

By the Committee on Banking and Insurance; and Senator Diaz de la Portilla

597-01562-12

2012610c1

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 companies; authorizing a
17 foreign or alien captive insurance company to become a
18 domestic captive insurance company by complying with
19 specified requirements; authorizing the office to
20 waive any requirements for public hearings relating to
21 the redomestication of an alien captive insurance
22 company; creating s. 628.906, F.S.; requiring
23 biographical affidavits and background investigations
24 for all officers and directors; providing restrictions
25 on officers and directors involved with insolvent
26 insurers under certain conditions; providing
27 restrictions on officers and directors found guilty
28 of, or that have pleaded guilty or nolo contendere to,
29 any felony or crime involving moral turpitude,

597-01562-12

2012610c1

30 including a crime of dishonesty or breach of trust;
31 amending s. 628.907, F.S.; revising capitalization
32 requirements for specified captive insurance
33 companies; requiring capital of specified captive
34 insurance companies to be held in certain forms;
35 requiring contributions to captive insurance companies
36 that are stock insurer corporations to be in a certain
37 form; authorizing the office to issue a captive
38 insurance company license conditioned upon certain
39 evidence relating to possession of specified capital;
40 authorizing revocation of a conditional license under
41 certain circumstances; authorizing the office to
42 prescribe certain additional capital and net asset
43 requirements; requiring such additional requirements
44 relating to capital and net assets to be held in
45 specified forms; requiring dividends or distributions
46 of capital or surplus to meet certain conditions and
47 be approved by the office; requiring certain
48 irrevocable letters of credit to meet certain
49 standards; creating s. 628.908, F.S.; prohibiting the
50 issuance of a license to specified captive insurance
51 companies unless such companies possess and maintain
52 certain levels of unimpaired surplus; authorizing the
53 office to condition issuance of a captive insurance
54 company license upon the provision of certain evidence
55 relating to the possession of a minimum amount of
56 unimpaired surplus; authorizing revocation of a
57 conditional license under certain circumstances;
58 requiring dividends or distributions of capital or

597-01562-12

2012610c1

59 surplus to meet certain conditions and be approved by
60 the office; requiring certain irrevocable letters of
61 credit to meet certain standards; amending s. 628.909,
62 F.S.; providing for applicability of certain statutory
63 provisions to specified captive insurers; creating s.
64 628.910, F.S.; providing requirements, options, and
65 conditions relating to how a captive insurance company
66 may be incorporated or organized as a business;
67 amending s. 628.911, F.S.; providing reporting
68 requirements for specified captive insurance companies
69 and captive reinsurance companies; creating s.
70 628.912, F.S.; authorizing a captive reinsurance
71 company to discount specified losses subject to
72 certain conditions; amending s. 628.913, F.S.;
73 authorizing a captive reinsurance company to apply to
74 the office for licensure to write reinsurance covering
75 property and casualty insurance or reinsurance
76 contracts; authorizing the office to allow a captive
77 reinsurance company to write reinsurance contracts
78 covering risks in any state; specifying that a captive
79 reinsurance company is subject to specified
80 requirements and must meet specified conditions to
81 conduct business in this state; creating s. 628.914,
82 F.S.; specifying requirements and conditions relating
83 to the capitalization or maintenance of reserves by a
84 captive reinsurance company; creating s. 628.9141,
85 F.S.; specifying requirements and conditions relating
86 to the incorporation of a captive reinsurance company;
87 creating s. 628.9142, F.S.; providing for the effect

597-01562-12

2012610c1

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

107
108 Be It Enacted by the Legislature of the State of Florida:

109
110 Section 1. Section 628.901, Florida Statutes, is amended to
111 read:

112 628.901 Definitions ~~"Captive insurer" defined.~~ As used in
113 ~~For the purposes of this part, the term: except as provided in~~
114 ~~s. 628.903, a "captive insurer" is a domestic insurer~~
115 ~~established under part I to insure the risks of a specific~~
116 ~~corporation or group of corporations under common ownership~~

597-01562-12

2012610c1

117 ~~owned by the corporation or corporations from which it accepts~~
118 ~~risk under a contract of insurance.~~

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

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

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

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

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

136 (4) "Captive insurance company" means a domestic insurer
137 established under this part. A captive insurance company
138 includes a pure captive insurance company, association captive
139 insurance company, special purpose captive insurance company, or
140 industrial insured captive insurance company formed and licensed
141 under this part.

142 (5) "Captive reinsurance company" means a reinsurance
143 company that is formed and licensed under this part and is
144 wholly owned by a qualifying reinsurance parent company. A
145 captive reinsurance company is a stock corporation and may not

597-01562-12

2012610c1

146 directly insure risks. A captive reinsurance company may
147 reinsure only risks.

148 (6) "Consolidated debt to total capital ratio" means the
149 ratio of the sum of all debts and hybrid capital instruments as
150 described in paragraph (a) to total capital as described in
151 paragraph (b).

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

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

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

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

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

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

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

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

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

597-01562-12

2012610c1

- 175 (a) Has gross assets in excess of \$50 million;
176 (b) Procures insurance through the use of a full-time
177 employee of the insured who acts as an insurance manager or
178 buyer or through the services of a person licensed as a property
179 and casualty insurance agent, broker, or consultant in such
180 person's state of domicile;
181 (c) Has at least 100 full-time employees; and
182 (d) Pays annual premiums of at least \$200,000 for each line
183 of insurance purchased from the industrial insured captive
184 insurer or at least \$75,000 for any line of coverage in excess
185 of at least \$25 million in the annual aggregate. The purchase of
186 umbrella or general liability coverage in excess of \$25 million
187 in the annual aggregate shall be deemed to be the purchase of a
188 single line of insurance.
- 189 (11) "Industrial insured captive insurance company" means a
190 captive insurance company that provides insurance only to the
191 industrial insureds that are its stockholders or members, and
192 affiliates thereof, or to the stockholders, and affiliates
193 thereof, of its parent corporation. An industrial insured
194 captive insurance company can also provide reinsurance to
195 insurers only on risks written by such insurers for the
196 industrial insureds who are the stockholders or members, and
197 affiliates thereof, of the industrial insured captive insurer,
198 or the stockholders, and affiliates thereof, of the parent
199 corporation of the industrial insured captive insurer.
- 200 (12) "Member organization" means any individual,
201 corporation, limited liability company, partnership, or
202 association that belongs to an association.
- 203 (13) "Office" means the Office of Insurance Regulation.

597-01562-12

2012610c1

204 (14) "Parent" means any corporation, limited liability
205 company, partnership, or individual that directly or indirectly
206 owns, controls, or holds with power to vote more than 50 percent
207 of the outstanding voting interests of a captive insurance
208 company.

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

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

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

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

225 Section 2. Section 628.905, Florida Statutes, is amended to
226 read:

227 628.905 Licensing; authority.—

228 (1) A ~~Any~~ captive insurer, if ~~when~~ permitted by its charter
229 or articles of incorporation, may apply to the office for a
230 license to do any and all insurance authorized under the
231 insurance code, ~~provide commercial property, commercial~~
232 ~~casualty, and commercial marine insurance coverage other than~~

597-01562-12

2012610c1

233 workers' compensation, health, personal motor vehicle, and
234 personal residential property and employer's liability insurance
235 coverage, except that: an industrial insured captive insurer may
236 apply for a license to provide workers' compensation and
237 employer's liability insurance as set forth in subsection (6).

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

241 (b) An association captive insurance company may not insure
242 any risks other than those of the member organizations of its
243 association and their affiliated companies. An association
244 captive insurance company shall have stamped or written upon the
245 first page of the policy or the certificate, cover note, or
246 confirmation of insurance the words: THIS INSURANCE IS ISSUED
247 PURSUANT TO THE FLORIDA CAPTIVE INSURERS LAW. PERSONS INSURED BY
248 CAPTIVE INSURANCE COMPANIES DO NOT HAVE THE PROTECTION OF THE
249 FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF
250 RECOVERY FOR THE OBLIGATION OF AN INSOLVENT INSURER. An
251 association captive insurance company shall also have stamped or
252 printed on the face of the policy in at least 14-point, boldface
253 type, the following statement: CAPTIVE INSURANCE COMPANIES'
254 POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA
255 REGULATORY AGENCY.

256 (c) An industrial insured captive insurance company may not
257 insure any risks other than those of the industrial insureds
258 that comprise the industrial insured group and their affiliated
259 companies.

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

597-01562-12

2012610c1

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

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

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

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

272 (c) Maintain its principal place of business in this state;
273 and

274 (d) Appoint a resident registered agent to accept service
275 of process and to otherwise act on its behalf in this state. In
276 the case of a captive insurance company formed as a corporation
277 or a nonprofit corporation, if the registered agent cannot with
278 reasonable diligence be found at the registered office of the
279 captive insurance company, the Chief Financial Officer of this
280 state must be an agent of the captive insurance company upon
281 whom any process, notice, or demand may be served.

282 (3) (a) Before receiving a license, a captive insurance
283 company formed as a corporation or a nonprofit corporation must
284 file with the office a certified copy of its articles of
285 incorporation and bylaws, a statement under oath of its
286 president and secretary showing its financial condition, and any
287 other statements or documents required by the office.

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

597-01562-12

2012610c1

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

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

295 3. The overall soundness of the company's plan of
296 operation;

297 4. The adequacy of the loss prevention programs of the
298 company's parent, member organizations, or industrial insureds,
299 as applicable; and

300 5. Any other factors considered relevant by the office in
301 ascertaining whether the company will be able to meet its policy
302 obligations. ~~In addition to information otherwise required by~~
303 ~~this code, each applicant captive insurer shall file with the~~
304 ~~office evidence of the adequacy of the loss prevention program~~
305 ~~of its insureds.~~

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

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

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

317 (5) If the commissioner is satisfied that the documents and
318 statements filed by the captive insurance company comply with
319 this chapter, the commissioner may grant a license authorizing

597-01562-12

2012610c1

320 the company to conduct insurance business in this state until
321 the next succeeding March 1, at which time the license may be
322 renewed. ~~An industrial insured captive insurer is subject to all~~
323 provisions of this part except as otherwise indicated.

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

348 (7) An industrial insured captive insurance company need

597-01562-12

2012610c1

349 not be incorporated in this state if it has been validly
350 incorporated under the laws of another jurisdiction.

351 Section 3. Section 628.906, Florida Statutes, is created to
352 read:

353 628.906 Application requirements; restrictions on
354 eligibility of officers and directors.—

355 (1) To evidence competence and trustworthiness of its
356 officers and directors, the application for a license to act as
357 a captive insurance company or captive reinsurance company shall
358 include, but not be limited to, background investigations,
359 biographical affidavits, and fingerprint cards for all officers
360 and directors.

361 (2) The office may deny, suspend, or revoke the license to
362 transact captive insurance or captive reinsurance in this state
363 if any person who was an officer or director of an insurer,
364 reinsurer, captive insurance company, captive reinsurance
365 company, financial institution, or financial services business
366 doing business in the United States, any state, or under the law
367 of any other country and who served in that capacity within the
368 2-year period prior to the date the insurer, reinsurer, captive
369 insurance company, captive reinsurance company, financial
370 institution, or financial services business became insolvent,
371 serves as an officer or director of a captive insurance company
372 or officer or director of a captive reinsurance company licensed
373 in this state unless the officer or director demonstrates that
374 his or her personal actions or omissions were not a contributing
375 cause to the insolvency or unless the officer or director is
376 immediately removed from the captive insurance company or
377 captive reinsurance company.

597-01562-12

2012610c1

378 (3) The office may deny, suspend, or revoke the license to
379 transact insurance or reinsurance in this state of a captive
380 insurance company or captive reinsurance company if any officer
381 or director, any stockholder that owns 10 percent or more of the
382 outstanding voting securities of the captive insurance company
383 or captive reinsurance company, or incorporator has been found
384 guilty of, or has pleaded guilty or nolo contendere to, any
385 felony or crime involving moral turpitude, including a crime of
386 dishonesty or breach of trust, punishable by imprisonment of 1
387 year or more under the law of the United States or any state
388 thereof or under the law of any other country without regard to
389 whether a judgment of conviction has been entered by the court
390 having jurisdiction in such case. However, in the case of a
391 captive insurance company or captive reinsurance company
392 operating under a subsisting license, the captive insurance
393 company or captive reinsurance company shall remove any such
394 person immediately upon discovery of the conditions set forth in
395 this subsection when applicable to such person or upon the order
396 of the office, and the failure to so act shall be grounds for
397 revocation or suspension of the captive insurance company's or
398 captive reinsurance company's license.

399 Section 4. Section 628.907, Florida Statutes, is amended to
400 read:

401 628.907 Minimum capital and net assets requirements;
402 restriction on payment of dividends surplus.-

403 (1) A ~~no~~ captive insurer may not ~~shall~~ be issued a license
404 unless it possesses and thereafter maintains unimpaired paid-in
405 capital of:

406 (a) ~~(1)~~ In the case of a pure captive insurance company, not

597-01562-12

2012610c1

407 less than \$100,000. Unimpaired paid in capital of at least
408 \$500,000; and

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

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

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

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

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

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

429 (3) Contributions to a captive insurance company
430 incorporated as a nonprofit corporation must be in the form of
431 cash, cash equivalent, or an irrevocable letter of credit issued
432 by a bank chartered by this state or a member bank of the
433 Federal Reserve System with a branch office in this state, or as
434 approved by the office.

435 (4) For purposes of this section, the office may issue a

597-01562-12

2012610c1

436 license expressly conditioned upon the captive insurance company
437 providing to the office satisfactory evidence of possession of
438 the minimum required unimpaired paid-in capital. Until this
439 evidence is provided, the captive insurance company may not
440 issue any policy, assume any liability, or otherwise provide
441 coverage. The office may revoke the conditional license if
442 satisfactory evidence of the required capital is not provided
443 within a maximum period of time, not to exceed 1 year, to be
444 established by the office at the time the conditional license is
445 issued.

446 (5) The office may prescribe additional capital or net
447 assets based upon the type, volume, and nature of insurance
448 business transacted. Contributions in connection with these
449 prescribed additional net assets or capital must be in the form
450 of:

451 (a) Cash;

452 (b) Cash equivalent;

453 (c) An irrevocable letter of credit issued by a bank
454 chartered by this state or a member bank of the Federal Reserve
455 System with a branch office in this state, or as approved by the
456 office; or

457 (d) Securities invested as provided in part II of chapter
458 625.

459 (6) A captive insurance company may not pay a dividend out
460 of, or other distribution with respect to, capital or surplus in
461 excess of the limitations set forth in this chapter without the
462 prior approval of the office. Approval of an ongoing plan for
463 the payment of dividends or other distributions must be
464 conditioned upon the retention, at the time of each payment, of

597-01562-12

2012610c1

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

467 (7) An irrevocable letter of credit that is issued by a
468 financial institution other than a bank chartered by this state
469 or a member bank of the Federal Reserve System must meet the
470 same standards as an irrevocable letter of credit that has been
471 issued by a bank chartered by this state or a member bank of the
472 Federal Reserve System.

473 Section 5. Section 628.908, Florida Statutes, is created to
474 read:

475 628.908 Surplus requirements; restriction on payment of
476 dividends.—

477 (1) The office may not issue a license to a captive
478 insurance company unless the company possesses and maintains
479 unimpaired surplus of:

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

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

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

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

488 (e) In the case of an industrial insured captive insurance
489 company incorporated as a mutual insurer, not less than
490 \$500,000.

491 (f) In the case of a special purpose captive insurance
492 company, an amount determined by the office after giving due
493 consideration to the company's business plan, feasibility study,

597-01562-12

2012610c1

494 and pro forma financial statements and projections, including
495 the nature of the risks to be insured.

496 (2) For purposes of this section, the office may issue a
497 license expressly conditioned upon the captive insurance company
498 providing to the office satisfactory evidence of possession of
499 the minimum required unimpaired surplus. Until this evidence is
500 provided, the captive insurance company may not issue any
501 policy, assume any liability, or otherwise provide coverage. The
502 office may revoke the conditional license if satisfactory
503 evidence of the required surplus is not provided within a
504 maximum period of time, not to exceed 1 year, to be established
505 by the office at the time the conditional license is issued.

506 (3) A captive insurance company may not pay a dividend out
507 of, or other distribution with respect to, capital or surplus in
508 excess of the limitations set forth in this chapter without the
509 prior approval of the office. Approval of an ongoing plan for
510 the payment of dividends or other distribution must be
511 conditioned upon the retention, at the time of each payment, of
512 capital or surplus in excess of amounts specified by, or
513 determined in accordance with formulas approved by, the office.

514 (4) An irrevocable letter of credit that is issued by a
515 financial institution other than a bank chartered by this state
516 or a member bank of the Federal Reserve System must meet the
517 same standards as an irrevocable letter of credit that has been
518 issued by a bank chartered by this state or a member bank of the
519 Federal Reserve System.

520 Section 6. Section 628.909, Florida Statutes, is amended to
521 read:

522 628.909 Applicability of other laws.—

597-01562-12

2012610c1

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

526 (2) The following provisions of the Florida Insurance Code
527 ~~shall~~ apply to captive insurers who are not industrial insured
528 captive insurers to the extent that such provisions are not
529 inconsistent with this part:

530 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
531 624.40851, 624.4095, 624.425, and 624.426.

532 (b) Chapter 625, part II.

533 (c) Chapter 626, part IX.

534 (d) Sections 627.730-627.7405, when no-fault coverage is
535 provided.

536 (e) Chapter 628.

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

540 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
541 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

544 (c) Chapter 626, part IX.

545 (d) Sections 627.730-627.7405 when no-fault coverage is
546 provided.

547 (e) Chapter 628, except for ss. 628.341, 628.351, and
548 628.6018.

549 Section 7. Section 628.910, Florida Statutes, is created to
550 read:

551 628.910 Incorporation options and requirements.-

597-01562-12

2012610c1

- 552 (1) A pure captive insurance company may be:
553 (a) Incorporated as a stock insurer with its capital
554 divided into shares and held by the stockholders; or
555 (b) Incorporated as a public benefit, mutual benefit, or
556 religious nonprofit corporation with members in accordance with
557 the Florida Not For Profit Corporation Act.
- 558 (2) An association captive insurance company or an
559 industrial insured captive insurance company may be:
560 (a) Incorporated as a stock insurer with its capital
561 divided into shares and held by the stockholders; or
562 (b) Incorporated as a mutual insurer without capital stock,
563 the governing body of which is elected by the member
564 organizations of its association.
- 565 (3) A captive insurance company may not have fewer than
566 three incorporators of whom not fewer than two must be residents
567 of this state.
- 568 (4) In the case of a captive insurance company formed as a
569 corporation or a nonprofit corporation, before the articles of
570 incorporation are transmitted to the Secretary of State, the
571 incorporators shall file the articles of incorporation in
572 triplicate with the office. The office shall promptly examine
573 the articles of incorporation. If it finds that the articles of
574 incorporation conform to law, it shall endorse its approval on
575 each of the triplicate originals of the articles of
576 incorporation, retain one copy for its files, and return the
577 remaining copies to the incorporators for filing with the
578 Department of State.
- 579 (5) The articles of incorporation, the certificate issued
580 pursuant to this section, and the organization fees required by

597-01562-12

2012610c1

581 the Florida Business Corporation Act or the Florida Not For
582 Profit Corporation Act, as applicable, must be transmitted to
583 the Secretary of State, who must record the articles of
584 incorporation and the certificate.

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

588 (7) In the case of a captive insurance company formed as a
589 corporation or a nonprofit corporation, at least one of the
590 members of the board of directors of a captive insurance company
591 incorporated in this state must be a resident of this state.

592 (8) A captive insurance company formed as a corporation or
593 a nonprofit corporation, pursuant to the provisions of this
594 chapter, has the privileges and is subject to the provisions of
595 the general corporation law, including the Florida Not For
596 Profit Corporation Act for nonprofit corporations, as
597 applicable, as well as the applicable provisions contained in
598 this chapter. If a conflict occurs between a provision of the
599 general corporation law, including the Florida Not For Profit
600 Corporation Act for nonprofit corporations, as applicable, and a
601 provision of this chapter, the latter controls. The provisions
602 of this title pertaining to mergers, consolidations,
603 conversions, mutualizations, and redomestications apply in
604 determining the procedures to be followed by a captive insurance
605 company in carrying out any of the transactions described in
606 such provisions, except that the office may waive or modify the
607 requirements for public notice and hearing in accordance with
608 rules the office may adopt addressing categories of
609 transactions. If a notice of public hearing is required, but no

597-01562-12

2012610c1

610 one requests a hearing, the office may cancel the hearing.

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

616 Section 8. Section 628.911, Florida Statutes, is amended to
617 read:

618 628.911 Reports and statements.—

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

622 (2) Annually no later than March 1, a captive insurance
623 company or a captive reinsurance company ~~insurer shall, within~~
624 ~~60 days after the end of its fiscal year and as often as the~~
625 ~~office may deem necessary,~~ submit to the office a report of its
626 financial condition verified by oath of two of its executive
627 officers. Except as provided in this part, a captive insurance
628 company or a captive reinsurance company must report using
629 generally accepted accounting principles, unless the office
630 approves the use of statutory accounting principles, with useful
631 or necessary modifications or adaptations required or approved
632 or accepted by the office for the type of insurance and kinds of
633 insurers to be reported upon, and as supplemented by additional
634 information required by the office. The Financial Services
635 Commission may adopt by rule the form in which captive insurance
636 companies ~~insurers~~ shall report.

637 (3) A captive insurance company may make written
638 application for filing the required report on a fiscal year end

597-01562-12

2012610c1

639 that is consistent with the parent company's fiscal year. If an
640 alternative reporting date is granted, the annual report is due
641 60 days after the fiscal year end.

642 Section 9. Section 628.912, Florida Statutes, is created to
643 read:

644 628.912 Discounting of loss and loss adjustment expense
645 reserves.—

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

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

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

656 Section 10. Section 628.913, Florida Statutes, is amended
657 to read:

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

660 628.913 Captive reinsurance companies.—

661 (1) A captive reinsurance company, if permitted by its
662 articles of incorporation or charter, may apply to the office
663 for a license to write reinsurance covering property and
664 casualty insurance or reinsurance contracts. A captive
665 reinsurance company authorized by the office may write
666 reinsurance contracts covering risks in any state; however, a
667 captive reinsurance company authorized by the office may not

597-01562-12

2012610c1

668 directly insure risks.

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

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

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

675 (c) Maintain its principal place of business in this state;
676 and

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

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

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

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

684 (c) Other documents required by the office.

685 (4) In addition to the information required by this
686 section, the captive reinsurance company must file with the
687 office evidence of:

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

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

692 (c) The overall soundness of the company's plan of
693 operation; and

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

597-01562-12

2012610c1

697 Section 11. Section 628.914, Florida Statutes, is created
698 to read:

699 628.914 Minimum capitalization or reserves for captive
700 reinsurance companies.-

701 (1) The office may not issue a license to a captive
702 reinsurance company unless the company possesses and maintains
703 capital or unimpaired surplus of not less than the greater of
704 \$300 million or 10 percent of reserves. The surplus may be in
705 the form of cash or securities as permitted by part II of
706 chapter 625.

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

710 (3) A captive reinsurance company may not pay a dividend
711 out of, or other distribution with respect to, capital or
712 surplus in excess of the limitations without the prior approval
713 of the office. Approval of an ongoing plan for the payment of
714 dividends or other distributions must be conditioned upon the
715 retention, at the time of each payment, of capital or surplus in
716 excess of amounts specified by, or determined in accordance with
717 formulas approved by, the office.

718 Section 12. Section 628.9141, Florida Statutes, is created
719 to read:

720 628.9141 Incorporation of a captive reinsurance company.-

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

724 (2) A captive reinsurance company may not have fewer than
725 three incorporators of whom at least two must be residents of

597-01562-12

2012610c1

726 this state.

727 (3) Before the articles of incorporation are transmitted to
728 the Secretary of State, the incorporators shall comply with all
729 the requirements of s. 628.091.

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

733 (5) At least one of the members of the board of directors
734 of a captive reinsurance company incorporated in this state must
735 be a resident of this state.

736 Section 13. Section 628.9142, Florida Statutes, is created
737 to read:

738 628.9142 Reinsurance; effect on reserves.—

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

741 (2) A captive insurance company may take credit for
742 reserves on risks or portions of risks ceded to authorized
743 insurers or reinsurers and unauthorized insurers or reinsurers
744 complying with the provisions of s. 624.610. A captive insurer
745 may not take credit for reserves on risks or portions of risks
746 ceded to an unauthorized insurer or reinsurer if the insurer or
747 reinsurer is not in compliance with s. 624.610.

748 Section 14. Section 628.918, Florida Statutes, is created
749 to read:

750 628.918 Management of assets of captive reinsurance
751 company.—At least 35 percent of the assets of a captive
752 reinsurance company must be managed by an asset manager
753 domiciled in this state.

754 Section 15. Section 628.919, Florida Statutes, is created

597-01562-12

2012610c1

755 to read:

756 628.919 Standards to ensure risk management control by
757 parent company.—The Financial Services Commission shall adopt
758 rules establishing standards to ensure that a parent or
759 affiliated company is able to exercise control of the risk
760 management function of any controlled unaffiliated business to
761 be insured by the pure captive insurance company.

762 Section 16. Section 628.920, Florida Statutes, is created
763 to read:

764 628.920 Eligibility of licensed captive insurance company
765 for certificate of authority to act as insurer.—A licensed
766 captive insurance company that meets the necessary requirements
767 of this part imposed upon an insurer must be considered for
768 issuance of a certificate of authority to act as an insurer in
769 this state.

770 Section 17. Paragraph (e) of subsection (2) of section
771 626.7491, Florida Statutes, is amended to read:

772 626.7491 Business transacted with producer controlled
773 property and casualty insurer.—

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

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

779 1. Any risk retention group as defined in:

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

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

597-01562-12

2012610c1

784 c. Section 627.942(9).

785 2. Any residual market pool or joint underwriting authority
786 or association; and

787 3. Any captive insurance company ~~insurer~~ as defined in s.
788 628.901.

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

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