepted accounting principles, unless the office  
649 approves the use of statutory accounting principles, with useful  
650 or necessary modifications or adaptations required or approved  
651 or accepted by the office for the type of insurance and kinds of  
652 insurers to be reported upon, and as supplemented by additional  
653 information required by the office. The Financial Services  
654 Commission may adopt by rule the form in which captive insurance  
655 companies ~~insurers~~ shall report.

656 (3) A captive insurance company may make written  
657 application for filing the required report on a fiscal year end  
658 that is consistent with the parent company's fiscal year. If an  
659 alternative reporting date is granted, the annual report is due  
660 60 days after the fiscal year end.

661 Section 9. Section 628.912, Florida Statutes, is created  
662 to read:

663 628.912 Discounting of loss and loss adjustment expense  
664 reserves.—

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

669 (2) A captive reinsurance company must file annually an  
670 actuarial opinion on loss and loss adjustment expense reserves



671 provided by an independent actuary. The actuary may not be an  
 672 employee of the captive reinsurance company or its affiliates.

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

675 Section 10. Section 628.913, Florida Statutes, is amended  
 676 to read:

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

679 628.913 Captive reinsurance companies.—

680 (1) A captive reinsurance company, if permitted by its  
 681 articles of incorporation or charter, may apply to the office  
 682 for a license to write reinsurance covering property and  
 683 casualty insurance or reinsurance contracts. A captive  
 684 reinsurance company authorized by the office may write  
 685 reinsurance contracts covering risks in any state. However, a  
 686 captive reinsurance company authorized by the office may not  
 687 directly insure risks.

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

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

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

694 (c) Maintain its principal place of business in this  
 695 state; and

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

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

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

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

703       (c) Other documents required by the office.

704       (4) In addition to the information required by this  
705 section, the captive reinsurance company must file with the  
706 office evidence of:

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

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

711       (c) The overall soundness of the company's plan of  
712 operation; and

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

716       Section 11. Section 628.914, Florida Statutes, is created  
717 to read:

718       628.914 Minimum capitalization or reserves for captive  
719 reinsurance companies.—

720       (1) The office may not issue a license to a captive  
721 reinsurance company unless the company possesses and maintains  
722 capital or unimpaired surplus of not less than the greater of  
723 \$300 million or 10 percent of reserves. The surplus may be in  
724 the form of cash or securities as permitted by part II of  
725 chapter 625.

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

729       (3) A captive reinsurance company may not pay a dividend  
730 out of, or other distribution with respect to, capital or  
731 surplus in excess of the limitations without the prior approval  
732 of the office. Approval of an ongoing plan for the payment of  
733 dividends or other distributions must be conditioned upon the  
734 retention, at the time of each payment, of capital or surplus in  
735 excess of amounts specified by, or determined in accordance with  
736 formulas approved by, the office.

737       Section 12. Section 628.9141, Florida Statutes, is created  
738 to read:

739       628.9141 Incorporation of a captive reinsurance company.—

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

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

746       (3) Before the articles of incorporation are transmitted  
747 to the Secretary of State, the incorporators shall comply with  
748 all the requirements of s. 628.091.

749       (4) The capital stock of a captive reinsurance company  
750 must be issued at par value of not less than \$1 or more than  
751 \$100 per share.

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752           (5) At least one of the members of the board of directors  
753 of a captive reinsurance company incorporated in this state must  
754 be a resident of this state.

755           Section 13. Section 628.9142, Florida Statutes, is created  
756 to read:

757           628.9142 Reinsurance; effect on reserves.-

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

760           (2) A captive insurance company may take credit for  
761 reserves on risks or portions of risks ceded to authorized  
762 insurers or reinsurers and unauthorized insurers or reinsurers  
763 complying with the provisions of s. 624.610. A captive insurer  
764 may not take credit for reserves on risks or portions of risks  
765 ceded to an unauthorized insurer or reinsurer if the insurer or  
766 reinsurer is not in compliance with s. 624.610.

767           Section 14. Section 628.918, Florida Statutes, is created  
768 to read:

769           628.918 Management of assets of captive reinsurance  
770 company.-At least 35 percent of the assets of a captive  
771 reinsurance company must be managed by an asset manager  
772 domiciled in this state.

773           Section 15. Section 628.919, Florida Statutes, is created  
774 to read:

775           628.919 Standards to ensure risk management control by  
776 parent company.-The Financial Services Commission shall adopt  
777 rules establishing standards to ensure that a parent or  
778 affiliated company is able to exercise control of the risk

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

781 Section 16. Section 628.920, Florida Statutes, is created  
782 to read:

783 628.920 Eligibility of licensed captive insurance company  
784 for certificate of authority to act as insurer.—A licensed  
785 captive insurance company that meets the necessary requirements  
786 of this part imposed upon an insurer must be considered for  
787 issuance of a certificate of authority to act as an insurer in  
788 this state.

789 Section 17. Paragraph (e) of subsection (2) of section  
790 626.7491, Florida Statutes, is amended to read:

791 626.7491 Business transacted with producer controlled  
792 property and casualty insurer.—

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

794 (e) "Licensed insurer" or "insurer" means any person,  
795 firm, association, or corporation licensed to transact a  
796 property or casualty insurance business in this state. The  
797 following are not licensed insurers for the purposes of this  
798 section:

799 1. Any risk retention group as defined in:

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

802 b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq.  
803 (1982 and Supp. 1986); or

804 c. Section 627.942(9).

805 2. Any residual market pool or joint underwriting  
806 authority or association; and

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807           3. Any captive insurance company ~~insurer~~ as defined in s.  
808 628.901.

809           Section 18. Section 628.903, Florida Statutes, is  
810 repealed.

811           Section 19. This act shall take effect upon becoming a  
812 law.