

By the Committees on Budget Subcommittee on General Government Appropriations; and Banking and Insurance; and Senator Diaz de la Portilla

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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, background investigations,  
24      and fingerprint cards for all officers and directors;  
25      providing restrictions on officers and directors  
26      involved with insolvent insurers under certain  
27      conditions; providing restrictions on officers and  
28      directors that are found guilty of, or have pleaded  
29      guilty or nolo contendere to, any felony or crime

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

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59 requiring dividends or distributions of capital or  
60 surplus to meet certain conditions and be approved by  
61 the office; requiring certain irrevocable letters of  
62 credit to meet certain standards; amending s. 628.909,  
63 F.S.; providing for applicability of certain statutory  
64 provisions to specified captive insurers; creating s.  
65 628.910, F.S.; providing requirements, options, and  
66 conditions relating to how a captive insurance company  
67 may be incorporated or organized as a business;  
68 amending s. 628.911, F.S.; providing reporting  
69 requirements for specified captive insurance companies  
70 and captive reinsurance companies; creating s.  
71 628.912, F.S.; authorizing a captive reinsurance  
72 company to discount specified losses subject to  
73 certain conditions; amending s. 628.913, F.S.;

74 authorizing a captive reinsurance company to apply to  
75 the office for licensure to write reinsurance covering  
76 property and casualty insurance or reinsurance  
77 contracts; authorizing the office to allow a captive  
78 reinsurance company to write reinsurance contracts  
79 covering risks in any state; specifying that a captive  
80 reinsurance company is subject to specified  
81 requirements and must meet specified conditions in  
82 order to conduct business in this state; creating s.  
83 628.914, F.S.; specifying requirements and conditions  
84 relating to the capitalization or maintenance of  
85 reserves by a captive reinsurance company; creating s.  
86 628.9141, F.S.; specifying requirements and conditions  
87 relating to the incorporation of a captive reinsurance

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88 company; creating s. 628.9142, F.S.; providing for the  
89 effect on reserves of certain actions taken by a  
90 captive insurance company relating to providing  
91 reinsurance for specified risks; creating s. 628.918,  
92 F.S.; requiring a specified percentage of a captive  
93 reinsurance company's assets to be managed by an asset  
94 manager domiciled in this state; creating s. 628.919,  
95 F.S.; authorizing the Financial Services Commission to  
96 adopt rules establishing certain standards for control  
97 of an unaffiliated business by a parent or affiliated  
98 company relating to coverage by a pure captive  
99 insurance company; creating s. 628.920, F.S.;  
100 requiring that a licensed captive insurance company  
101 must be considered for issuance of a certificate of  
102 authority as an insurer under certain circumstances;  
103 amending s. 626.7491, F.S.; conforming a cross-  
104 reference; repealing s. 628.903, F.S., relating to the  
105 definition of the term "industrial insured captive  
106 insurer," to conform to changes made by the act;  
107 providing an effective date.  
108

109 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

124 (2) "Captive insurance company" means a domestic insurer  
125 established under this part. A captive insurance company  
126 includes a pure captive insurance company, special purpose  
127 captive insurance company, or industrial insured captive  
128 insurance company formed and licensed under this part.

129 (3) "Captive reinsurance company" means a reinsurance  
130 company that is formed and licensed under this part and is  
131 wholly owned by a qualifying reinsurance parent company. A  
132 captive reinsurance company is a stock corporation and may not  
133 directly insure risks. A captive reinsurance company may  
134 reinsure only risks.

135 (4) "Consolidated debt to total capital ratio" means the  
136 ratio of the sum of all debts and hybrid capital instruments as  
137 described in paragraph (a) to total capital as described in  
138 paragraph (b).

139 (a) Debts and hybrid capital instruments include, but are  
140 not limited to, all borrowings from banks, all senior debt, all  
141 subordinated debts, all trust preferred shares, and all other  
142 hybrid capital instruments that are not included in the  
143 determination of consolidated GAAP net worth issued and  
144 outstanding.

145 (b) Total capital consists of all debts and hybrid capital

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146 instruments as described in paragraph (a) plus owners' equity  
147 determined in accordance with GAAP for reporting to the United  
148 States Securities and Exchange Commission.

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

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

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

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

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

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

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

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

163 (b) Procures insurance through the use of a full-time  
164 employee of the insured who acts as an insurance manager or  
165 buyer or through the services of a person licensed as a property  
166 and casualty insurance agent, broker, or consultant in such  
167 person's state of domicile;

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

169 (d) Pays annual premiums of at least \$200,000 for each line  
170 of insurance purchased from the industrial insured captive  
171 insurer or at least \$75,000 for any line of coverage in excess  
172 of at least \$25 million in the annual aggregate. The purchase of  
173 umbrella or general liability coverage in excess of \$25 million  
174 in the annual aggregate shall be deemed to be the purchase of a

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175 single line of insurance.

176 (9) "Industrial insured captive insurance company" means a  
177 captive insurance company that provides insurance only to the  
178 industrial insureds that are its stockholders or members, and  
179 affiliates thereof, or to the stockholders, and affiliates  
180 thereof, of its parent corporation. An industrial insured  
181 captive insurance company can also provide reinsurance to  
182 insurers only on risks written by such insurers for the  
183 industrial insureds that are the stockholders or members, and  
184 affiliates thereof, of the industrial insured captive insurer,  
185 or the stockholders, and affiliates thereof, of the parent  
186 corporation of the industrial insured captive insurer.

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

188 (11) "Parent" means any corporation, limited liability  
189 company, partnership, or individual that directly or indirectly  
190 owns, controls, or holds with power to vote more than 50 percent  
191 of the outstanding voting interests of a captive insurance  
192 company.

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

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

202 (14) "Special purpose captive insurance company" means a  
203 captive insurance company that is formed or licensed under this

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204 chapter that does not meet the definition of any other type of  
205 captive insurance company defined in this section.

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

209 Section 2. Section 628.905, Florida Statutes, is amended to  
210 read:

211 628.905 Licensing; authority.—

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

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

226 (b) An industrial insured captive insurance company may not  
227 insure any risks other than those of the industrial insureds  
228 that comprise the industrial insured group and their affiliated  
229 companies.

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

232 (d) A captive insurance company may not accept or cede



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233 reinsurance except as provided in this part.

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

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

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

242 (c) Maintain its principal place of business in this state;  
243 and

244 (d) Appoint a resident registered agent to accept service  
245 of process and to otherwise act on its behalf in this state. In  
246 the case of a captive insurance company formed as a corporation  
247 or a nonprofit corporation, if the registered agent cannot with  
248 reasonable diligence be found at the registered office of the  
249 captive insurance company, the Chief Financial Officer of this  
250 state must be an agent of the captive insurance company upon  
251 whom any process, notice, or demand may be served.

252 (3) Before receiving a license, a captive insurance company  
253 formed as a corporation or a nonprofit corporation must file  
254 with the office a certified copy of its articles of  
255 incorporation and bylaws, a statement under oath of its  
256 president and secretary showing its financial condition, and any  
257 other statements or documents required by the office. In  
258 addition, an applicant captive insurance company must file with  
259 the office evidence of:

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

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

264       (c) The overall soundness of the company's plan of  
265 operation;

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

269       (e) Any other factors considered relevant by the office in  
270 ascertaining whether the company will be able to meet its policy  
271 obligations. In addition to information otherwise required by  
272 this code, each applicant captive insurer shall file with the  
273 office evidence of the adequacy of the loss prevention program  
274 of its insureds.

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

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

280       (b) The office may charge a fee of \$5 for any document  
281 requiring certification of authenticity or the signature of the  
282 commissioner or his or her designee. An industrial insured  
283 captive insurer need not be incorporated in this state if it has  
284 been validly incorporated under the laws of another  
285 jurisdiction.

286       (5) If the commissioner is satisfied that the documents and  
287 statements filed by the captive insurance company comply with  
288 this chapter, the commissioner may grant a license authorizing  
289 the company to conduct insurance business in this state until  
290 the next succeeding March 1, at which time the license may be

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291 ~~renewed. An industrial insured captive insurer is subject to all~~  
292 ~~provisions of this part except as otherwise indicated.~~

293 (6) Upon approval of the office, a foreign or alien captive  
294 insurance company may become a domestic captive insurance  
295 company by complying with all of the requirements of law  
296 relative to the organization and licensing of a domestic captive  
297 insurance company of the same or equivalent type in this state  
298 and by filing with the Secretary of State its charter or other  
299 organizational documents, together with any appropriate  
300 amendments that have been adopted in accordance with the laws of  
301 this state to bring the charter or other organizational  
302 documents into compliance with the laws of this state, along  
303 with a certificate of good standing issued by the office. The  
304 captive insurance company is then entitled to the necessary or  
305 appropriate certificates and licenses to continue transacting  
306 business in this state and is subject to the authority and  
307 jurisdiction of this state. In connection with this  
308 redomestication, the office may waive any requirements for  
309 public hearings. It is not necessary for a captive insurance  
310 company redomesticating into this state to merge, consolidate,  
311 transfer assets, or otherwise engage in any other  
312 reorganization, other than as specified in this section. An  
313 ~~industrial insured captive insurer may not provide workers'~~  
314 ~~compensation and employer's liability insurance except in excess~~  
315 ~~of at least \$25 million in the annual aggregate.~~

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

319 Section 3. Section 628.906, Florida Statutes, is created to

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320 read:

321 628.906 Application requirements; restrictions on  
322 eligibility of officers and directors.-

323 (1) To evidence competence and trustworthiness of its  
324 officers and directors, the application for a license to act as  
325 a captive insurance company or captive reinsurance company shall  
326 include, but not be limited to, background investigations,  
327 biographical affidavits, and fingerprint cards for all officers  
328 and directors. Fingerprints must be taken by a law enforcement  
329 agency or other entity approved by the office, be accompanied by  
330 the fingerprint processing fee specified in s. 624.501, and  
331 processed in accordance with s. 624.34.

332 (2) The office may deny, suspend, or revoke the license to  
333 transact captive insurance or captive reinsurance in this state  
334 if any person who was an officer or director of an insurer,  
335 reinsurer, captive insurance company, captive reinsurance  
336 company, financial institution, or financial services business  
337 doing business in the United States, any state, or under the law  
338 of any other country and who served in that capacity within the  
339 2-year period prior to the date the insurer, reinsurer, captive  
340 insurance company, captive reinsurance company, financial  
341 institution, or financial services business became insolvent,  
342 serves as an officer or director of a captive insurance company  
343 or officer or director of a captive reinsurance company licensed  
344 in this state unless the officer or director demonstrates that  
345 his or her personal actions or omissions were not a contributing  
346 cause to the insolvency or unless the officer or director is  
347 immediately removed from the captive insurance company or  
348 captive reinsurance company.

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349       (3) The office may deny, suspend, or revoke the license to  
350 transact insurance or reinsurance in this state of a captive  
351 insurance company or captive reinsurance company if any officer  
352 or director, any stockholder that owns 10 percent or more of the  
353 outstanding voting securities of the captive insurance company  
354 or captive reinsurance company, or incorporator has been found  
355 guilty of, or has pleaded guilty or nolo contendere to, any  
356 felony or crime involving moral turpitude, including a crime of  
357 dishonesty or breach of trust, punishable by imprisonment of 1  
358 year or more under the law of the United States or any state  
359 thereof or under the law of any other country without regard to  
360 whether a judgment of conviction has been entered by the court  
361 having jurisdiction in such case. However, in the case of a  
362 captive insurance company or captive reinsurance company  
363 operating under a subsisting license, the captive insurance  
364 company or captive reinsurance company shall remove any such  
365 person immediately upon discovery of the conditions set forth in  
366 this subsection when applicable to such person or upon the order  
367 of the office, and the failure to so act shall be grounds for  
368 revocation or suspension of the captive insurance company's or  
369 captive reinsurance company's license.

370       Section 4. Section 628.907, Florida Statutes, is amended to  
371 read:

372       628.907 Minimum capital and net assets requirements;  
373 restriction on payment of dividends ~~surplus.~~

374       (1) A ~~no~~ captive insurer may not ~~shall~~ be issued a license  
375 unless it possesses and thereafter maintains:

376       ~~(1)~~ unimpaired paid-in capital of:

377       (a) In the case of a pure captive insurance company, at

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378 least \$100,000. ~~\$500,000;~~ and

379 (b) In the case of an industrial insured captive insurance  
380 company incorporated as a stock insurer, at least \$200,000.

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

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

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

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

396 (3) Contributions to a captive insurance company  
397 incorporated as a nonprofit corporation must be in the form of  
398 cash, cash equivalent, or an irrevocable letter of credit issued  
399 by a bank chartered by this state or a member bank of the  
400 Federal Reserve System with a branch office in this state, or as  
401 approved by the office.

402 (4) For purposes of this section, the office may issue a  
403 license expressly conditioned upon the captive insurance company  
404 providing to the office satisfactory evidence of possession of  
405 the minimum required unimpaired paid-in capital. Until this  
406 evidence is provided, the captive insurance company may not

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407 issue any policy, assume any liability, or otherwise provide  
408 coverage. The office may revoke the conditional license if  
409 satisfactory evidence of the required capital is not provided  
410 within a maximum period of time, not to exceed 1 year, to be  
411 established by the office at the time the conditional license is  
412 issued.

413 (5) The office may prescribe additional capital or net  
414 assets based upon the type, volume, and nature of insurance  
415 business transacted. Contributions in connection with these  
416 prescribed additional net assets or capital must be in the form  
417 of:

418 (a) Cash;

419 (b) Cash equivalent;

420 (c) An irrevocable letter of credit issued by a bank  
421 chartered by this state or a member bank of the Federal Reserve  
422 System with a branch office in this state, or as approved by the  
423 office; or

424 (d) Securities invested as provided in part II of chapter  
425 625.

426 (6) A captive insurance company may not pay a dividend out  
427 of, or other distribution with respect to, capital or surplus in  
428 excess of the limitations set forth in this chapter without the  
429 prior approval of the office. Approval of an ongoing plan for  
430 the payment of dividends or other distributions must be  
431 conditioned upon the retention, at the time of each payment, of  
432 capital or surplus in excess of amounts specified by, or  
433 determined in accordance with formulas approved by, the office.

434 (7) An irrevocable letter of credit that is issued by a  
435 financial institution other than a bank chartered by this state

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436 or a member bank of the Federal Reserve System must meet the  
437 same standards as an irrevocable letter of credit that has been  
438 issued by a bank chartered by this state or a member bank of the  
439 Federal Reserve System.

440 Section 5. Section 628.908, Florida Statutes, is created to  
441 read:

442 628.908 Surplus requirements; restriction on payment of  
443 dividends.—

444 (1) The office may not issue a license to a captive  
445 insurance company unless the company possesses and maintains  
446 unimpaired surplus of:

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

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

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

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

458 (2) For purposes of this section, the office may issue a  
459 license expressly conditioned upon the captive insurance company  
460 providing to the office satisfactory evidence of possession of  
461 the minimum required unimpaired surplus. Until this evidence is  
462 provided, the captive insurance company may not issue any  
463 policy, assume any liability, or otherwise provide coverage. The  
464 office may revoke the conditional license if satisfactory



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465 evidence of the required surplus is not provided within a  
466 maximum period of time, not to exceed 1 year, to be established  
467 by the office at the time the conditional license is issued.

468 (3) A captive insurance company may not pay a dividend out  
469 of, or other distribution with respect to, capital or surplus in  
470 excess of the limitations set forth in this chapter without the  
471 prior approval of the office. Approval of an ongoing plan for  
472 the payment of dividends or other distribution must be  
473 conditioned upon the retention, at the time of each payment, of  
474 capital or surplus in excess of amounts specified by, or  
475 determined in accordance with formulas approved by, the office.

476 (4) An irrevocable letter of credit that is issued by a  
477 financial institution other than a bank chartered by this state  
478 or a member bank of the Federal Reserve System must meet the  
479 same standards as an irrevocable letter of credit that has been  
480 issued by a bank chartered by this state or a member bank of the  
481 Federal Reserve System.

482 Section 6. Section 628.909, Florida Statutes, is amended to  
483 read:

484 628.909 Applicability of other laws.—

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

488 (2) The following provisions of the Florida Insurance Code  
489 ~~shall~~ apply to captive insurers who are not industrial insured  
490 captive insurers to the extent that such provisions are not  
491 inconsistent with this part:

492 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,  
493 624.40851, 624.4095, 624.425, and 624.426.

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494 (b) Chapter 625, part II.

495 (c) Chapter 626, part IX.

496 (d) Sections 627.730-627.7405, when no-fault coverage is  
497 provided.

498 (e) Chapter 628.

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

502 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,  
503 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

506 (c) Chapter 626, part IX.

507 (d) Sections 627.730-627.7405 when no-fault coverage is  
508 provided.

509 (e) Chapter 628, except for ss. 628.341, 628.351, and  
510 628.6018.

511 Section 7. Section 628.910, Florida Statutes, is created to  
512 read:

513 628.910 Incorporation options and requirements.-

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

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

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

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

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

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

525 (3) A captive insurance company may not have fewer than  
526 three incorporators of whom not fewer than two must be residents  
527 of this state.

528 (4) In the case of a captive insurance company formed as a  
529 corporation or a nonprofit corporation, before the articles of  
530 incorporation are transmitted to the Secretary of State, the  
531 incorporators shall file the articles of incorporation in  
532 triplicate with the office. The office shall promptly examine  
533 the articles of incorporation. If it finds that the articles of  
534 incorporation conform to law, it shall endorse its approval on  
535 each of the triplicate originals of the articles of  
536 incorporation, retain one copy for its files, and return the  
537 remaining copies to the incorporators for filing with the  
538 Department of State.

539 (5) The articles of incorporation, the certificate issued  
540 pursuant to this section, and the organization fees required by  
541 the Florida Business Corporation Act or the Florida Not For  
542 Profit Corporation Act, as applicable, must be transmitted to  
543 the Secretary of State, who must record the articles of  
544 incorporation and the certificate.

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

548 (7) In the case of a captive insurance company formed as a  
549 corporation or a nonprofit corporation, at least one of the  
550 members of the board of directors of a captive insurance company  
551 incorporated in this state must be a resident of this state.

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552       (8) A captive insurance company formed as a corporation or  
553 a nonprofit corporation, pursuant to the provisions of this  
554 chapter, has the privileges and is subject to the provisions of  
555 the general corporation law, including the Florida Not For  
556 Profit Corporation Act for nonprofit corporations, as  
557 applicable, as well as the applicable provisions contained in  
558 this chapter. If a conflict occurs between a provision of the  
559 general corporation law, including the Florida Not For Profit  
560 Corporation Act for nonprofit corporations, as applicable, and a  
561 provision of this chapter, the latter controls. The provisions  
562 of this title pertaining to mergers, consolidations,  
563 conversions, mutualizations, and redomestications apply in  
564 determining the procedures to be followed by a captive insurance  
565 company in carrying out any of the transactions described in  
566 such provisions, except that the office may waive or modify the  
567 requirements for public notice and hearing in accordance with  
568 rules the office may adopt addressing categories of  
569 transactions. If a notice of public hearing is required, but no  
570 one requests a hearing, the office may cancel the hearing.

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

576       Section 8. Section 628.911, Florida Statutes, is amended to  
577 read:

578       628.911 Reports and statements.—

579       (1) A captive insurance company may ~~insurer shall~~ not be  
580 required to make any annual report except as provided in this

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581 part section.

582       (2) Annually no later than March 1, a captive insurance  
583 company or a captive reinsurance company ~~insurer~~ shall, ~~within~~  
584 60 days after the end of its fiscal year and as often as the  
585 office may deem necessary, submit to the office a report of its  
586 financial condition verified by oath of two of its executive  
587 officers. Except as provided in this part, a captive insurance  
588 company or a captive reinsurance company must report using  
589 generally accepted accounting principles, unless the office  
590 approves the use of statutory accounting principles, with useful  
591 or necessary modifications or adaptations required or approved  
592 or accepted by the office for the type of insurance and kinds of  
593 insurers to be reported upon, and as supplemented by additional  
594 information required by the office. The Financial Services  
595 Commission may adopt by rule the form in which captive insurance  
596 companies ~~insurers~~ shall report.

597       (3) A captive insurance company may make written  
598 application for filing the required report on a fiscal year end  
599 that is consistent with the parent company's fiscal year. If an  
600 alternative reporting date is granted, the annual report is due  
601 60 days after the fiscal year end.

602       Section 9. Section 628.912, Florida Statutes, is created to  
603 read:

604       628.912 Discounting of loss and loss adjustment expense  
605 reserves.—

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

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

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

616       Section 10. Section 628.913, Florida Statutes, is amended  
617 to read:

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

620       628.913 Captive reinsurance companies.—

621       (1) A captive reinsurance company, if permitted by its  
622 articles of incorporation or charter, may apply to the office  
623 for a license to write reinsurance covering property and  
624 casualty insurance or reinsurance contracts. A captive  
625 reinsurance company authorized by the office may write  
626 reinsurance contracts covering risks in any state; however, a  
627 captive reinsurance company authorized by the office may not  
628 directly insure risks.

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

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

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

635       (c) Maintain its principal place of business in this state;  
636 and

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

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

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

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

644 (c) Other documents required by the office.

645 (4) In addition to the information required by this  
646 section, the captive reinsurance company must file with the  
647 office evidence of:

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

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

652 (c) The overall soundness of the company's plan of  
653 operation; and

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

657 Section 11. Section 628.914, Florida Statutes, is created  
658 to read:

659 628.914 Minimum capitalization or reserves for captive  
660 reinsurance companies.-

661 (1) The office may not issue a license to a captive  
662 reinsurance company unless the company possesses and maintains  
663 capital or unimpaired surplus of at least the greater of \$300  
664 million or 10 percent of reserves. The surplus may be in the  
665 form of cash or securities as permitted by part II of chapter  
666 625.

667 (2) The office may prescribe additional capital or surplus

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668 based upon the type, volume, and nature of the insurance  
669 business transacted.

670 (3) A captive reinsurance company may not pay a dividend  
671 out of, or other distribution with respect to, capital or  
672 surplus in excess of the limitations without the prior approval  
673 of the office. Approval of an ongoing plan for the payment of  
674 dividends or other distributions must be conditioned upon the  
675 retention, at the time of each payment, of capital or surplus in  
676 excess of amounts specified by, or determined in accordance with  
677 formulas approved by, the office.

678 Section 12. Section 628.9141, Florida Statutes, is created  
679 to read:

680 628.9141 Incorporation of a captive reinsurance company.—

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

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

687 (3) Before the articles of incorporation are transmitted to  
688 the Secretary of State, the incorporators must comply with all  
689 the requirements of s. 628.091.

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

693 (5) At least one of the members of the board of directors  
694 of a captive reinsurance company incorporated in this state must  
695 be a resident of this state.

696 Section 13. Section 628.9142, Florida Statutes, is created



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697 to read:

698 628.9142 Reinsurance; effect on reserves.-699 (1) A captive insurance company may provide reinsurance, as  
700 authorized in this part, on risks ceded by any other insurer.701 (2) A captive insurance company may take credit for  
702 reserves on risks or portions of risks ceded to authorized  
703 insurers or reinsurers and unauthorized insurers or reinsurers  
704 complying with s. 624.610. A captive insurer may not take credit  
705 for reserves on risks or portions of risks ceded to an  
706 unauthorized insurer or reinsurer if the insurer or reinsurer is  
707 not in compliance with s. 624.610.708 Section 14. Section 628.918, Florida Statutes, is created  
709 to read:710 628.918 Management of assets of captive reinsurance  
711 company.-At least 35 percent of the assets of a captive  
712 reinsurance company must be managed by an asset manager  
713 domiciled in this state.714 Section 15. Section 628.919, Florida Statutes, is created  
715 to read:716 628.919 Standards to ensure risk management control by  
717 parent company.-The Financial Services Commission shall adopt  
718 rules establishing standards to ensure that a parent or  
719 affiliated company is able to exercise control of the risk  
720 management function of any controlled unaffiliated business to  
721 be insured by the pure captive insurance company.722 Section 16. Section 628.920, Florida Statutes, is created  
723 to read:724 628.920 Eligibility of licensed captive insurance company  
725 for certificate of authority to act as insurer.-A licensed

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726 captive insurance company that meets the necessary requirements  
727 of this part imposed upon an insurer must be considered for  
728 issuance of a certificate of authority to act as an insurer in  
729 this state.

730 Section 17. Paragraph (e) of subsection (2) of section  
731 626.7491, Florida Statutes, is amended to read:

732 626.7491 Business transacted with producer controlled  
733 property and casualty insurer.—

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

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

739 1. Any risk retention group as defined in:

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

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

744 c. Section 627.942(9).

745 2. Any residual market pool or joint underwriting authority  
746 or association; and

747 3. Any captive insurance company ~~insurer~~ as defined in s.  
748 628.901.

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

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