

By Senator Richter

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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
29 company to be incorporated in a specified manner;

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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 to
56 read:

57 628.901 Definitions.—As used in this part, the term:
58 (1) "Affiliated company" means a company in the same

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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

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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 in
102 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 line
112 of insurance purchased from the industrial insured captive
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

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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 or
121 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 Regulation.

135 (12)~~(11)~~ "Parent" means any corporation, limited liability
136 company, partnership, or individual that directly or indirectly
137 owns, controls, or holds with power to vote more than 50 percent
138 of the outstanding voting interests of a captive insurance
139 company.

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

145 (14) "Participant agreement" means a contract by which one

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146 or more participants and a protected cell subsidiary company
147 agree on the terms governing the operation of a protected cell
148 and the insuring arrangement with the protected cell subsidiary
149 company.

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

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

159 (17)~~(12)~~ "Pure captive insurance company" means a company
160 that insures risks of its parent, affiliated companies,
161 controlled unaffiliated businesses, or a combination thereof.

162 (18)~~(13)~~ "Qualifying reinsurer parent company" means a
163 reinsurer which currently holds a certificate of authority,
164 letter of eligibility or is an accredited or a satisfactory non-
165 approved reinsurer in this state possessing a consolidated GAAP
166 net worth of at least \$500 million and a consolidated debt to
167 total capital ratio of not greater than 0.50.

168 (19)~~(14)~~ "Special purpose captive insurance company" means
169 a ~~captive insurance~~ company that is formed or licensed under
170 this chapter that does not meet the definition of any other type
171 of captive insurance company defined in this section.

172 (20)~~(15)~~ "Treasury rates" means the United States Treasury
173 STRIPS asked yield as published in the Wall Street Journal as of
174 a balance sheet date.

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

177 628.905 Licensing; authority.—

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

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

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

194 (c) A protected cell subsidiary company may insure or
195 reinsure risks only through protected cells in accordance with
196 s. 628.921 and may not insure or reinsure any risks other than
197 those of the industrial insureds and their affiliated companies,
198 who are the stockholders or members of the industrial insured
199 captive insurance company that is the sole stockholder of such
200 protected cell subsidiary company, controlled unaffiliated
201 businesses, or a combination thereof.

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

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

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

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

215 b. The excess life and health risks of an industrial
216 insured and its affiliated companies.

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

221 (2) To conduct insurance business in this state, a captive
222 insurance company insurer must:

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

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

227 (c) Maintain its principal place of business in this state;
228 and

229 (d) Appoint a resident registered agent to accept service
230 of process and to otherwise act on its behalf in this state. In
231 the case of a captive insurance company formed as a corporation
232 or a nonprofit corporation, if the registered agent cannot with

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233 reasonable diligence be found at the registered office of the
234 captive insurance company, the Chief Financial Officer of this
235 state must be an agent of the captive insurance company upon
236 whom any process, notice, or demand may be served.

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

239 628.907 Minimum capital and net assets requirements;
240 restriction on payment of dividends.—

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

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

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

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

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

255 Section 4. Subsection (1) of section 628.908, Florida
256 Statutes, is amended to read:

257 628.908 Surplus requirements; restriction on payment of
258 dividends.—

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

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

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

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

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

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

275 Section 5. Section 628.909, Florida Statutes, is amended to
276 read:

277 628.909 Applicability of other laws.—

278 (1) The Florida Insurance Code does not apply to captive
279 insurance companies ~~insurers~~ or industrial insured captive
280 insurers except as provided in this part and subsections (2) and
281 (3).

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

287 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
288 624.40851, 624.4095, 624.425, and 624.426.

289 (b) Chapter 625, part II.

290 (c) Chapter 626, part IX.

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291 (d) Sections 627.730-627.7405, when no-fault coverage is
292 provided.

293 (e) Chapter 628.

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

298 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
299 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

302 (c) Chapter 626, part IX.

303 (d) Sections 627.730-627.7405 when no-fault coverage is
304 provided.

305 (e) Chapter 628, except for ss. 628.341, 628.351, and
306 628.6018.

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

311 628.910 Incorporation options and requirements.-

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

316 Section 7. Section 628.9142, Florida Statutes, is amended
317 to read:

318 628.9142 Reinsurance; effect on reserves.-

319 (1) A captive insurance company may provide reinsurance, as

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320 authorized in this part, on risks ceded by any other insurer.

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

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

337 Section 8. Section 628.915, Florida Statutes, is amended to
338 read:

339 628.915 Exemption from compulsory association.—

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

347 ~~(2) No industrial insured captive insurer shall be~~
348 ~~permitted to join or contribute financially to any joint~~

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349 ~~underwriting association or guaranty fund in this state; nor~~
350 ~~shall any industrial insured captive insurer, its industrial~~
351 ~~insured, or its parent or any affiliated company receive any~~
352 ~~benefit from any such joint underwriting association or guaranty~~
353 ~~fund for claims arising out of the operations of such industrial~~
354 ~~insured captive insurer.~~

355 Section 9. Section 628.917, Florida Statutes, is amended to
356 read:

357 628.917 Insolvency and liquidation.—In the event that a
358 captive insurance company insurer is insolvent as defined in
359 chapter 631, the office shall liquidate the captive insurance
360 company insurer pursuant to the provisions of part I of chapter
361 631; except that the office shall make no attempt to
362 rehabilitate such insurer.

363 Section 10. Section 628.921, Florida Statutes, is created
364 to read:

365 628.921 Formation of protected cell subsidiary company;
366 establishing protected cells.—An industrial insured captive
367 insurance company may form a protected cell subsidiary company
368 under this part. A protected cell subsidiary company that is
369 formed or licensed under this part may establish and maintain
370 one or more protected cells to insure or reinsure risks of one
371 or more participants or affiliated companies of such
372 participants, subject to the following conditions:

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

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

386 (3) Each protected cell must be accounted for separately on
387 the books and records of the protected cell subsidiary company
388 to reflect the financial condition and results of operations of
389 the protected cell, net income or loss, dividends or other
390 distributions to participants and their affiliated companies,
391 and other factors that may be provided in the participant
392 agreement or required by the commissioner.

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

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

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

406 (b) In the event that the funds held by the protected cell

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407 subsidiary company are insufficient to pay all such claims, the
408 claims must be reduced, as provided in the insurance policy or
409 reinsurance agreement, or if no such provision is made for
410 reduction in claim amounts, in the sole discretion of the board
411 of directors of the protected cell subsidiary company; and

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

417
418 Any insurance policy issued or reinsurance assumed which does
419 not contain these provisions must nevertheless be deemed to have
420 such provisions and the reduction in claim amounts referred to
421 in paragraph (b) must be made on an equitable basis in the sole
422 discretion of the board of directors of the protected cell
423 subsidiary company.

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

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

435 (8) A protected cell subsidiary company must notify the

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436 commissioner in writing within 10 business days after a
437 protected cell becomes insolvent or otherwise unable to meet its
438 claim or expense obligations.

439 (9) With respect to incorporated protected cells:

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

444 (b) A protected cell of a protected cell subsidiary company
445 may be formed as an incorporated protected cell with limited
446 liability separate from the protected cell subsidiary company,
447 but the sole shareholder of an incorporated protected cell must
448 be the shareholder that is the parent of the protected cell
449 subsidiary company that forms the incorporated protected cell.

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

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

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

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

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

472 (11) The following apply to participants in protected cell
473 subsidiary companies:

474 (a) Any industrial insured who is a stockholder or member,
475 and its affiliated companies, of the industrial insured captive
476 insurance company that is the parent of the protected cell
477 subsidiary company may be a participant in such protected cell
478 subsidiary company formed or licensed under this part.

479 (b) The industrial insured captive insurance company that
480 is the parent of the protected cell subsidiary company may
481 itself be a participant in the protected cell subsidiary
482 company.

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