



344004

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
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The Committee on Banking and Insurance (Bennett) 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) "Association" means a legal association of individuals,
19 corporations, limited liability companies, partnerships,
20 political subdivisions, or associations which has been in
21 continuous existence for at least 1 year, the member
22 organizations of which collectively, or which does itself:

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

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

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

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

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



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42 reinsure only risks.

43 (6) "Consolidated debt to total capital ratio" means the
44 ratio of the sum of all debts and hybrid capital instruments as
45 described in paragraph (a) to total capital as described in
46 paragraph (b).

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

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

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

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

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

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

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

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

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

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



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71 (b) Procures insurance through the use of a full-time
72 employee of the insured who acts as an insurance manager or
73 buyer or through the services of a person licensed as a property
74 and casualty insurance agent, broker, or consultant in such
75 person's state of domicile;

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

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

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

95 (12) "Member organization" means any individual,
96 corporation, limited liability company, partnership, or
97 association that belongs to an association.

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

99 (14) "Parent" means any corporation, limited liability



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100 company, partnership, or individual that directly or indirectly
101 owns, controls, or holds with power to vote more than 50 percent
102 of the outstanding voting interests of a captive insurance
103 company.

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

107 (16) "Qualifying reinsurer parent company" means a
108 reinsurer which currently holds a certificate of authority,
109 letter of eligibility or is an accredited or a satisfactory non-
110 approved reinsurer in this state possessing a consolidated GAAP
111 net worth of not less than \$500 million and a consolidated debt
112 to total capital ratio of not greater than 0.50.

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

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

120 Section 2. Section 628.905, Florida Statutes, is amended to
121 read:

122 628.905 Licensing; authority.—

123 (1) A ~~Any~~ captive insurer, ~~if when~~ permitted by its charter
124 or articles of incorporation, may apply to the office for a
125 license to do any and all insurance authorized under the
126 ~~insurance code, provide commercial property, commercial~~
127 ~~casualty, and commercial marine insurance coverage other than~~
128 ~~workers' compensation, health, personal motor vehicle, and~~



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129 personal residential property and employer's liability insurance
130 coverage, except that: an industrial insured captive insurer may
131 apply for a license to provide workers' compensation and
132 employer's liability insurance as set forth in subsection (6).

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

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

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

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

157 (e) A captive insurance company may not accept or cede



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158 reinsurance except as provided in this part.

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

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

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

167 (c) Maintain its principal place of business in this state;
168 and

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

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

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

186 1. The amount and liquidity of the proposed captive



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187 insurance company's assets relative to the risks to be assumed;

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

190 3. The overall soundness of the company's plan of
191 operation;

192 4. The adequacy of the loss prevention programs of the
193 company's parent, member organizations, or industrial insureds,
194 as applicable; and

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

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

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

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

212 (5) If the commissioner is satisfied that the documents and
213 statements filed by the captive insurance company comply with
214 this chapter, the commissioner may grant a license authorizing
215 the company to conduct insurance business in this state until



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216 the next succeeding March 1, at which time the license may be
217 renewed. ~~An industrial insured captive insurer is subject to all~~
218 ~~provisions of this part except as otherwise indicated.~~

219 (6) Upon approval of the office, a foreign or alien captive
220 insurance company may become a domestic captive insurance
221 company by complying with all of the requirements of law
222 relative to the organization and licensing of a domestic captive
223 insurance company of the same or equivalent type in this state
224 and by filing with the Secretary of State its articles of
225 association, charter, or other organizational documents,
226 together with any appropriate amendments that have been adopted
227 in accordance with the laws of this state to bring the articles
228 of association, charter, or other organizational documents into
229 compliance with the laws of this state, along with a certificate
230 of good standing issued by the office. The captive insurance
231 company is then entitled to the necessary or appropriate
232 certificates and licenses to continue transacting business in
233 this state and is subject to the authority and jurisdiction of
234 this state. In connection with this redomestication, the office
235 may waive any requirements for public hearings. It is not
236 necessary for a captive insurance company redomesticating into
237 this state to merge, consolidate, transfer assets, or otherwise
238 engage in any other reorganization, other than as specified in
239 this section. ~~An industrial insured captive insurer may not~~
240 ~~provide workers' compensation and employer's liability insurance~~
241 ~~except in excess of at least \$25 million in the annual~~
242 ~~aggregate.~~

243 (7) An industrial insured captive insurance company need
244 not be incorporated in this state if it has been validly



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245 incorporated under the laws of another jurisdiction.

246 Section 3. Section 628.906, Florida Statutes, is created to
247 read:

248 628.906 Application requirements; restrictions on
249 eligibility of officers and directors.-

250 (1) To evidence competence and trustworthiness of its
251 officers and directors, the application for a license to act as
252 a captive insurance company or captive reinsurance company shall
253 include, but not be limited to, background investigations,
254 biographical affidavits, and fingerprint cards for all officers
255 and directors.

256 (2) The office may deny, suspend, or revoke the license to
257 transact captive insurance or captive reinsurance in this state
258 if any person who was an officer or director of an insurer,
259 reinsurer, captive insurance company, captive reinsurance
260 company, financial institution, or financial services business
261 doing business in the United States, any state, or under the law
262 of any other country and who served in that capacity within the
263 2-year period prior to the date the insurer, reinsurer, captive
264 insurance company, captive reinsurance company, financial
265 institution, or financial services business became insolvent,
266 serves as an officer or director of a captive insurance company
267 or officer or director of a captive reinsurance company licensed
268 in this state unless the officer or director demonstrates that
269 his or her personal actions or omissions were not a contributing
270 cause to the insolvency or unless the officer or director is
271 immediately removed from the captive insurance company or
272 captive reinsurance company.

273 (3) The office may deny, suspend, or revoke the license to



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274 transact insurance or reinsurance in this state of a captive
275 insurance company or captive reinsurance company if any officer
276 or director, any stockholder that owns 10 percent or more of the
277 outstanding voting securities of the captive insurance company
278 or captive reinsurance company, or incorporator has been found
279 guilty of, or has pleaded guilty or nolo contendere to, any
280 felony or crime involving moral turpitude, including a crime of
281 dishonesty or breach of trust, punishable by imprisonment of 1
282 year or more under the law of the United States or any state
283 thereof or under the law of any other country without regard to
284 whether a judgment of conviction has been entered by the court
285 having jurisdiction in such case. However, in the case of a
286 captive insurance company or captive reinsurance company
287 operating under a subsisting license, the captive insurance
288 company or captive reinsurance company shall remove any such
289 person immediately upon discovery of the conditions set forth in
290 this subsection when applicable to such person or upon the order
291 of the office, and the failure to so act shall be grounds for
292 revocation or suspension of the captive insurance company's or
293 captive reinsurance company's license.

294 Section 4. Section 628.907, Florida Statutes, is amended to
295 read:

296 628.907 Minimum capital and net assets requirements;
297 restriction on payment of dividends surplus.-

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

301 (a) ~~(1)~~ In the case of a pure captive insurance company, not
302 less than \$100,000. Unimpaired paid-in capital of at least



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303 ~~\$500,000; and~~

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

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

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

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

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

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

324 (3) Contributions to a captive insurance company
325 incorporated as a nonprofit corporation must be in the form of
326 cash, cash equivalent, or an irrevocable letter of credit issued
327 by a bank chartered by this state or a member bank of the
328 Federal Reserve System with a branch office in this state, or as
329 approved by the office.

330 (4) For purposes of this section, the office may issue a
331 license expressly conditioned upon the captive insurance company



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332 providing to the office satisfactory evidence of possession of
333 the minimum required unimpaired paid-in capital. Until this
334 evidence is provided, the captive insurance company may not
335 issue any policy, assume any liability, or otherwise provide
336 coverage. The office may revoke the conditional license if
337 satisfactory evidence of the required capital is not provided
338 within a maximum period of time, not to exceed 1 year, to be
339 established by the office at the time the conditional license is
340 issued.

341 (5) The office may prescribe additional capital or net
342 assets based upon the type, volume, and nature of insurance
343 business transacted. Contributions in connection with these
344 prescribed additional net assets or capital must be in the form
345 of:

346 (a) Cash;

347 (b) Cash equivalent;

348 (c) An irrevocable letter of credit issued by a bank
349 chartered by this state or a member bank of the Federal Reserve
350 System with a branch office in this state, or as approved by the
351 office; or

352 (d) Securities invested as provided in part II of chapter
353 625.

354 (6) A captive insurance company may not pay a dividend out
355 of, or other distribution with respect to, capital or surplus in
356 excess of the limitations set forth in this chapter without the
357 prior approval of the office. Approval of an ongoing plan for
358 the payment of dividends or other distributions must be
359 conditioned upon the retention, at the time of each payment, of
360 capital or surplus in excess of amounts specified by, or



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361 determined in accordance with formulas approved by, the office.

362 (7) An irrevocable letter of credit that is issued by a
363 financial institution other than a bank chartered by this state
364 or a member bank of the Federal Reserve System must meet the
365 same standards as an irrevocable letter of credit that has been
366 issued by a bank chartered by this state or a member bank of the
367 Federal Reserve System.

368 Section 5. Section 628.908, Florida Statutes, is created to
369 read:

370 628.908 Surplus requirements; restriction on payment of
371 dividends.—

372 (1) The office may not issue a license to a captive
373 insurance company unless the company possesses and maintains
374 unimpaired surplus of:

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

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

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

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

383 (e) In the case of an industrial insured captive insurance
384 company incorporated as a mutual insurer, not less than
385 \$500,000.

386 (f) In the case of a special purpose captive insurance
387 company, an amount determined by the office after giving due
388 consideration to the company's business plan, feasibility study,
389 and pro forma financial statements and projections, including



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390 the nature of the risks to be insured.

391 (2) For purposes of this section, the office may issue a
392 license expressly conditioned upon the captive insurance company
393 providing to the office satisfactory evidence of possession of
394 the minimum required unimpaired surplus. Until this evidence is
395 provided, the captive insurance company may not issue any
396 policy, assume any liability, or otherwise provide coverage. The
397 office may revoke the conditional license if satisfactory
398 evidence of the required surplus is not provided within a
399 maximum period of time, not to exceed 1 year, to be established
400 by the office at the time the conditional license is issued.

401 (3) A captive insurance company may not pay a dividend out
402 of, or other distribution with respect to, capital or surplus in
403 excess of the limitations set forth in this chapter without the
404 prior approval of the office. Approval of an ongoing plan for
405 the payment of dividends or other distribution must be
406 conditioned upon the retention, at the time of each payment, of
407 capital or surplus in excess of amounts specified by, or
408 determined in accordance with formulas approved by, the office.

409 (4) An irrevocable letter of credit that is issued by a
410 financial institution other than a bank chartered by this state
411 or a member bank of the Federal Reserve System must meet the
412 same standards as an irrevocable letter of credit that has been
413 issued by a bank chartered by this state or a member bank of the
414 Federal Reserve System.

415 Section 6. Section 628.909, Florida Statutes, is amended to
416 read:

417 628.909 Applicability of other laws.—

418 (1) The Florida Insurance Code does ~~shall~~ not apply to



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419 captive insurers or industrial insured captive insurers except
420 as provided in this part and subsections (2) and (3).

421 (2) The following provisions of the Florida Insurance Code
422 ~~shall~~ apply to captive insurers who are not industrial insured
423 captive insurers to the extent that such provisions are not
424 inconsistent with this part:

425 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
426 624.40851, 624.4095, 624.425, and 624.426.

427 (b) Chapter 625, part II.

428 (c) Chapter 626, part IX.

429 (d) Sections 627.730-627.7405, when no-fault coverage is
430 provided.

431 (e) Chapter 628.

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

435 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
436 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

439 (c) Chapter 626, part IX.

440 (d) Sections 627.730-627.7405 when no-fault coverage is
441 provided.

442 (e) Chapter 628, except for ss. 628.341, 628.351, and
443 628.6018.

444 Section 7. Section 628.910, Florida Statutes, is created to
445 read:

446 628.910 Incorporation options and requirements.-

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



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448 (a) Incorporated as a stock insurer with its capital
449 divided into shares and held by the stockholders; or
450 (b) Incorporated as a public benefit, mutual benefit, or
451 religious nonprofit corporation with members in accordance with
452 the Florida Not For Profit Corporation Act.
453 (2) An association captive insurance company or an
454 industrial insured captive insurance company may be:
455 (a) Incorporated as a stock insurer with its capital
456 divided into shares and held by the stockholders; or
457 (b) Incorporated as a mutual insurer without capital stock,
458 the governing body of which is elected by the member
459 organizations of its association.
460 (3) A captive insurance company may not have fewer than
461 three incorporators of whom not fewer than two must be residents
462 of this state.
463 (4) In the case of a captive insurance company formed as a
464 corporation or a nonprofit corporation, before the articles of
465 incorporation are transmitted to the Secretary of State, the
466 incorporators shall file the articles of incorporation in
467 triplicate with the office. The office shall promptly examine
468 the articles of incorporation. If it finds that the articles of
469 incorporation conform to law, it shall endorse its approval on
470 each of the triplicate originals of the articles of
471 incorporation, retain one copy for its files, and return the
472 remaining copies to the incorporators for filing with the
473 Department of State.
474 (5) The articles of incorporation, the certificate issued
475 pursuant to this section, and the organization fees required by
476 the Florida Business Corporation Act or the Florida Not For



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477 Profit Corporation Act, as applicable, must be transmitted to
478 the Secretary of State, who must record the articles of
479 incorporation and the certificate.

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

483 (7) In the case of a captive insurance company formed as a
484 corporation or a nonprofit corporation, at least one of the
485 members of the board of directors of a captive insurance company
486 incorporated in this state must be a resident of this state.

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



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

511 Section 8. Section 628.911, Florida Statutes, is amended to
512 read:

513 628.911 Reports and statements.—

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

517 (2) Annually no later than March 1, a captive insurance
518 company or a captive reinsurance company ~~insurer shall, within~~
519 ~~60 days after the end of its fiscal year and as often as the~~
520 ~~office may deem necessary,~~ submit to the office a report of its
521 financial condition verified by oath of two of its executive
522 officers. Except as provided in this part, a captive insurance
523 company or a captive reinsurance company must report using
524 generally accepted accounting principles, unless the office
525 approves the use of statutory accounting principles, with useful
526 or necessary modifications or adaptations required or approved
527 or accepted by the office for the type of insurance and kinds of
528 insurers to be reported upon, and as supplemented by additional
529 information required by the office. The Financial Services
530 Commission may adopt by rule the form in which captive insurance
531 companies ~~insurers~~ shall report.

532 (3) A captive insurance company may make written
533 application for filing the required report on a fiscal year end
534 that is consistent with the parent company's fiscal year. If an



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535 alternative reporting date is granted, the annual report is due
536 60 days after the fiscal year end.

537 Section 9. Section 628.912, Florida Statutes, is created to
538 read:

539 628.912 Discounting of loss and loss adjustment expense
540 reserves.—

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

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

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

551 Section 10. Section 628.913, Florida Statutes, is amended
552 to read:

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

555 628.913 Captive reinsurance companies.—

556 (1) A captive reinsurance company, if permitted by its
557 articles of incorporation or charter, may apply to the office
558 for a license to write reinsurance covering property and
559 casualty insurance or reinsurance contracts. A captive
560 reinsurance company authorized by the office may write
561 reinsurance contracts covering risks in any state; however, a
562 captive reinsurance company authorized by the office may not
563 directly insure risks.



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

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

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

570 (c) Maintain its principal place of business in this state;
571 and

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

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

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

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

579 (c) Other documents required by the office.

580 (4) In addition to the information required by this
581 section, the captive reinsurance company must file with the
582 office evidence of:

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

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

587 (c) The overall soundness of the company's plan of
588 operation; and

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

592 Section 11. Section 628.914, Florida Statutes, is created



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593 to read:

594 628.914 Minimum capitalization or reserves for captive
595 reinsurance companies.-

596 (1) The office may not issue a license to a captive
597 reinsurance company unless the company possesses and maintains
598 capital or unimpaired surplus of not less than the greater of
599 \$300 million or 10 percent of reserves. The surplus may be in
600 the form of cash or securities as permitted by part II of
601 chapter 625.

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

605 (3) A captive reinsurance company may not pay a dividend
606 out of, or other distribution with respect to, capital or
607 surplus in excess of the limitations without the prior approval
608 of the office. Approval of an ongoing plan for the payment of
609 dividends or other distributions must be conditioned upon the
610 retention, at the time of each payment, of capital or surplus in
611 excess of amounts specified by, or determined in accordance with
612 formulas approved by, the office.

613 Section 12. Section 628.9141, Florida Statutes, is created
614 to read:

615 628.9141 Incorporation of a captive reinsurance company.-

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

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



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622 (3) Before the articles of incorporation are transmitted to
623 the Secretary of State, the incorporators shall comply with all
624 the requirements of s. 628.091.

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

628 (5) At least one of the members of the board of directors
629 of a captive reinsurance company incorporated in this state must
630 be a resident of this state.

631 Section 13. Section 628.9142, Florida Statutes, is created
632 to read:

633 628.9142 Reinsurance; effect on reserves.-

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

636 (2) A captive insurance company may take credit for
637 reserves on risks or portions of risks ceded to authorized
638 insurers or reinsurers and unauthorized insurers or reinsurers
639 complying with the provisions of s. 624.610. A captive insurer
640 may not take credit for reserves on risks or portions of risks
641 ceded to an unauthorized insurer or reinsurer if the insurer or
642 reinsurer is not in compliance with s. 624.610.

643 Section 14. Section 628.918, Florida Statutes, is created
644 to read:

645 628.918 Management of assets of captive reinsurance
646 company.-At least 35 percent of the assets of a captive
647 reinsurance company must be managed by an asset manager
648 domiciled in this state.

649 Section 15. Section 628.919, Florida Statutes, is created
650 to read:



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651 628.919 Standards to ensure risk management control by
652 parent company.—The Financial Services Commission shall adopt
653 rules establishing standards to ensure that a parent or
654 affiliated company is able to exercise control of the risk
655 management function of any controlled unaffiliated business to
656 be insured by the pure captive insurance company.

657 Section 16. Section 628.920, Florida Statutes, is created
658 to read:

659 628.920 Eligibility of licensed captive insurance company
660 for certificate of authority to act as insurer.—A licensed
661 captive insurance company that meets the necessary requirements
662 of this part imposed upon an insurer must be considered for
663 issuance of a certificate of authority to act as an insurer in
664 this state.

665 Section 17. Paragraph (e) of subsection (2) of section
666 626.7491, Florida Statutes, is amended to read:

667 626.7491 Business transacted with producer controlled
668 property and casualty insurer.—

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

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

674 1. Any risk retention group as defined in:

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

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

679 c. Section 627.942(9).



680 2. Any residual market pool or joint underwriting authority
681 or association; and

682 3. Any captive insurance company ~~insurer~~ as defined in s.
683 628.901.

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

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

686

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

688 And the title is amended as follows:

689 Delete everything before the enacting clause
690 and insert:

691 A bill to be entitled
692 An act relating to captive insurance; amending s.
693 628.901, F.S.; providing definitions; amending s.
694 628.905, F.S.; expanding the kinds of insurance for
695 which a captive insurer may seek licensure; limiting
696 the risks that certain captive insurers may insure;
697 specifying requirements and conditions relating to a
698 captive insurer's authority to conduct business;
699 requiring that before licensure certain captive
700 insurers must file or submit to the Office of
701 Insurance Regulation specified information, documents,
702 and statements; requiring a captive insurance company
703 to file specific evidence with the office relating to
704 the financial condition and quality of management and
705 operations of the company; specifying certain fees to
706 be paid by captive insurance companies; authorizing a
707 foreign or alien captive insurance company to become a
708 domestic captive insurance company by complying with



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709 specified requirements; authorizing the office to
710 waive any requirements for public hearings relating to
711 the redomestication of an alien captive insurance
712 company; creating s. 628.906, F.S.; requiring
713 biographical affidavits and background investigations
714 for all officers and directors; providing restrictions
715 on officers and directors involved with insolvent
716 insurers under certain conditions; providing
717 restrictions on officers and directors found guilty
718 of, or that have pleaded guilty or nolo contendere to,
719 any felony or crime involving moral turpitude,
720 including a crime of dishonesty or breach of trust;
721 amending s. 628.907, F.S.; revising capitalization
722 requirements for specified captive insurance
723 companies; requiring capital of specified captive
724 insurance companies to be held in certain forms;
725 requiring contributions to captive insurance companies
726 that are stock insurer corporations to be in a certain
727 form; authorizing the office to issue a captive
728 insurance company license conditioned upon certain
729 evidence relating to possession of specified capital;
730 authorizing revocation of a conditional license under
731 certain circumstances; authorizing the office to
732 prescribe certain additional capital and net asset
733 requirements; requiring such additional requirements
734 relating to capital and net assets to be held in
735 specified forms; requiring dividends or distributions
736 of capital or surplus to meet certain conditions and
737 be approved by the office; requiring certain



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



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



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providing an effective date.