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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/12/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

628.901 Definitions ~~"Captive insurer" defined.—As used in~~
~~For the purposes of this part, the term: except as provided in~~
~~s. 628.903, a "captive insurer" is a domestic insurer~~
~~established under part I to insure the risks of a specific~~
~~corporation or group of corporations under common ownership~~
~~owned by the corporation or corporations from which it accepts~~



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13 ~~risk under a contract of insurance.~~

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

18 (2) "Captive insurance company" means a domestic insurer
19 established under this part. A captive insurance company
20 includes a pure captive insurance company, special purpose
21 captive insurance company, or industrial insured captive
22 insurance company formed and licensed under this part.

23 (3) "Captive reinsurance company" means a reinsurance
24 company that is formed and licensed under this part and is
25 wholly owned by a qualifying reinsurance parent company. A
26 captive reinsurance company is a stock corporation and may not
27 directly insure risks. A captive reinsurance company may
28 reinsure only risks.

29 (4) "Consolidated debt to total capital ratio" means the
30 ratio of the sum of all debts and hybrid capital instruments as
31 described in paragraph (a) to total capital as described in
32 paragraph (b).

33 (a) Debts and hybrid capital instruments include, but are
34 not limited to, all borrowings from banks, all senior debt, all
35 subordinated debts, all trust preferred shares, and all other
36 hybrid capital instruments that are not included in the
37 determination of consolidated GAAP net worth issued and
38 outstanding.

39 (b) Total capital consists of all debts and hybrid capital
40 instruments as described in paragraph (a) plus owners' equity
41 determined in accordance with GAAP for reporting to the United



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42 States Securities and Exchange Commission.

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

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

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

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

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

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

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

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

57 (b) Procures insurance through the use of a full-time
58 employee of the insured who acts as an insurance manager or
59 buyer or through the services of a person licensed as a property
60 and casualty insurance agent, broker, or consultant in such
61 person's state of domicile;

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

63 (d) Pays annual premiums of at least \$200,000 for each line
64 of insurance purchased from the industrial insured captive
65 insurer or at least \$75,000 for any line of coverage in excess
66 of at least \$25 million in the annual aggregate. The purchase of
67 umbrella or general liability coverage in excess of \$25 million
68 in the annual aggregate shall be deemed to be the purchase of a
69 single line of insurance.

70 (9) "Industrial insured captive insurance company" means a



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71 captive insurance company that provides insurance only to the
72 industrial insureds that are its stockholders or members, and
73 affiliates thereof, or to the stockholders, and affiliates
74 thereof, of its parent corporation. An industrial insured
75 captive insurance company can also provide reinsurance to
76 insurers only on risks written by such insurers for the
77 industrial insureds that are the stockholders or members, and
78 affiliates thereof, of the industrial insured captive insurer,
79 or the stockholders, and affiliates thereof, of the parent
80 corporation of the industrial insured captive insurer.

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

82 (11) "Parent" means any corporation, limited liability
83 company, partnership, or individual that directly or indirectly
84 owns, controls, or holds with power to vote more than 50 percent
85 of the outstanding voting interests of a captive insurance
86 company.

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

90 (13) "Qualifying reinsurer parent company" means a
91 reinsurer which currently holds a certificate of authority,
92 letter of eligibility or is an accredited or a satisfactory non-
93 approved reinsurer in this state possessing a consolidated GAAP
94 net worth of at least \$500 million and a consolidated debt to
95 total capital ratio of not greater than 0.50.

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



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

103 Section 2. Section 628.905, Florida Statutes, is amended to
104 read:

105 628.905 Licensing; authority.—

106 (1) A Any captive insurer, if when permitted by its charter
107 or articles of incorporation, may apply to the office for a
108 license to do any and all insurance authorized under the
109 insurance code, provide commercial property, commercial
110 easualty, and commercial marine insurance coverage other than
111 workers' compensation and employer's liability, life, health,
112 personal motor vehicle, and personal residential property
113 insurance coverage, except that: an industrial insured captive
114 insurer may apply for a license to provide workers' compensation
115 and employer's liability insurance as set forth in subsection
116 (6).

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

120 (b) An industrial insured captive insurance company may not
121 insure any risks other than those of the industrial insureds
122 that comprise the industrial insured group and their affiliated
123 companies.

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

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

128 (2) To conduct insurance business in this state, a Ne



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129 ~~captive insurer, other than an industrial insured captive~~
130 ~~insurer must:; shall insure or accept reinsurance on any risks~~
131 ~~other than those of its parent and affiliated companies.~~

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

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

136 (c) Maintain its principal place of business in this state;
137 and

138 (d) Appoint a resident registered agent to accept service
139 of process and to otherwise act on its behalf in this state. In
140 the case of a captive insurance company formed as a corporation
141 or a nonprofit corporation, if the registered agent cannot with
142 reasonable diligence be found at the registered office of the
143 captive insurance company, the Chief Financial Officer of this
144 state must be an agent of the captive insurance company upon
145 whom any process, notice, or demand may be served.

146 (3) Before receiving a license, a captive insurance company
147 formed as a corporation or a nonprofit corporation must file
148 with the office a certified copy of its articles of
149 incorporation and bylaws, a statement under oath of its
150 president and secretary showing its financial condition, and any
151 other statements or documents required by the office. In
152 addition, an applicant captive insurance company must file with
153 the office evidence of:

154 (a) The amount and liquidity of the proposed captive
155 insurance company's assets relative to the risks to be assumed;

156 (b) The adequacy of the expertise, experience, and
157 character of the person or persons who will manage the company;



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158 (c) The overall soundness of the company's plan of
159 operation;

160 (d) The adequacy of the loss prevention programs of the
161 company's parent, member organizations, or industrial insureds,
162 as applicable; and

163 (e) Any other factors considered relevant by the office in
164 ascertaining whether the company will be able to meet its policy
165 obligations. ~~In addition to information otherwise required by~~
166 ~~this code, each applicant captive insurer shall file with the~~
167 ~~office evidence of the adequacy of the loss prevention program~~
168 ~~of its insureds.~~

169 (4) A captive insurance company or captive reinsurance
170 company must pay to the office a nonrefundable fee of \$1,500 for
171 processing its application for license.

172 (a) A captive insurance company or captive reinsurance
173 company must also pay an annual renewal fee of \$1,000.

174 (b) The office may charge a fee of \$5 for any document
175 requiring certification of authenticity or the signature of the
176 commissioner or his or her designee. ~~An industrial insured~~
177 ~~captive insurer need not be incorporated in this state if it has~~
178 ~~been validly incorporated under the laws of another~~
179 ~~jurisdiction.~~

180 (5) If the commissioner is satisfied that the documents and
181 statements filed by the captive insurance company comply with
182 this chapter, the commissioner may grant a license authorizing
183 the company to conduct insurance business in this state until
184 the next succeeding March 1, at which time the license may be
185 renewed. ~~An industrial insured captive insurer is subject to all~~
186 ~~provisions of this part except as otherwise indicated.~~



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187 (6) Upon approval of the office, a foreign or alien captive
188 insurance company may become a domestic captive insurance
189 company by complying with all of the requirements of law
190 relative to the organization and licensing of a domestic captive
191 insurance company of the same or equivalent type in this state
192 and by filing with the Secretary of State its charter or other
193 organizational documents, together with any appropriate
194 amendments that have been adopted in accordance with the laws of
195 this state to bring the charter or other organizational
196 documents into compliance with the laws of this state, along
197 with a certificate of good standing issued by the office. The
198 captive insurance company is then entitled to the necessary or
199 appropriate certificates and licenses to continue transacting
200 business in this state and is subject to the authority and
201 jurisdiction of this state. In connection with this
202 redomestication, the office may waive any requirements for
203 public hearings. It is not necessary for a captive insurance
204 company redomesticating into this state to merge, consolidate,
205 transfer assets, or otherwise engage in any other
206 reorganization, other than as specified in this section. ~~An~~
207 ~~industrial insured captive insurer may not provide workers'~~
208 ~~compensation and employer's liability insurance except in excess~~
209 ~~of at least \$25 million in the annual aggregate.~~

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

213 Section 3. Section 628.906, Florida Statutes, is created to
214 read:

215 628.906 Application requirements; restrictions on



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216 eligibility of officers and directors.-

217 (1) To evidence competence and trustworthiness of its
218 officers and directors, the application for a license to act as
219 a captive insurance company or captive reinsurance company shall
220 include, but not be limited to, background investigations,
221 biographical affidavits, and fingerprint cards for all officers
222 and directors. Fingerprints must be taken by a law enforcement
223 agency or other entity approved by the office, be accompanied by
224 the fingerprint processing fee specified in s. 624.501, and
225 processed in accordance with s. 624.34.

226 (2) The office may deny, suspend, or revoke the license to
227 transact captive insurance or captive reinsurance in this state
228 if any person who was an officer or director of an insurer,
229 reinsurer, captive insurance company, captive reinsurance
230 company, financial institution, or financial services business
231 doing business in the United States, any state, or under the law
232 of any other country and who served in that capacity within the
233 2-year period prior to the date the insurer, reinsurer, captive
234 insurance company, captive reinsurance company, financial
235 institution, or financial services business became insolvent,
236 serves as an officer or director of a captive insurance company
237 or officer or director of a captive reinsurance company licensed
238 in this state unless the officer or director demonstrates that
239 his or her personal actions or omissions were not a contributing
240 cause to the insolvency or unless the officer or director is
241 immediately removed from the captive insurance company or
242 captive reinsurance company.

243 (3) The office may deny, suspend, or revoke the license to
244 transact insurance or reinsurance in this state of a captive



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245 insurance company or captive reinsurance company if any officer
246 or director, any stockholder that owns 10 percent or more of the
247 outstanding voting securities of the captive insurance company
248 or captive reinsurance company, or incorporator has been found
249 guilty of, or has pleaded guilty or nolo contendere to, any
250 felony or crime involving moral turpitude, including a crime of
251 dishonesty or breach of trust, punishable by imprisonment of 1
252 year or more under the law of the United States or any state
253 thereof or under the law of any other country without regard to
254 whether a judgment of conviction has been entered by the court
255 having jurisdiction in such case. However, in the case of a
256 captive insurance company or captive reinsurance company
257 operating under a subsisting license, the captive insurance
258 company or captive reinsurance company shall remove any such
259 person immediately upon discovery of the conditions set forth in
260 this subsection when applicable to such person or upon the order
261 of the office, and the failure to so act shall be grounds for
262 revocation or suspension of the captive insurance company's or
263 captive reinsurance company's license.

264 Section 4. Section 628.907, Florida Statutes, is amended to
265 read:

266 628.907 Minimum capital and net assets requirements;
267 restriction on payment of dividends ~~surplus.~~

268 (1) A ~~Ne~~ captive insurer may not ~~shall~~ be issued a license

269 unless it possesses and thereafter maintains:

270 (1) unimpaired paid-in capital of:
271 (a) In the case of a pure captive insurance company, at
272 least \$100,000. ~~\$500,000;~~ and

273 (b) In the case of an industrial insured captive insurance



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274 company incorporated as a stock insurer, at least \$200,000.

275 (c) In the case of a special purpose captive insurance
276 company, an amount determined by the office after giving due
277 consideration to the company's business plan, feasibility study,
278 and pro forma financial statements and projections, including
279 the nature of the risks to be insured.

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

283 (a) In the case of a pure captive insurance company,
284 Unimpaired surplus of at least \$250,000.

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

290 (3) Contributions to a captive insurance company
291 incorporated as a nonprofit corporation must be in the form of
292 cash, cash equivalent, or an irrevocable letter of credit issued
293 by a bank chartered by this state or a member bank of the
294 Federal Reserve System with a branch office in this state, or as
295 approved by the office.

296 (4) For purposes of this section, the office may issue a
297 license expressly conditioned upon the captive insurance company
298 providing to the office satisfactory evidence of possession of
299 the minimum required unimpaired paid-in capital. Until this
300 evidence is provided, the captive insurance company may not
301 issue any policy, assume any liability, or otherwise provide
302 coverage. The office may revoke the conditional license if



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303 satisfactory evidence of the required capital is not provided
304 within a maximum period of time, not to exceed 1 year, to be
305 established by the office at the time the conditional license is
306 issued.

307 (5) The office may prescribe additional capital or net
308 assets based upon the type, volume, and nature of insurance
309 business transacted. Contributions in connection with these
310 prescribed additional net assets or capital must be in the form
311 of:

312 (a) Cash;

313 (b) Cash equivalent;

314 (c) An irrevocable letter of credit issued by a bank
315 chartered by this state or a member bank of the Federal Reserve
316 System with a branch office in this state, or as approved by the
317 office; or

318 (d) Securities invested as provided in part II of chapter
319 625.

320 (6) A captive insurance company may not pay a dividend out
321 of, or other distribution with respect to, capital or surplus in
322 excess of the limitations set forth in this chapter without the
323 prior approval of the office. Approval of an ongoing plan for
324 the payment of dividends or other distributions must be
325 conditioned upon the retention, at the time of each payment, of
326 capital or surplus in excess of amounts specified by, or
327 determined in accordance with formulas approved by, the office.

328 (7) An irrevocable letter of credit that is issued by a
329 financial institution other than a bank chartered by this state
330 or a member bank of the Federal Reserve System must meet the
331 same standards as an irrevocable letter of credit that has been



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332 issued by a bank chartered by this state or a member bank of the
333 Federal Reserve System.

334 Section 5. Section 628.908, Florida Statutes, is created to
335 read:

336 628.908 Surplus requirements; restriction on payment of
337 dividends.—

338 (1) The office may not issue a license to a captive
339 insurance company unless the company possesses and maintains
340 unimpaired surplus of:

341 (a) In the case of a pure captive insurance company, at
342 least \$150,000.

343 (b) In the case of an industrial insured captive insurance
344 company incorporated as a stock insurer, at least \$300,000.

345 (c) In the case of an industrial insured captive insurance
346 company incorporated as a mutual insurer, at least \$500,000.

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

352 (2) For purposes of this section, the office may issue a
353 license expressly conditioned upon the captive insurance company
354 providing to the office satisfactory evidence of possession of
355 the minimum required unimpaired surplus. Until this evidence is
356 provided, the captive insurance company may not issue any
357 policy, assume any liability, or otherwise provide coverage. The
358 office may revoke the conditional license if satisfactory
359 evidence of the required surplus is not provided within a
360 maximum period of time, not to exceed 1 year, to be established



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361 by the office at the time the conditional license is issued.

362 (3) 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 distribution 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 (4) 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 6. Section 628.909, Florida Statutes, is amended to
377 read:

378 628.909 Applicability of other laws.—

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

382 (2) The following provisions of the Florida Insurance Code
383 ~~shall~~ apply to captive insurers who are not industrial insured
384 captive insurers to the extent that such provisions are not
385 inconsistent with this part:

386 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
387 624.40851, 624.4095, 624.425, and 624.426.

388 (b) Chapter 625, part II.

389 (c) Chapter 626, part IX.



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390 (d) Sections 627.730-627.7405, when no-fault coverage is
391 provided.

392 (e) Chapter 628.

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

396 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
397 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

400 (c) Chapter 626, part IX.

401 (d) Sections 627.730-627.7405 when no-fault coverage is
402 provided.

403 (e) Chapter 628, except for ss. 628.341, 628.351, and
404 628.6018.

405 Section 7. Section 628.910, Florida Statutes, is created to
406 read:

407 628.910 Incorporation options and requirements.-

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

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

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

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

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

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



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419 (3) A captive insurance company may not have fewer than
420 three incorporators of whom not fewer than two must be residents
421 of this state.

422 (4) In the case of a captive insurance company formed as a
423 corporation or a nonprofit corporation, before the articles of
424 incorporation are transmitted to the Secretary of State, the
425 incorporators shall file the articles of incorporation in
426 triplicate with the office. The office shall promptly examine
427 the articles of incorporation. If it finds that the articles of
428 incorporation conform to law, it shall endorse its approval on
429 each of the triplicate originals of the articles of
430 incorporation, retain one copy for its files, and return the
431 remaining copies to the incorporators for filing with the
432 Department of State.

433 (5) The articles of incorporation, the certificate issued
434 pursuant to this section, and the organization fees required by
435 the Florida Business Corporation Act or the Florida Not For
436 Profit Corporation Act, as applicable, must be transmitted to
437 the Secretary of State, who must record the articles of
438 incorporation and the certificate.

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

442 (7) In the case of a captive insurance company formed as a
443 corporation or a nonprofit corporation, at least one of the
444 members of the board of directors of a captive insurance company
445 incorporated in this state must be a resident of this state.

446 (8) A captive insurance company formed as a corporation or
447 a nonprofit corporation, pursuant to the provisions of this



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448 chapter, has the privileges and is subject to the provisions of
449 the general corporation law, including the Florida Not For
450 Profit Corporation Act for nonprofit corporations, as
451 applicable, as well as the applicable provisions contained in
452 this chapter. If a conflict occurs between a provision of the
453 general corporation law, including the Florida Not For Profit
454 Corporation Act for nonprofit corporations, as applicable, and a
455 provision of this chapter, the latter controls. The provisions
456 of this title pertaining to mergers, consolidations,
457 conversions, mutualizations, and redomestications apply in
458 determining the procedures to be followed by a captive insurance
459 company in carrying out any of the transactions described in
460 such provisions, except that the office may waive or modify the
461 requirements for public notice and hearing in accordance with
462 rules the office may adopt addressing categories of
463 transactions. If a notice of public hearing is required, but no
464 one requests a hearing, the office may cancel the hearing.

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

470 Section 8. Section 628.911, Florida Statutes, is amended to
471 read:

472 628.911 Reports and statements.-

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

476 (2) Annually no later than March 1, a captive insurance



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477 company or a captive reinsurance company insurer shall, within
478 60 days after the end of its fiscal year and as often as the
479 office may deem necessary, submit to the office a report of its
480 financial condition verified by oath of two of its executive
481 officers. Except as provided in this part, a captive insurance
482 company or a captive reinsurance company must report using
483 generally accepted accounting principles, unless the office
484 approves the use of statutory accounting principles, with useful
485 or necessary modifications or adaptations required or approved
486 or accepted by the office for the type of insurance and kinds of
487 insurers to be reported upon, and as supplemented by additional
488 information required by the office. The Financial Services
489 Commission may adopt by rule the form in which captive insurance
490 companies insurers shall report.

491 (3) A captive insurance company may make written
492 application for filing the required report on a fiscal year end
493 that is consistent with the parent company's fiscal year. If an
494 alternative reporting date is granted, the annual report is due
495 60 days after the fiscal year end.

496 Section 9. Section 628.912, Florida Statutes, is created to
497 read:

498 628.912 Discounting of loss and loss adjustment expense
499 reserves.—

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

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



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

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

510 Section 10. Section 628.913, Florida Statutes, is amended
511 to read:

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

514 628.913 Captive reinsurance companies.—

515 (1) A captive reinsurance company, if permitted by its
516 articles of incorporation or charter, may apply to the office
517 for a license to write reinsurance covering property and
518 casualty insurance or reinsurance contracts. A captive
519 reinsurance company authorized by the office may write
520 reinsurance contracts covering risks in any state; however, a
521 captive reinsurance company authorized by the office may not
522 directly insure risks.

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

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

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

529 (c) Maintain its principal place of business in this state;
530 and

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

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



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- 535 (a) A certified copy of its charter and bylaws;
536 (b) A statement under oath of its president and secretary
537 showing its financial condition; and
538 (c) Other documents required by the office.
539 (4) In addition to the information required by this
540 section, the captive reinsurance company must file with the
541 office evidence of:

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

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

546 (c) The overall soundness of the company's plan of
547 operation; and

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

551 Section 11. Section 628.914, Florida Statutes, is created
552 to read:

553 628.914 Minimum capitalization or reserves for captive
554 reinsurance companies.—

555 (1) The office may not issue a license to a captive
556 reinsurance company unless the company possesses and maintains
557 capital or unimpaired surplus of at least the greater of \$300
558 million or 10 percent of reserves. The surplus may be in the
559 form of cash or securities as permitted by part II of chapter
560 625.

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



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564 (3) A captive reinsurance company may not pay a dividend
565 out of, or other distribution with respect to, capital or
566 surplus in excess of the limitations without the prior approval
567 of the office. Approval of an ongoing plan for the payment of
568 dividends or other distributions must be conditioned upon the
569 retention, at the time of each payment, of capital or surplus in
570 excess of amounts specified by, or determined in accordance with
571 formulas approved by, the office.

572 Section 12. Section 628.9141, Florida Statutes, is created
573 to read:

574 628.9141 Incorporation of a captive reinsurance company.-

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

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

581 (3) Before the articles of incorporation are transmitted to
582 the Secretary of State, the incorporators must comply with all
583 the requirements of s. 628.091.

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

587 (5) At least one of the members of the board of directors
588 of a captive reinsurance company incorporated in this state must
589 be a resident of this state.

590 Section 13. Section 628.9142, Florida Statutes, is created
591 to read:

592 628.9142 Reinsurance; effect on reserves.-



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

595 (2) A captive insurance company may take credit for
596 reserves on risks or portions of risks ceded to authorized
597 insurers or reinsurers and unauthorized insurers or reinsurers
598 complying with s. 624.610. A captive insurer may not take credit
599 for reserves on risks or portions of risks ceded to an
600 unauthorized insurer or reinsurer if the insurer or reinsurer is
601 not in compliance with s. 624.610.

602 Section 14. Section 628.918, Florida Statutes, is created
603 to read:

604 628.918 Management of assets of captive reinsurance
605 company.—At least 35 percent of the assets of a captive
606 reinsurance company must be managed by an asset manager
607 domiciled in this state.

608 Section 15. Section 628.919, Florida Statutes, is created
609 to read:

610 628.919 Standards to ensure risk management control by
611 parent company.—The Financial Services Commission shall adopt
612 rules establishing standards to ensure that a parent or
613 affiliated company is able to exercise control of the risk
614 management function of any controlled unaffiliated business to
615 be insured by the pure captive insurance company.

616 Section 16. Section 628.920, Florida Statutes, is created
617 to read:

618 628.920 Eligibility of licensed captive insurance company
619 for certificate of authority to act as insurer.—A licensed
620 captive insurance company that meets the necessary requirements
621 of this part imposed upon an insurer must be considered for



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622 issuance of a certificate of authority to act as an insurer in
623 this state.

624 Section 17. Paragraph (e) of subsection (2) of section
625 626.7491, Florida Statutes, is amended to read:

626 626.7491 Business transacted with producer controlled
627 property and casualty insurer.-

628 (2) DEFINITIONS.-As used in this section:

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

633 1. Any risk retention group as defined in:

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

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

638 c. Section 627.942(9).

639 2. Any residual market pool or joint underwriting authority
640 or association; and

641 3. Any captive insurance company insurer as defined in s.
642 628.901.

643 Section 18. Section 628.903, Florida Statutes, is repealed.

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

645

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647 ===== T I T L E A M E N D M E N T =====

648 And the title is amended as follows:

649 Delete everything before the enacting clause
650 and insert:



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651 A bill to be entitled
652 An act relating to captive insurance; amending s.
653 628.901, F.S.; providing definitions; amending s.
654 628.905, F.S.; expanding the kinds of insurance for
655 which a captive insurer may seek licensure; limiting
656 the risks that certain captive insurers may insure;
657 specifying requirements and conditions relating to a
658 captive insurer's authority to conduct business;
659 requiring that before licensure certain captive
660 insurers must file or submit to the Office of
661 Insurance Regulation specified information, documents,
662 and statements; requiring a captive insurance company
663 to file specific evidence with the office relating to
664 the financial condition and quality of management and
665 operations of the company; specifying certain fees to
666 be paid by captive insurance companies; authorizing a
667 foreign or alien captive insurance company to become a
668 domestic captive insurance company by complying with
669 specified requirements; authorizing the office to
670 waive any requirements for public hearings relating to
671 the redomestication of an alien captive insurance
672 company; creating s. 628.906, F.S.; requiring
673 biographical affidavits, background investigations,
674 and fingerprint cards for all officers and directors;
675 providing restrictions on officers and directors
676 involved with insolvent insurers under certain
677 conditions; providing restrictions on officers and
678 directors found guilty of, or that have pleaded guilty
679 or nolo contendere to, any felony or crime involving



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680 moral turpitude, including a crime of dishonesty or
681 breach of trust; amending s. 628.907, F.S.; revising
682 capitalization requirements for specified captive
683 insurance companies; requiring capital of specified
684 captive insurance companies to be held in certain
685 forms; requiring contributions to captive insurance
686 companies that are stock insurer corporations to be in
687 a certain form; authorizing the office to issue a
688 captive insurance company license conditioned upon
689 certain evidence relating to possession of specified
690 capital; authorizing revocation of a conditional
691 license under certain circumstances; authorizing the
692 office to prescribe certain additional capital and net
693 asset requirements; requiring such additional
694 requirements relating to capital and net assets to be
695 held in specified forms; requiring dividends or
696 distributions of capital or surplus to meet certain
697 conditions and be approved by the office; requiring
698 certain irrevocable letters of credit to meet certain
699 standards; creating s. 628.908, F.S.; prohibiting the
700 issuance of a license to specified captive insurance
701 companies unless such companies possess and maintain
702 certain levels of unimpaired surplus; authorizing the
703 office to condition issuance of a captive insurance
704 company license upon the provision of certain evidence
705 relating to the possession of a minimum amount of
706 unimpaired surplus; authorizing revocation of a
707 conditional license under certain circumstances;
708 requiring dividends or distributions of capital or



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709 surplus to meet certain conditions and be approved by
710 the office; requiring certain irrevocable letters of
711 credit to meet certain standards; amending s. 628.909,
712 F.S.; providing for applicability of certain statutory
713 provisions to specified captive insurers; creating s.
714 628.910, F.S.; providing requirements, options, and
715 conditions relating to how a captive insurance company
716 may be incorporated or organized as a business;
717 amending s. 628.911, F.S.; providing reporting
718 requirements for specified captive insurance companies
719 and captive reinsurance companies; creating s.
720 628.912, F.S.; authorizing a captive reinsurance
721 company to discount specified losses subject to
722 certain conditions; amending s. 628.913, F.S.;
723 authorizing a captive reinsurance company to apply to
724 the office for licensure to write reinsurance covering
725 property and casualty insurance or reinsurance
726 contracts; authorizing the office to allow a captive
727 reinsurance company to write reinsurance contracts
728 covering risks in any state; specifying that a captive
729 reinsurance company is subject to specified
730 requirements and must meet specified conditions to
731 conduct business in this state; creating s. 628.914,
732 F.S.; specifying requirements and conditions relating
733 to the capitalization or maintenance of reserves by a
734 captive reinsurance company; creating s. 628.9141,
735 F.S.; specifying requirements and conditions relating
736 to the incorporation of a captive reinsurance company;
737 creating s. 628.9142, F.S.; providing for the effect



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738 on reserves of certain actions taken by a captive
739 insurance company relating to providing reinsurance
740 for specified risks; creating s. 628.918, F.S.;;
741 requiring a specified percentage of a captive
742 reinsurance company's assets to be managed by an asset
743 manager domiciled in this state; creating s. 628.919,
744 F.S.; authorizing the Financial Services Commission to
745 adopt rules establishing certain standards for control
746 of an unaffiliated business by a parent or affiliated
747 company relating to coverage by a pure captive
748 insurance company; creating s. 628.920, F.S.;;
749 requiring that a licensed captive insurance company
750 must be considered for issuance of a certificate of
751 authority as an insurer under certain circumstances;
752 amending s. 626.7491, F.S.; conforming a cross-
753 reference; repealing s. 628.903, F.S., relating to the
754 definition of the term "industrial insured captive
755 insurer," to conform to changes made by the act;
756 providing an effective date.