

1 A bill to be entitled  
2 An act relating to captive insurance; amending s.  
3 628.901, F.S.; revising definitions and providing  
4 definitions; amending s. 628.905, F.S.; revising  
5 terminology; providing that protected cell subsidiary  
6 companies are limited to only insuring or reinsuring  
7 certain risks through protected cells; authorizing  
8 industrial insured captive insurance companies or  
9 protected cell subsidiary companies to insure or  
10 reinsure certain risks with respect to excess workers  
11 compensation and employer's liability insurance and  
12 excess life and health insurance; limiting an  
13 industrial insured captive insurance company from  
14 providing coverage with respect to such excess workers  
15 compensation and employer's liability insurance under  
16 certain circumstances; amending s. 628.907, F.S.;  
17 revising terminology; requiring a protected cell  
18 subsidiary company to have a minimum amount of  
19 unimpaired paid-in capital in order to be issued a  
20 license; amending s. 628.908, F.S.; requiring a  
21 protected cell subsidiary company to have a minimum  
22 amount of unimpaired surplus in order to be issued a  
23 license; amending s. 628.909, F.S.; providing that  
24 specified provisions of the insurance code apply, or  
25 do not apply, to captive insurance companies,  
26 industrial insured captive insurance companies, or  
27 protected cell subsidiary companies; amending s.  
28 628.910, F.S.; requiring a protected cell subsidiary

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29 | company to be incorporated in a specified manner;  
30 | amending s. 628.9142, F.S.; conforming provisions;  
31 | authorizing a ceding captive insurance company to  
32 | reinsure certain risks of a protected cell subsidiary  
33 | company with respect to protected cells under  
34 | specified circumstances; authorizing credit for  
35 | reserves on certain risks assumed through reinsurance;  
36 | amending s. 628.915, F.S.; conforming provisions;  
37 | deleting a provision prohibiting industrial insured  
38 | captive insurers from joining or contributing to any  
39 | joint underwriting association or guaranty fund;  
40 | deleting a provision prohibiting such insurers and  
41 | specified others from receiving certain benefits from  
42 | such associations or guaranty funds; amending s.  
43 | 628.917, F.S.; conforming provisions; creating s.  
44 | 628.921, F.S.; authorizing industrial insured captive  
45 | insurance companies to form protected cell subsidiary  
46 | companies; authorizing protected cell subsidiary  
47 | companies to establish protected cells; providing  
48 | conditions and requirements with respect to the  
49 | formation of such subsidiaries, the establishment of  
50 | such cells, and the conduct of operations of such  
51 | entities; providing an effective date.

52 |  
53 | Be It Enacted by the Legislature of the State of Florida:

54 |  
55 | Section 1. Section 628.901, Florida Statutes, is amended  
56 | to read:

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57 |           628.901 Definitions.—As used in this part, the term:

58 |           (1) "Affiliated company" means a company in the same  
59 | corporate system as a parent, an industrial insured, or a member  
60 | organization by virtue of common ownership, control, operation,  
61 | or management.

62 |           (2) "Captive insurance company" means a domestic insurer  
63 | established under this part or an industrial insured captive  
64 | insurance company licensed under this part. A captive insurance  
65 | company includes a pure captive insurance company, special  
66 | purpose captive insurance company, ~~or~~ industrial insured captive  
67 | insurance company, or protected cell subsidiary company formed  
68 | and licensed under this part.

69 |           (3) "Captive reinsurance company" means a reinsurance  
70 | company that is formed and licensed under this part and is  
71 | wholly owned by a qualifying reinsurance parent company. A  
72 | captive reinsurance company is a stock corporation and may not  
73 | directly insure risks. A captive reinsurance company may  
74 | reinsure only risks.

75 |           (4) "Consolidated debt to total capital ratio" means the  
76 | ratio of the sum of all debts and hybrid capital instruments as  
77 | described in paragraph (a) to total capital as described in  
78 | paragraph (b).

79 |           (a) Debts and hybrid capital instruments include, but are  
80 | not limited to, all borrowings from banks, all senior debt, all  
81 | subordinated debts, all trust preferred shares, and all other  
82 | hybrid capital instruments that are not included in the  
83 | determination of consolidated GAAP net worth issued and  
84 | outstanding.

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

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

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

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

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

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

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

101 (8) "Incorporated protected cell" means a company formed  
 102 in accordance with s. 628.921(2).

103 (9)~~(8)~~ "Industrial insured" means an insured that:

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

105 (b) Procures insurance through the use of a full-time  
 106 employee of the insured who acts as an insurance manager or  
 107 buyer or through the services of a person licensed as a property  
 108 and casualty insurance agent, broker, or consultant in such  
 109 person's state of domicile;

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

111 (d) Pays annual premiums of at least \$200,000 for each  
 112 line of insurance purchased from the industrial insured captive

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113 | insurance company insurer or at least \$75,000 for any line of  
114 | coverage in excess of at least \$25 million in the annual  
115 | aggregate. The purchase of umbrella or general liability  
116 | coverage in excess of \$25 million in the annual aggregate shall  
117 | be deemed to be the purchase of a single line of insurance.

118 | ~~(10)-(9)~~ "Industrial insured captive insurance company"  
119 | means a ~~captive insurance~~ company that provides insurance only;

120 | (a) To the industrial insureds that are its stockholders  
121 | or members, and affiliates thereof; ~~or~~

122 | (b) To the stockholders, and affiliates thereof, of its  
123 | parent corporation;

124 | (c) A controlled unaffiliated business; or

125 | (d) Any combination thereof.

126 |  
127 | An industrial insured captive insurance company can also provide  
128 | reinsurance to insurers only on risks written by such insurers  
129 | for the industrial insureds that are the stockholders or  
130 | members, and affiliates thereof, of the industrial insured  
131 | captive insurer, or the stockholders, and affiliates thereof, of  
132 | the parent corporation of the industrial insured captive  
133 | insurer.

134 | ~~(11)-(10)~~ "Office" means the Office of Insurance  
135 | Regulation.

136 | ~~(12)-(11)~~ "Parent" means any corporation, limited liability  
137 | company, partnership, or individual that directly or indirectly  
138 | owns, controls, or holds with power to vote more than 50 percent  
139 | of the outstanding voting interests of a captive insurance  
140 | company.

141        (13) "Participant" means an industrial insured or its  
 142 affiliated company or companies, or its controlled affiliate  
 143 business, that are insured by a protected cell subsidiary  
 144 company, where the losses of it are limited to the assets of one  
 145 or more protected cells.

146        (14) "Participant agreement" means a contract by which one  
 147 or more participants and a protected cell subsidiary company  
 148 agree on the terms governing the operation of a protected cell  
 149 and the insuring arrangement with the protected cell subsidiary  
 150 company.

151        (15) "Protected cell" means a separate account established  
 152 and maintained by a protected cell subsidiary company for one or  
 153 more participants in accordance with the participant agreement  
 154 and includes an "incorporated protected cell" as defined in  
 155 subsection (8).

156        (16) "Protected cell subsidiary company" means a company  
 157 that has as its sole stockholder an industrial insured captive  
 158 insurance company and only insures or reinsures risks through  
 159 protected cells in accordance with s. 628.921.

160        (17)~~(12)~~ "Pure captive insurance company" means a company  
 161 that insures risks of its parent, affiliated companies,  
 162 controlled unaffiliated businesses, or a combination thereof.

163        (18)~~(13)~~ "Qualifying reinsurer parent company" means a  
 164 reinsurer which currently holds a certificate of authority,  
 165 letter of eligibility or is an accredited or a satisfactory non-  
 166 approved reinsurer in this state possessing a consolidated GAAP  
 167 net worth of at least \$500 million and a consolidated debt to  
 168 total capital ratio of not greater than 0.50.

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169        ~~(19)-(14)~~ "Special purpose captive insurance company" means  
170 a ~~captive insurance~~ company that is formed or licensed under  
171 this chapter that does not meet the definition of any other type  
172 of captive insurance company defined in this section.

173        ~~(20)-(15)~~ "Treasury rates" means the United States Treasury  
174 STRIPS asked yield as published in the Wall Street Journal as of  
175 a balance sheet date.

176        Section 2. Subsections (1) and (2) of section 628.905,  
177 Florida Statutes, are amended to read:

178        628.905 Licensing; authority.—

179        (1) A captive insurance company insurer, if permitted by  
180 its charter or articles of incorporation, may apply to the  
181 office for a license to do any and all insurance authorized  
182 under the insurance code, other than workers' compensation,  
183 subject to paragraph (f), and employer's liability, life,  
184 health, personal motor vehicle, and personal residential  
185 property insurance, except that:

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

189        (b) An industrial insured captive insurance company may  
190 not insure any risks other than those of the industrial insureds  
191 that comprise the industrial insured group or its stockholders,  
192 ~~and~~ their affiliated companies, stockholders or affiliates of  
193 its parent corporation, controlled unaffiliated businesses, or  
194 any combination thereof.

195        (c) A protected cell subsidiary company may insure or  
196 reinsure risks only through protected cells in accordance with

197 s. 628.921 and may not insure or reinsure any risks other than  
 198 those of the industrial insureds and their affiliated companies,  
 199 who are the stockholders or members of the industrial insured  
 200 captive insurance company that is the sole stockholder of such  
 201 protected cell subsidiary company, controlled unaffiliated  
 202 businesses, or a combination thereof.

203 (d)~~(e)~~ A special purpose captive insurance company may  
 204 insure only the risks of its parent.

205 (e)~~(d)~~ A captive insurance company may not accept or cede  
 206 reinsurance except as provided in this part.

207 (f)1. This section is not intended to preclude an  
 208 industrial insured captive insurance company or a protected cell  
 209 subsidiary company, as determined by the industrial insured and  
 210 its affiliated companies, from insuring or reinsuring the  
 211 following risks if such risks relate to benefits provided by  
 212 such industrial insured or its affiliated companies to employees  
 213 or retired employees:

214 a. The excess workers compensation and employer's  
 215 liability risks of an industrial insured and its affiliated  
 216 companies; or

217 b. The excess life and health risks of an industrial  
 218 insured and its affiliated companies.

219 2. An industrial insured captive insurance company may not  
 220 provide workers' compensation and employer's liability insurance  
 221 as authorized under sub-subparagraph a., except in excess of at  
 222 least \$25 million in the annual aggregate.

223 (2) To conduct insurance business in this state, a captive  
 224 insurance company ~~insurer~~ must:



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

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

229 (c) Maintain its principal place of business in this  
 230 state; and

231 (d) Appoint a resident registered agent to accept service  
 232 of process and to otherwise act on its behalf in this state. In  
 233 the case of a captive insurance company formed as a corporation  
 234 or a nonprofit corporation, if the registered agent cannot with  
 235 reasonable diligence be found at the registered office of the  
 236 captive insurance company, the Chief Financial Officer of this  
 237 state must be an agent of the captive insurance company upon  
 238 whom any process, notice, or demand may be served.

239 Section 3. Subsection (1) of section 628.907, Florida  
 240 Statutes, is amended to read:

241 628.907 Minimum capital and net assets requirements;  
 242 restriction on payment of dividends.—

243 (1) A captive insurance company ~~insurer~~ may not be issued  
 244 a license unless it possesses and thereafter maintains  
 245 unimpaired paid-in capital of:

246 (a) In the case of a pure captive insurance company, at  
 247 least \$100,000.

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

250 (c) In the case of a protected cell subsidiary company, at  
 251 least \$200,000.

252 (d)-(e) In the case of a special purpose captive insurance

253 | company, an amount determined by the office after giving due  
 254 | consideration to the company's business plan, feasibility study,  
 255 | and pro forma financial statements and projections, including  
 256 | the nature of the risks to be insured.

257 | Section 4. Subsection (1) of section 628.908, Florida  
 258 | Statutes, is amended to read:

259 | 628.908 Surplus requirements; restriction on payment of  
 260 | dividends.—

261 | (1) The office may not issue a license to a captive  
 262 | insurance company unless the company possesses and maintains  
 263 | unimpaired surplus of:

264 | (a) In the case of a pure captive insurance company, at  
 265 | least \$150,000.

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

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

270 | (d) In the case of a protected cell subsidiary company, at  
 271 | least \$300,000.

272 | (e)~~(d)~~ In the case of a special purpose captive insurance  
 273 | company, an amount determined by the office after giving due  
 274 | consideration to the company's business plan, feasibility study,  
 275 | and pro forma financial statements and projections, including  
 276 | the nature of the risks to be insured.

277 | Section 5. Section 628.909, Florida Statutes, is amended  
 278 | to read:

279 | 628.909 Applicability of other laws.—

280 | (1) The Florida Insurance Code does not apply to captive

281 | insurance companies ~~insurers~~ or industrial insured captive  
 282 | insurers except as provided in this part and subsections (2) and  
 283 | (3).

284 |         (2) The following provisions of the Florida Insurance Code  
 285 | apply to captive insurance companies ~~insurers~~ who are not  
 286 | industrial insured captive insurance companies or protected cell  
 287 | subsidiary companies ~~insurers~~ to the extent that such provisions  
 288 | are not inconsistent with this part:

289 |             (a) Chapter 624, except for ss. 624.407, 624.408,  
 290 | 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

291 |             (b) Chapter 625, part II.

292 |             (c) Chapter 626, part IX.

293 |             (d) Sections 627.730-627.7405, when no-fault coverage is  
 294 | provided.

295 |             (e) Chapter 628.

296 |         (3) The following provisions of the Florida Insurance Code  
 297 | apply to industrial insured captive insurance companies and  
 298 | protected cell subsidiary companies ~~insurers~~ to the extent that  
 299 | such provisions are not inconsistent with this part:

300 |             (a) Chapter 624, except for ss. 624.407, 624.408,  
 301 | 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

302 |             (b) Chapter 625, part II, if the industrial insured  
 303 | captive insurance company ~~insurer~~ is incorporated in this state.

304 |             (c) Chapter 626, part IX.

305 |             (d) Sections 627.730-627.7405 when no-fault coverage is  
 306 | provided.

307 |             (e) Chapter 628, except for ss. 628.341, 628.351, and  
 308 | 628.6018.

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309 Section 6. Subsections (3) through (9) of section 628.910,  
310 Florida Statutes, are renumbered as subsections (4) through  
311 (10), respectively, and subsection (3) is added to that section,  
312 to read:

313 628.910 Incorporation options and requirements.—

314 (3) A protected cell subsidiary company must be  
315 incorporated as a stock insurer with its capital divided into  
316 shares that are held by its industrial insured captive insurance  
317 company parent.

318 Section 7. Section 628.9142, Florida Statutes, is amended  
319 to read:

320 628.9142 Reinsurance; effect on reserves.—

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

323 (2) A captive insurance company may take credit for  
324 reserves on risks or portions of risks ceded to authorized  
325 insurers or reinsurers and unauthorized insurers or reinsurers  
326 complying with s. 624.610. A captive insurance company insurer  
327 may not take credit for reserves on risks or portions of risks  
328 ceded to an unauthorized insurer or reinsurer if the insurer or  
329 reinsurer is not in compliance with s. 624.610.

330 (3) In addition to the authority granted under subsection  
331 (2), a ceding captive insurance company may reinsure all or any  
332 part of any particular risk or class of risks with an assuming  
333 insurer approved by the office for the limited purpose of  
334 assuming risk from a protected cell subsidiary company with  
335 respect to one or more protected cells. Subject to the other  
336 requirements of this code, credit may be taken for reserves on

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337 | risks assumed through reinsurance approved under this  
338 | subsection.

339 | Section 8. Section 628.915, Florida Statutes, is amended  
340 | to read:

341 | 628.915 Exemption from compulsory association.—

342 | ~~(1)~~ No captive insurance company insurer shall be  
343 | permitted to join or contribute financially to any joint  
344 | underwriting association or guaranty fund in this state; nor  
345 | shall any captive insurance company insurer, its insured, or its  
346 | parent or any affiliated company receive any benefit from any  
347 | such joint underwriting association or guaranty fund for claims  
348 | arising out of the operations of such captive insurance company  
349 | insurer.

350 | ~~(2) No industrial insured captive insurer shall be~~  
351 | ~~permitted to join or contribute financially to any joint~~  
352 | ~~underwriting association or guaranty fund in this state; nor~~  
353 | ~~shall any industrial insured captive insurer, its industrial~~  
354 | ~~insured, or its parent or any affiliated company receive any~~  
355 | ~~benefit from any such joint underwriting association or guaranty~~  
356 | ~~fund for claims arising out of the operations of such industrial~~  
357 | ~~insured captive insurer.~~

358 | Section 9. Section 628.917, Florida Statutes, is amended  
359 | to read:

360 | 628.917 Insolvency and liquidation.—In the event that a  
361 | captive insurance company insurer is insolvent as defined in  
362 | chapter 631, the office shall liquidate the captive insurance  
363 | company insurer pursuant to the provisions of part I of chapter  
364 | 631; except that the office shall make no attempt to

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365 rehabilitate such insurer.

366 Section 10. Section 628.921, Florida Statutes, is created  
367 to read:

368 628.921 Formation of protected cell subsidiary company;  
369 establishing protected cells.—An industrial insured captive  
370 insurance company may form a protected cell subsidiary company  
371 under this part. A protected cell subsidiary company that is  
372 formed or licensed under this part may establish and maintain  
373 one or more protected cells to insure or reinsure risks of one  
374 or more participants or affiliated companies of such  
375 participants, subject to the following conditions:

376 (1) A protected cell of a protected cell subsidiary  
377 company may not be established or terminated without the  
378 commissioner's prior written approval, and no participant may be  
379 added to or withdrawn from any existing protected cell without  
380 the commissioner's prior written approval.

381 (2) The business plan of a protected cell subsidiary  
382 company must include a description of its operations with  
383 respect to each protected cell. Once approved for one kind of  
384 insurance authorized under the insurance code, the protected  
385 cell subsidiary company is authorized to write such kind of  
386 insurance with respect to any of its protected cells, provided  
387 the establishment of such protected cells has previously been  
388 approved by the commissioner.

389 (3) Each protected cell must be accounted for separately  
390 on the books and records of the protected cell subsidiary  
391 company to reflect the financial condition and results of  
392 operations of the protected cell, net income or loss, dividends

393 or other distributions to participants and their affiliated  
394 companies, and other factors that may be provided in the  
395 participant agreement or required by the commissioner.

396 (4) The assets of a protected cell may not be chargeable  
397 with liabilities arising out of any other insurance business the  
398 protected cell subsidiary company may conduct, except pursuant  
399 to a written agreement approved by the commissioner between the  
400 protected cell subsidiary company and the participants of each  
401 protected cell being charged with such liabilities.

402 (5) No insurance policy may be issued or reinsurance  
403 assumed with respect to a protected cell unless such insurance  
404 policy or reinsurance agreement contains terms providing that:

405 (a) The amount of all claims by insureds or reinsureds of  
406 the protected cell may not exceed the aggregate of the funds  
407 designated by the protected cell subsidiary company as being  
408 funds held with respect to such protected cell;

409 (b) In the event that the funds held by the protected cell  
410 subsidiary company are insufficient to pay all such claims, the  
411 claims must be reduced, as provided in the insurance policy or  
412 reinsurance agreement, or if no such provision is made for  
413 reduction in claim amounts, in the sole discretion of the board  
414 of directors of the protected cell subsidiary company; and

415 (c) A claim may not be made under such insurance policy or  
416 reinsurance agreement on any funds held by the protected cell  
417 subsidiary company other than those funds held with respect to  
418 the protected cell under which the insurance policy was issued  
419 or reinsurance assumed.

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421 Any insurance policy issued or reinsurance assumed which does  
422 not contain these provisions must nevertheless be deemed to have  
423 such provisions and the reduction in claim amounts referred to  
424 in paragraph (b) must be made on an equitable basis in the sole  
425 discretion of the board of directors of the protected cell  
426 subsidiary company.

427 (6) Sale, exchange, or other transfer of assets may not be  
428 made by the protected cell subsidiary company between or among  
429 any of its protected cells without the consent of the protected  
430 cells.

431 (7) Sale, exchange, transfer of assets, dividend, or  
432 distribution may not be made from a protected cell to a  
433 shareholder or a participant of the protected cell subsidiary  
434 company without the commissioner's approval, nor may the  
435 approval be given if the sale, exchange, transfer, dividend, or  
436 distribution would result in insolvency or impairment with  
437 respect to a protected cell.

438 (8) A protected cell subsidiary company must notify the  
439 commissioner in writing within 10 business days after a  
440 protected cell becomes insolvent or otherwise unable to meet its  
441 claim or expense obligations.

442 (9) With respect to incorporated protected cells:

443 (a) For purposes of this subsection, the term  
444 "incorporated protected cell" means a protected cell that is  
445 formed as a corporation or a limited liability company separate  
446 from the protected cell subsidiary company of which it is a  
447 part.

448 (b) A protected cell of a protected cell subsidiary



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449 company may be formed as an incorporated protected cell with  
450 limited liability separate from the protected cell subsidiary  
451 company, but the sole shareholder of an incorporated protected  
452 cell must be the shareholder that is the parent of the protected  
453 cell subsidiary company that forms the incorporated protected  
454 cell.

455 (c) The articles of incorporation or articles of  
456 organization of an incorporated protected cell must refer to the  
457 protected cell subsidiary company for which it is a protected  
458 cell and must state that the protected cell is incorporated or  
459 organized for the limited purposes authorized by the protected  
460 cell subsidiary company's license. A copy of the prior written  
461 approval of the commissioner to add the incorporated protected  
462 cell must be attached to and filed with the articles of  
463 incorporation or articles of organization.

464 (d) This subsection is intended to provide protected cell  
465 subsidiary companies with the option to establish one or more  
466 protected cells as a separate corporation or limited liability  
467 company. This subsection may not be construed to limit any  
468 rights or protections applicable to protected cells not  
469 established as corporations or limited liability companies.

470 (10) The following requirements are applicable to  
471 shareholders of protected cell subsidiary companies:

472 (a) The shareholder of a protected cell subsidiary company  
473 must be an industrial insured captive insurance company licensed  
474 as such under this chapter.

475 (b) A risk retention group may not be either a shareholder  
476 or a participant of a protected cell subsidiary company.

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477 (11) The following apply to participants in protected cell  
478 subsidiary companies:

479 (a) Any industrial insured who is a stockholder or member,  
480 and its affiliated companies, of the industrial insured captive  
481 insurance company that is the parent of the protected cell  
482 subsidiary company may be a participant in such protected cell  
483 subsidiary company formed or licensed under this part.

484 (b) The industrial insured captive insurance company that  
485 is the parent of the protected cell subsidiary company may  
486 itself be a participant in the protected cell subsidiary  
487 company.

488 Section 11. This act shall take effect July 1, 2013.