

By Senator Leek

7-01128-26

2026990__

A bill to be entitled

An act relating to protected cell captive insurance companies; amending s. 628.901, F.S.; revising the definitions of the terms "captive insurance company" and "special purpose captive insurance company"; defining terms; amending s. 628.905, F.S.; specifying that a protected cell captive insurance company may only insure certain risks; amending s. 628.907, F.S.; revising the unimpaired paid-in capital requirements for captive insurance companies; revising the unrestricted net asset requirements for captive insurance companies incorporated as nonprofit corporations; amending s. 628.908, F.S.; revising the unimpaired surplus requirements for captive insurance companies; amending s. 628.909, F.S.; revising applicability; creating s. 628.921, F.S.; authorizing one or more sponsors to form a protected cell captive insurance company; requiring protected cell captive insurance companies to be incorporated in a specified manner; requiring applicant protected cell captive insurance companies to file certain information with the Office of Insurance Regulation; authorizing protected cell captive insurance companies to establish and maintain certain protected cells, subject to certain approvals granted by the office; specifying conditions on protected cell establishment and maintenance; providing construction; specifying requirements regarding protected cells' assets and liabilities and their attribution; requiring protected

7-01128-26

2026990__

cell captive insurance companies to file annual reports, as required by the office, and to notify the office when any protected cell is insolvent or unable to meet its obligations; requiring the office's approval before a participant contract may take effect; specifying requirements for any insurance business written by a protected cell captive insurance company and the security arrangements that must be established; authorizing the office to take certain actions in the event of an insolvency of a protected cell captive insurance company; requiring certain affidavits for owners of incorporated protected cells; authorizing the assets of two or more protected cells to be combined for a specified purpose; specifying that such combination may not be construed in a certain manner; authorizing the office to approve the use of certain methods for valuation of certain assets and liabilities and rating the risk attributable to a protected cell; requiring a receiver to manage the assets and liabilities of protected cell captive insurance companies under certain circumstances; prohibiting assets of protected cells from being used to pay certain expenses and claims; requiring that protected cell captive insurance companies' capital and surplus be available to pay certain expenses or claims; specifying requirements in actions brought by or against protected cell captive insurance companies; specifying that certain legal actions are deemed to be brought against the general account only; specifying

7-01128-26

2026990__

that protected cells not named in an action are not deemed to be a party to the action and are entitled to dismissal under certain circumstances; prohibiting the assets of protected cells from being encumbered or seized under certain circumstances; specifying that protected cells do not have a duty to defend the rights and obligations or other protected cells; requiring protected cell captive insurance companies and protected cells to be afforded a certain status during discovery; specifying that nonparty protected cells have standing under certain circumstances; authorizing protected cells to be converted to any authorized form of captive insurance company; authorizing the office to issue a specified certificate of authority; requiring converting protected cells to file certain organizational documents; specifying requirements for such documents; specifying the formation date upon conversion; requiring converted protected cells to possess certain assets and liabilities; requiring the converting protected cell to submit amended organizational documents under certain circumstances; authorizing captive insurance companies to apply to the office for conversion to protected cell captive insurance companies; requiring captive insurance companies to be issued a revised certificate of authority under certain circumstances; specifying the effective date of such certificate; authorizing protected cells of a captive insurance company to disaffiliate and to

7-01128-26

2026990__

88 affiliate with another protected cell captive
89 insurance company under certain circumstances;
90 authorizing the office to require changes to certain
91 documents under certain circumstances; specifying the
92 formation date of protected cells that affiliate with
93 another protected cell captive insurance company;
94 requiring such protected cells to maintain and carry
95 over certain assets and liabilities; authorizing an
96 individual protected cell to merge or otherwise
97 combine assets and liabilities with another individual
98 protected cell, subject to certain requirements;
99 specifying that a hearing is not required for certain
100 mergers; specifying the date of final conversion or
101 disaffiliation of a protected cell for certain
102 purposes; specifying that the prior entity and
103 successor entities are responsible for certain tasks;
104 providing an effective date.

105
106 Be It Enacted by the Legislature of the State of Florida:

107
108 Section 1. Present subsections (8) through (11), (12)
109 through (14), and (15) of section 628.901, Florida Statutes, are
110 redesignated as subsections (9) through (12), (19) through (21),
111 and (23), respectively, new subsections (8) and (13) through
112 (15) and subsections (16) through (18) and (22) are added to
113 that section, and subsection (2) and present subsection (14) of
114 that section are amended, to read:

115 628.901 Definitions.—As used in this part, the term:
116 (2) "Captive insurance company" means a domestic insurer

7-01128-26

2026990__

established under this part. A captive insurance company includes a protected cell captive insurance company, pure captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed and licensed under this part.

(8) "General account" means all assets and liabilities of a protected cell captive insurance company not attributable to a protected cell.

(13) "Participant" means a person or an entity, and any affiliate of such person or entity, which is insured by a protected cell captive insurance company, if the losses of the participant are limited through a participant contract.

(14) "Participant contract" means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one or more protected cells identified in such contract.

(15) "Protected cell" means a separate account established by a protected cell captive insurance company formed or licensed under this part, in which account an identified pool of assets and liabilities is segregated and insulated by means of this part from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with the terms of one or more participant contracts to fund the liabilities of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts.

(16) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive

7-01128-26

2026990__

insurance company.

(17) "Protected cell captive insurance company" means a captive insurance company:

(a) In which the minimum capital and surplus required by this part are provided by one or more sponsors;

(b) That is formed or licensed under this part;

(c) That insures the risks of separate participants through participant contracts; and

(d) That funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.

(18) "Protected cell liabilities" means all liabilities and other obligations identified with and attributed to a specific protected cell of a protected cell captive insurance company.

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

(22) "Sponsor" means any person or entity that is approved by the office to provide all or part of the capital and surplus required by this part and to organize and operate a protected cell captive insurance company.

Section 2. Paragraph (f) is added to subsection (1) of section 628.905, Florida Statutes, to read:

628.905 Licensing; authority.—

(1) A captive insurance company, if permitted by its charter or articles of incorporation, may apply to the office

7-01128-26

2026990__

for a license to do any and all insurance authorized under the insurance code, other than workers' compensation and employer's liability, life, health, personal motor vehicle, and personal residential property insurance, except that:

(f) A protected cell captive insurance company may only insure the risks of its protected cell participants.

Section 3. Subsections (1) and (2) of section 628.907, Florida Statutes, are amended to read:

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

(1) A captive insurance company may not be issued a license unless it possesses and thereafter maintains the following applicable unimpaired paid-in capital requirements ~~of~~:

(a) In the case of a protected cell captive insurance company, at least \$100,000.

(b) In the case of a pure captive insurance company, at least \$100,000.~~†~~

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

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

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

7-01128-26

2026990__

(a) In the case of a protected cell captive insurance company, at least \$100,000.

(b) In the case of a pure captive insurance company, at least \$250,000.

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

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

628.908 Surplus requirements; restriction on payment of dividends.—

(1) The office may not issue a license to a captive insurance company unless the company possesses and maintains the following applicable unimpaired surplus requirements ~~of~~:

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

(b) In the case of a protected cell captive insurance company, at least \$100,000.

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

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

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

7-01128-26

2026990__

the nature of the risks to be insured.

Section 5. Subsection (1) of section 628.909, Florida Statutes, is amended to read:

628.909 Applicability of other laws.—

(1) The Florida Insurance Code does not apply to captive insurance companies, protected cell captive insurance companies, or industrial insured captive insurance companies except as provided in this part and subsections (2) and (3).

Section 6. Section 628.921, Florida Statutes, is created to read:

628.921 Protected cell captive insurance companies.—

(1) One or more sponsors may form a protected cell captive insurance company under this part.

(2) A protected cell captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one or more members, or as a limited liability company.

(3) In addition to the information required by chapter 624, each applicant protected cell captive insurance company must file all of the following information with the office:

(a) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the office, and how it will report such experience to the office.

(b) A statement acknowledging that all financial records of the applicant, including records pertaining to any protected cells, must be made available for inspection or examination by the office or the office's designated agent.

7-01128-26

2026990__

262 (c) All contracts or sample contracts between the applicant
263 and any participants.

264 (d) Evidence that expenses will be allocated to each
265 protected cell in a fair and equitable manner.

266 (4) A protected cell captive insurance company formed or
267 licensed under this part may establish and maintain one or more
268 incorporated or unincorporated protected cells, to insure risks
269 of one or more participants, subject to all of the following
270 conditions:

271 (a)1. A protected cell captive insurance company may
272 establish one or more protected cells if the office has approved
273 in writing a plan of operation or amendments to a plan of
274 operation submitted by the protected cell captive insurance
275 company with respect to each protected cell. A plan of operation
276 must include, but is not limited to, the specific business
277 objectives and investment guidelines of the protected cell.
278 However, the office may require additional information in the
279 plan of operation. The office may make the approval of a plan of
280 operation or amendments to a plan of operation effective as of
281 any date on or before the date the approval is signed so long as
282 the effective date is no earlier than the date on which the plan
283 of operation or amendments to the plan of operation were filed
284 with the office.

285 2. Upon the office's written approval of the plan of
286 operation, the protected cell captive insurance company, in
287 accordance with the approved plan of operation, may attribute
288 insurance obligations with respect to its insurance business to
289 the protected cell.

290 3. A protected cell must have its own distinct name or

7-01128-26

2026990__

291 designation, which must include the words "protected cell" or
292 "incorporated cell." Such names or designations may also be
293 reasonably abbreviated, including, without limitation, PC or
294 P.C. for "protected cell"; IC, I.C., IPC, or I.P.C. for
295 "incorporated cell"; and SC, S.C., SPC, or S.P.C. for "series
296 cell."

297 4. The protected cell captive insurance company shall
298 transfer all assets attributable to a protected cell to one or
299 more separately established and identified protected cell
300 accounts bearing the name or designation of that protected cell.
301 Protected cell assets must be held in the protected cell
302 accounts for the purpose of satisfying the obligations of that
303 protected cell.

304 5. An incorporated protected cell may be organized and
305 operated in any form of business organization authorized by the
306 office, including, but not limited to, an individual series of a
307 limited liability company under chapter 605. Each incorporated
308 protected cell of a protected cell captive insurance company
309 must be treated as a captive insurer for purposes of this part
310 and has the power to enter into contracts, including an
311 individual series of a limited liability company. Unless
312 otherwise permitted by the organizational documents of a
313 protected cell captive insurance company, each incorporated
314 protected cell of the protected cell captive insurance company
315 must have the same directors, secretary, and registered office
316 as the protected cell captive insurance company.

317 6. All attributions of assets and liabilities between a
318 protected cell and the general account must be in accordance
319 with the plan of operation and participant contracts approved by

7-01128-26

2026990__

the office. A protected cell captive insurance company may not make other attributions of assets or liabilities between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell must be in cash or in readily marketable securities with established market values.

(b) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this part, including assets transferred to a protected cell account, are owned by the protected cell. A protected cell captive insurance company may not act as, or hold itself out to be, a trustee of the protected cell assets of the protected cell account. Notwithstanding this subsection, a protected cell captive insurance company may permit a security interest to attach to the assets of a protected cell assets or a protected cell account if the security interest is in favor of a creditor of that protected cell and is otherwise authorized by applicable law.

(c) This subsection may not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells

7-01128-26

2026990__

or the assets of the protected cell captive insurance company's general account.

(d)1. A protected cell captive insurance company must establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company must keep protected cell assets and protected cell liabilities:

a. Separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

b. Attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

2. If subparagraph 1. is violated, the remedy of tracing applies to protected cell assets that have been commingled with the protected cell assets of other protected cells or with the assets of the protected cell captive insurance company's general account. The remedy of tracing may not be construed as exclusive.

(e) When establishing a protected cell, the protected cell captive insurance company must attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

(f) Each protected cell must be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and results of

7-01128-26

2026990__

378 operations of such protected cell, net income or loss, dividends
379 or other distributions to participants, and such other factors
380 as may be provided in the participant contract or required by
381 the office.

382 (g) An asset of a protected cell may not be charged with,
383 or otherwise made liable for, any liability arising out of
384 insurance business conducted by the protected cell captive
385 insurance company on behalf of any other protected cell or its
386 general account.

387 (h) A protected cell captive insurance company may not
388 sell, exchange, or otherwise transfer assets between or among
389 any of its protected cells without the consent of such protected
390 cells.

391 (i) A protected cell captive insurance company may not
392 sell, exchange, transfer, or otherwise distribute assets, or pay
393 any dividend or distribution, from a protected cell to the
394 company or to a participant without the approval of the office.
395 The office may not approve any sale, exchange, transfer,
396 dividend, or distribution that would result in the insolvency or
397 impairment of a protected cell.

398 (j) All attributions of assets and liabilities to the
399 protected cells and the general account must be in accordance
400 with the plan of operation approved by the office. A protected
401 cell captive insurance company may not attribute assets or
402 liabilities between its general account and any protected cell,
403 or between any protected cells. The protected cell captive
404 insurance company must attribute all insurance obligations,
405 assets, and liabilities relating to a reinsurance contract
406 entered into with respect to a protected cell to such protected

7-01128-26

2026990__

407 cell. The performance under such reinsurance contract and any
408 tax benefits, losses, refunds, or credits allocated pursuant to
409 a tax allocation agreement to which the protected cell captive
410 insurance company is a party, including any payments made by or
411 due to be made to the protected cell captive insurance company
412 pursuant to the terms of such agreement, must reflect the
413 insurance obligations, assets, and liabilities relating to the
414 reinsurance contract which are attributed to such protected
415 cell.

416 (k) In connection with the conservation, rehabilitation, or
417 liquidation of a protected cell captive insurance company, the
418 assets and liabilities of a protected cell must, to the extent
419 the office determines they are separable, at all times be kept
420 separate from, and may not be commingled with, those of other
421 protected cells and the protected cell captive insurance
422 company.

423 (l) Each protected cell captive insurance company must
424 annually file with the office such financial reports as required
425 by the office. Any such financial report must include, without
426 limitation, accounting statements detailing the financial
427 experience of each protected cell.

428 (m) Each protected cell captive insurance company must
429 notify the office in writing within 10 business days of any
430 protected cell that is insolvent or otherwise unable to meet its
431 claim or expense obligations.

432 (n) A participant contract may not take effect without the
433 office's prior written approval. The addition of each new
434 protected cell, the withdrawal of any participant, or the
435 termination of any existing protected cell constitutes a change

7-01128-26

2026990__

in the plan of operation requiring the office's prior written approval.

(o) The business written by a protected cell captive insurance company, with respect to each protected cell, must be:

1. Fronted by an insurance company licensed under the laws of any state;

2. Reinsured by a reinsurer authorized or approved by this state; or

3. Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the office. The amount of security provided may not be less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell. The office may require the protected cell captive insurance company to increase the funding of any security arrangement established under this paragraph. If the form of security is a letter of credit, the letter of credit must be issued or confirmed by a bank approved by the office. A trust maintained pursuant to this paragraph must be established in a form and upon such terms as approved by the office.

(p) Notwithstanding this part or other laws of this state, and in addition to subsection (6), in the event of an insolvency of a protected cell captive insurance company where the office determines that one or more protected cells remain solvent, the office may separate such cells from the protected cell captive

7-01128-26

2026990__

insurance company and may allow, on application of the protected cell captive insurance company, for the conversion of such protected cells into one or more new or existing protected cell captive insurance companies, or one or more other captive insurance companies, pursuant to such plan of operation as the office deems acceptable.

(q) Biographical affidavits are not required for participants in unincorporated cells. However, biographical affidavits are required for owners of incorporated cells, including series members of a series limited liability company.

(r) A protected cell captive insurance company formed or licensed under this part may establish and operate both unincorporated and incorporated protected cells.

(5) Notwithstanding subsection (4), the assets of two or more protected cells may be combined for purposes of investment, and such combination may not be construed as defeating the segregation of such assets for accounting or other purposes. Notwithstanding any other provision of the insurance code, the office may approve the use of alternative reliable methods for the valuation of protected cell assets and liabilities and for the rating of risks attributable to a protected cell.

(6) Upon any order of supervision, rehabilitation, or liquidation of a protected cell captive insurance company, the receiver shall manage the assets and liabilities of the protected cell captive insurance company pursuant to this part.

(7) (a) Assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell.

(b) A protected cell captive insurance company's capital

7-01128-26

2026990__

and surplus must at all times be available to pay any expenses of or claims against the protected cell captive insurance company.

(8)(a) The pleadings in any legal action brought by or against a protected cell captive insurance company must specify which protected cell or cells are or should be named a party to the suit. If the general account is party to the suit, such account must be separately identified in the pleadings as if it were a protected cell.

(b) A legal action brought against a protected cell captive insurance company which does not specify one or more protected cells shall be deemed to have been brought against the general account only.

(c) Any protected cell that is not named in the pleadings of the legal action may not be deemed to be a party to the legal action. Any protected cell that is erroneously named as a party or named without proper cause is entitled to prompt dismissal from the legal action.

(d) Unless specified by the plan of operation, participant contract, or other prior contractual agreement, the assets of one protected cell may not be encumbered or seized to satisfy the obligations of or a judgment against any other protected cell. A protected cell does not have a duty to defend the rights and obligations of any other protected cell.

(e) In any legal action involving a protected cell captive insurance company or a protected cell, any papers, documents, or property of a nonparty protected cell must be afforded the same status during discovery as the documents or property of any other unrelated third party. A nonparty protected cell has

7-01128-26

2026990__

standing to appear and petition for any appropriate relief to protect the confidentiality of its papers or documents.

(9)(a)1. Upon the application of a protected cell captive insurance company, one of its protected cells may be converted to any form of captive insurance company authorized pursuant to this part with the consent of the office. Upon compliance with this part, the office may issue to the converting protected cell a certificate of authority with an effective date of its original date of formation as a protected cell.

2. If the converting protected cell is a series of a limited liability company, the protected cell must file organizational documents with the Secretary of State which comply with this part. The organizational documents must include the date of formation as a series of a limited liability company. Upon conversion, the formation date of the series shall be deemed the formation date of the converted protected cell. The converted protected cell shall possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor series.

3. If the converting protected cell is any other type of incorporated protected cell entity, the converting protected cell must submit amended organizational documents to the Secretary of State which comply with this part.

4. If the converting protected cell is neither a series of a limited liability company nor an incorporated protected cell, the protected cell must file organizational documents with the Secretary of State which comply with this part. The organizational documents must include the date of formation as a protected cell. Upon conversion, the formation date of the

7-01128-26

2026990__

protected cell is the formation date of the converted protected cell. The converted protected cell shall possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor cell.

(b) A captive insurance company may apply to the office for conversion to become a protected cell captive insurance company under any form permitted under this part. Upon compliance with this part, approval by the office, and the filing of amended organizational documents with the Secretary of State, the captive insurance company must be issued a revised certificate of authority. The effective date of the revised protected cell captive insurance company's certificate of authority shall remain the same as the effective date of the prior captive insurance company.

(c) With the consent of both the affected protected cell captive insurance companies and the office, an individual protected cell of a captive insurance company may disaffiliate from one protected cell captive insurance company and affiliate with another protected cell captive insurance company. The office may require the affected protected cell captive insurance companies and the individual protected cell to make necessary changes to their business plans, organizational documents, participation contracts, or other governing documents before approving the change in affiliation. The formation date of a protected cell that affiliates with another protected cell captive insurance company shall be the date of its original formation with the prior protected cell captive insurance company. A protected cell shall maintain and carry over all assets and liabilities, including outstanding insurance

7-01128-26

2026990__

liabilities, to the new protected cell captive insurance company.

(d) With the consent of the affected protected cell captive insurance company or companies, the owners or the participants of the protected cells, and the office, an individual protected cell of a captive insurance company may merge or otherwise combine assets and liabilities with another individual protected cell of a protected cell captive insurance company. The office may require the affected protected cell captive insurance companies and the individual protected cells to make necessary changes to their business plans, organizational documents, participation contracts, or other governing documents before approving the change in affiliation. The formation date of a protected cell that merges or otherwise combines assets and liabilities with another protected cell captive insurance company is the date of the original formation of the surviving protected cell. The surviving protected cell must acquire all of the assets and liabilities, including outstanding insurance liabilities, of the merging protected cell. A hearing is not required for mergers of protected cells effectuated under this section.

(e) Solely for the purposes of annual reports, inspections, examinations, and taxation, the date of final conversion or disaffiliation of a protected cell shall be deemed a termination of that cell from the prior entity. The prior entity shall be responsible for the accounting, oversight, and premium tax on any transactions prior to the date of final conversion or disaffiliation. The successor entity shall be responsible for the accounting, oversight, and premium tax on any transactions

7-01128-26

2026990__

610 on or after the date of final conversion or disaffiliation.

611 Section 7. This act shall take effect July 1, 2026.