

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 insurance; amending s. 624.402,  
3 F.S.; revising provisions relating to certain insurers  
4 serving nonresidents domiciled outside the United  
5 States who are exempt from requirements to obtain a  
6 certificate of authority; amending s. 628.901, F.S.;  
7 providing definitions; repealing s. 628.903, F.S.,  
8 relating to the definition of the term "industrial  
9 insured captive insurer"; amending s. 628.905, F.S.;  
10 requiring a captive insurer to obtain a license and to  
11 file evidence that a person or firm with whom it  
12 intends to conduct business is reputable; providing  
13 that a certificate of insurance for an association  
14 captive insurer does not exceed the total funds of the  
15 association members; creating s. 628.908, F.S.;  
16 requiring a licensed captive insurer to maintain its  
17 principal place of business in this state and hold an  
18 annual meeting in this state; amending s. 628.909,  
19 F.S.; applying additional provisions of the insurance  
20 code to captive insurers; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24 Section 1. Subsection (8) of section 624.402, Florida  
25 Statutes, is amended to read:

26 624.402 Exceptions, certificate of authority required.—A  
27 certificate of authority shall not be required of an insurer  
28 with respect to:

29 (8) An insurer domiciled outside the United States covering

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30 only persons who, at the time of issuance or renewal, are  
31 nonresidents of the United States.

32 (a) In order to qualify for this exemption, the insurer:

33 1. Must register with the office via a letter of  
34 notification upon commencing business from this state.

35 2. Must provide the following information to the office  
36 annually by March 1:

37 a. The name of the insurer; the country of domicile; the  
38 address of the insurer's principal office and office in this  
39 state; the names of the owners of the insurer and their  
40 percentage of ownership; the names of the officers and directors  
41 of the insurer; the name, e-mail, and telephone number of a  
42 contact person for the insurer; and the number of individuals  
43 who are employed by the insurer or its affiliates in this state;

44 b. The type of products offered by the insurer;

45 c. A statement from the applicable regulatory body of the  
46 insurer's domicile certifying that the insurer is licensed or  
47 registered in that domicile; and

48 d. A copy of the filings required by the applicable  
49 regulatory body of the insurer's domicile.

50 3. Or any affiliated person as defined in s. 624.04 under  
51 common ownership or control with the insurer, may not solicit,  
52 sell, or accept an application for any insurance policy or  
53 contract to be delivered or issued for delivery to any  
54 individual other than a nonresident.

55 (b) All policies or certificates delivered to nonresidents  
56 in this state must include the following statement in a  
57 contrasting color and at least 10-point type: "The policy  
58 providing your coverage and the insurer providing this policy

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59 have not been approved by the Florida Office of Insurance  
60 Regulation”.

61 (c) If the insurer ceases to do business from this state,  
62 the insurer must agree to provide written notification to the  
63 office within 30 days after cessation.

64 (d) Subject to the limitations contained in this  
65 subsection, services, including those listed in s. 624.10, may  
66 be provided by the insurer or an affiliated person as defined in  
67 s. 624.04 under common ownership or control with the insurer.

68 (e) An alien insurer transacting insurance in this state  
69 without complying with this subsection is in violation of this  
70 chapter and subject to the penalties under s. 624.15.

71 (f) An insurer that holds a certificate of authority in  
72 this state may issue and deliver policies to nonresidents at  
73 temporary or secondary addresses in this state, along with a  
74 notice that the policy form and rate is not subject to the  
75 approval of the Office of Insurance Regulation.

76 (g) The term “nonresident” means an individual who resides  
77 in and maintains a physical place of domicile in a country other  
78 than the United States, which he or she recognizes as and  
79 intends to maintain as his or her permanent home. The term does  
80 not include an unauthorized immigrant present in the United  
81 States. Notwithstanding any other provision of law, it is  
82 conclusively presumed that an individual is a resident of the  
83 United States if such individual:

84 1. Has had his or her principal place of domicile in the  
85 United States for 180 days or more in the 365 days before  
86 issuance or renewal the policy;

87 2. Has registered to vote in any state;

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88       3. Has made a statement of domicile in any state; or  
89       4. Has filed for homestead tax exemption on property in any  
90 state.

91       ~~(a) Life insurance policies or annuity contracts issued by~~  
92 ~~an insurer domiciled outside the United States covering only~~  
93 ~~persons who, at the time of issuance, are not residents of the~~  
94 ~~United States and are not nonresidents illegally residing in the~~  
95 ~~United States, provided:~~

96       ~~1. The insurer must currently be an authorized insurer in~~  
97 ~~its country of domicile as to the kind or kinds of insurance~~  
98 ~~proposed to be offered and must have been such an insurer for~~  
99 ~~not fewer than the immediately preceding 3 years, or must be the~~  
100 ~~wholly owned subsidiary of such authorized insurer or must be~~  
101 ~~the wholly owned subsidiary of an already eligible authorized~~  
102 ~~insurer as to the kind or kinds of insurance proposed for a~~  
103 ~~period of not fewer than the immediately preceding 3 years.~~  
104 ~~However, the office may waive the 3-year requirement if the~~  
105 ~~insurer has operated successfully for a period of at least the~~  
106 ~~immediately preceding year and has capital and surplus of not~~  
107 ~~less than \$25 million.~~

108       ~~2. Before the office may grant eligibility, the requesting~~  
109 ~~insurer shall furnish the office with a duly authenticated copy~~  
110 ~~of its current annual financial statement, in English, and with~~  
111 ~~all monetary values therein expressed in United States dollars,~~  
112 ~~at an exchange rate then current and shown in the statement, in~~  
113 ~~the case of statements originally made in the currencies of~~  
114 ~~other countries, and with such additional information relative~~  
115 ~~to the insurer as the office may request.~~

116       ~~3. The insurer must have and maintain surplus as to~~

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117 ~~policyholders of not less than \$15 million. Any such surplus as~~  
118 ~~to policyholders shall be represented by investments consisting~~  
119 ~~of eligible investments for like funds of like domestic insurers~~  
120 ~~under part II of chapter 625; however, any such surplus as to~~  
121 ~~policyholders may be represented by investments permitted by the~~  
122 ~~domestic regulator of such alien insurance company if such~~  
123 ~~investments are substantially similar in terms of quality,~~  
124 ~~liquidity, and security to eligible investments for like funds~~  
125 ~~of like domestic insurers under part II of chapter 625.~~

126 ~~4. The insurer must be of good reputation as to the~~  
127 ~~providing of service to its policyholders and the payment of~~  
128 ~~losses and claims.~~

129 ~~5. To maintain eligibility, the insurer shall furnish the~~  
130 ~~office within the time period specified in s. 624.424(1)(a) a~~  
131 ~~duly authenticated copy of its current annual and quarterly~~  
132 ~~financial statements, in English, and with all monetary values~~  
133 ~~therein expressed in United States dollars, at an exchange rate~~  
134 ~~then-current and shown in the statement, in the case of~~  
135 ~~statements originally made in the currencies of other countries,~~  
136 ~~and with such additional information relative to the insurer as~~  
137 ~~the office may request.~~

138 ~~6. An insurer receiving eligibility under this subsection~~  
139 ~~shall agree to make its books and records pertaining to its~~  
140 ~~operations in this state available for inspection during normal~~  
141 ~~business hours upon request of the office.~~

142 ~~7. The insurer shall provide to the applicant for the~~  
143 ~~policy or contract a copy of the most recent quarterly financial~~  
144 ~~statements of the insurer providing, in clear and conspicuous~~  
145 ~~language:~~

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146 ~~a. The date of organization of the insurer.~~

147 ~~b. The identity of and rating assigned by each recognized~~  
148 ~~insurance company rating organization that has rated the insurer~~  
149 ~~or, if applicable, that the insurer is unrated.~~

150 ~~c. That the insurer does not hold a certificate of~~  
151 ~~authority issued in this state and that the office does not~~  
152 ~~exercise regulatory oversight over the insurer.~~

153 ~~d. The identity and address of the regulatory authority~~  
154 ~~exercising oversight of the insurer.~~

155  
156 ~~This paragraph does not impose upon the office any duty or~~  
157 ~~responsibility to determine the actual financial condition or~~  
158 ~~claims practices of any unauthorized insurer, and the status of~~  
159 ~~eligibility, if granted by the office, indicates only that the~~  
160 ~~insurer appears to be financially sound and to have satisfactory~~  
161 ~~claims practices and that the office has no credible evidence to~~  
162 ~~the contrary.~~

163 ~~(b) If at any time the office has reason to believe that an~~  
164 ~~insurer issuing policies or contracts pursuant to this~~  
165 ~~subsection is insolvent or is in unsound financial condition,~~  
166 ~~does not make reasonable prompt payment of benefits, or is no~~  
167 ~~longer eligible under the conditions specified in this~~  
168 ~~subsection, the office may conduct an examination or~~  
169 ~~investigation in accordance with s. 624.316, s. 624.3161, or s.~~  
170 ~~624.320 and, if the findings of such examination or~~  
171 ~~investigation warrant, may withdraw the eligibility of the~~  
172 ~~insurer to issue policies or contracts pursuant to this~~  
173 ~~subsection without having a certificate of authority issued by~~  
174 ~~the office.~~

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175 ~~(c) This subsection does not provide an exception to the~~  
176 ~~agent licensure requirements of chapter 626. Any insurer issuing~~  
177 ~~policies or contracts pursuant to this subsection shall appoint~~  
178 ~~the agents that the insurer uses to sell such policies or~~  
179 ~~contracts as provided in chapter 626.~~

180 ~~(d) An insurer issuing policies or contracts pursuant to~~  
181 ~~this subsection is subject to part IX of chapter 626, Unfair~~  
182 ~~Insurance Trade Practices, and the office may take such actions~~  
183 ~~against the insurer for a violation as are provided in that~~  
184 ~~part.~~

185 ~~(e) Policies and contracts issued pursuant to this~~  
186 ~~subsection are not subject to the premium tax specified in s.~~  
187 ~~624.509.~~

188 ~~(f) Applications for life insurance coverage offered under~~  
189 ~~this subsection must contain, in contrasting color and not less~~  
190 ~~than 12-point type, the following statement on the same page as~~  
191 ~~the applicant's signature:~~

192  
193 ~~This policy is primarily governed by the laws of a~~  
194 ~~foreign country. As a result, all of the rating and~~  
195 ~~underwriting laws applicable to policies filed in this~~  
196 ~~state do not apply to this coverage, which may result~~  
197 ~~in your premiums being higher than would be~~  
198 ~~permissible under a Florida-approved policy. Any~~  
199 ~~purchase of individual life insurance should be~~  
200 ~~considered carefully, as future medical conditions may~~  
201 ~~make it impossible to qualify for another individual~~  
202 ~~life policy. If the insurer issuing your policy~~  
203 ~~becomes insolvent, this policy is not covered by the~~

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204 ~~Florida Life and Health Insurance Guaranty~~  
205 ~~Association. For information concerning individual~~  
206 ~~life coverage under a Florida-approved policy, consult~~  
207 ~~your agent or the Florida Department of Financial~~  
208 ~~Services.~~

209

210 ~~(g) All life insurance policies and annuity contracts~~  
211 ~~issued pursuant to this subsection must contain on the first~~  
212 ~~page of the policy or contract, in contrasting color and not~~  
213 ~~less than 10-point type, the following statement:~~

214

215 ~~The benefits of the policy providing your coverage are~~  
216 ~~governed primarily by the law of a country other than~~  
217 ~~the United States.~~

218

219 ~~(h) All single-premium life insurance policies and single-~~  
220 ~~premium annuity contracts issued to persons who are not~~  
221 ~~residents of the United States and are not nonresidents~~  
222 ~~illegally residing in the United States pursuant to this~~  
223 ~~subsection shall be subject to the provisions of chapter 896.~~

224 Section 2. Section 628.901, Florida Statutes, is amended to  
225 read:

226 628.901 Definitions ~~"Captive insurer" defined.~~ As used in  
227 For the purposes of this part, the term: ~~except as provided in~~  
228 ~~s. 628.903, a "captive insurer" is a domestic insurer~~  
229 ~~established under part I to insure the risks of a specific~~  
230 ~~corporation or group of corporations under common ownership~~  
231 ~~owned by the corporation or corporations from which it accepts~~  
232 ~~risk under a contract of insurance.~~



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233       (1) "Association" means a legal association of nursing  
234 homes, hospitals, skilled nursing facilities, assisted living  
235 facilities, or continuing care retirement communities.

236       (2) "Association captive insurer" means a company that  
237 insures risks of the member organizations of the association and  
238 their affiliated companies.

239       (3) "Captive insurer" means a pure captive insurer or an  
240 association captive insurer domiciled in this state and formed  
241 or licensed under this part.

242       (4) "Industrial insured" means an insured that:

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

244       (b) Procures insurance through the use of a full-time  
245 employee of the insured who acts as an insurance manager or  
246 buyer or through the services of a person licensed as a property  
247 and casualty insurance agent, broker, or consultant in such  
248 person's state of domicile;

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

250       (d) Pays annual premiums of at least \$200,000 for each line  
251 of insurance purchased from the industrial insured captive  
252 insurer, or at least \$75,000 for any line of coverage in excess  
253 of at least \$25 million in the annual aggregate. The purchase of  
254 umbrella or general liability coverage in excess of \$25 million  
255 in the annual aggregate is deemed to be the purchase of a single  
256 line of insurance.

257       (5) "Industrial insured captive insurer" is a captive  
258 insurer that:

259       (a) Has as its stockholders or members only industrial  
260 insureds that the captive insurer insures, or has as its sole  
261 stockholder a corporation whose sole stockholders are industrial

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262 insureds that the captive insurer insures; and

263 1. Provides insurance only to the industrial insureds that  
264 are its stockholders or members, and affiliates thereof, or to  
265 the stockholders, and affiliates thereof, of its parent  
266 corporation; or

267 2. Provides reinsurance only on risks written by insurers  
268 of industrial insureds who are the stockholders or members, and  
269 affiliates thereof, of the captive insurer, or the stockholders,  
270 and affiliates thereof, of the parent corporation of the captive  
271 insurer;

272 (b) Maintains unimpaired capital and surplus of at least  
273 \$20 million; and

274 (c) If licensed in this state before December 31, 1999, or  
275 if any subsidiary formed by the licensed insurer on or after  
276 December 31, 1999, has:

277 1. Gross assets in excess of \$10 million and procures  
278 insurance through the use of a full-time employee of the insured  
279 who acts as an insurance manager or buyer or through the  
280 services of a person licensed as a property and casualty  
281 insurance agent, broker, or consultant in such person's state of  
282 domicile;

283 2. At least 25 full-time employees; and

284 3. Annual aggregate premiums for all insurance risks which  
285 total at least \$100,000.

286

287 As used in this subsection, the term "affiliate" means a person  
288 that directly or indirectly, through one or more intermediaries,  
289 controls, is controlled by, or is under common control with one  
290 or more of the stockholders or members of an industrial insured

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291 captive insurer or one or more of the stockholders of the parent  
292 corporation of an industrial insured captive insurer.

293 (6) "Pure captive insurer" means a company that insures the  
294 risks of its parent, affiliated companies, controlled  
295 unaffiliated businesses, or a combination thereof.

296 Section 3. Section 628.903, Florida Statutes, is repealed.

297 Section 4. Section 628.905, Florida Statutes, is amended to  
298 read:

299 628.905 Licensing; authority.—In order to conduct insurance  
300 business in this state, a captive insurer must obtain a license  
301 from the office.

302 (1) A ~~Any~~ captive insurer, if ~~when~~ permitted by its charter  
303 or articles of incorporation, may apply to the office for a  
304 license to provide commercial property, commercial casualty, and  
305 commercial marine insurance. ~~coverage other than workers'~~  
306 ~~compensation and employer's liability insurance coverage, except~~  
307 ~~that~~ An industrial insured captive insurer may also apply for a  
308 license to provide workers' compensation and employer's  
309 liability insurance as set forth in subsection (5) ~~(6)~~.

310 (2) A ~~No~~ captive insurer, other than an industrial insured  
311 captive insurer, may not ~~shall~~ insure or accept reinsurance on  
312 any risks other than those of its parent and affiliated  
313 companies.

314 (3) In addition to information otherwise required by this  
315 code, each applicant captive insurer shall file with the office  
316 evidence:

317 (a) Of the adequacy of the loss prevention program of its  
318 insureds.

319 (b) That it intends to employ or contract with a reputable

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320 person or firm that possesses the appropriate expertise,  
321 experience, and character to manage the association captive  
322 insurer.

323 (4) If an association captive insurer operates with  
324 separate cells or segregated accounts, a certificate of  
325 insurance used to satisfy financial responsibility laws shall be  
326 issued in an amount not exceeding the total funds in the  
327 segregated accounts or separate cells of each member  
328 organization of the association.

329 (5)~~(4)~~ An industrial insured captive insurer:

330 (a) Need not be incorporated in this state if it has been  
331 validly incorporated under the laws of another jurisdiction;~~;~~

332 (b)~~(5)~~ ~~An industrial insured captive insurer~~ Is subject to  
333 all provisions of this part except as otherwise indicated; and~~;~~

334 (c)~~(6)~~ ~~An industrial insured captive insurer~~ May not  
335 provide workers' compensation and employer's liability insurance  
336 except in excess of at least \$25 million in the annual  
337 aggregate.

338 Section 5. Section 628.908, Florida Statutes, is created to  
339 read:

340 628.908 Principal place of business; annual meeting.—In  
341 order to conduct insurance business in this state, a licensed  
342 captive insurer must:

343 (1) Maintain its principal place of business in this state;  
344 and

345 (2) Annually hold in this state at least one board of  
346 directors' meeting; or, in the case of a reciprocal insurer, one  
347 subscriber's advisory committee meeting; or, in the case of a  
348 limited liability company, one managing board's meeting.

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349 Section 6. Paragraph (a) of subsection (2) and paragraph  
350 (a) of subsection (3) of section 628.909, Florida Statutes, are  
351 amended to read:

352 628.909 Applicability of other laws.—

353 (2) The following provisions of the Florida Insurance Code  
354 shall apply to captive insurers who are not industrial insured  
355 captive insurers to the extent that such provisions are not  
356 inconsistent with this part:

357 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,  
358 624.40851, 624.4095, 624.425, and 624.426.

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

362 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,  
363 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

364 Section 7. This act shall take effect July 1, 2011.