

1 A bill to be entitled
2 An act relating to captive insurance; amending s.
3 628.901, F.S.; providing definitions; amending s.
4 628.905, F.S.; expanding the kinds of insurance for
5 which a captive insurer may seek licensure; limiting
6 the risks that certain captive insurers may insure;
7 specifying requirements and conditions relating to a
8 captive insurer's authority to conduct business;
9 requiring that before licensure certain captive
10 insurers must file or submit to the Office of
11 Insurance Regulation specified information, documents,
12 and statements; requiring a captive insurance company
13 to file specific evidence with the office relating to
14 the financial condition and quality of management and
15 operations of the company; specifying certain fees to
16 be paid by captive insurance companies; authorizing
17 the Commissioner of Insurance Regulation to grant a
18 captive insurance company a license to conduct
19 insurance business until a specified date under
20 certain circumstances; authorizing a foreign or alien
21 captive insurance company to become a domestic captive
22 insurance company by complying with specified
23 requirements; authorizing the office to waive any
24 requirements for public hearings relating to the
25 redomestication of an alien captive insurance company;
26 creating s. 628.906, F.S.; requiring biographical
27 affidavits and background investigations for all
28 officers and directors; providing restrictions on

29 officers and directors involved with insolvent
30 insurers under certain conditions; providing
31 restrictions on officers and directors that have been
32 found guilty of, or that have pleaded guilty or nolo
33 contendere to, any felony or crime involving moral
34 turpitude, including a crime of dishonesty or breach
35 of trust; amending s. 628.907, F.S.; revising
36 capitalization requirements for specified captive
37 insurance companies; requiring capital of specified
38 captive insurance companies to be held in certain
39 forms; requiring contributions to captive insurance
40 companies that are nonprofit corporations to be in a
41 certain form; authorizing the office to issue a
42 captive insurance company license conditioned upon
43 certain evidence relating to possession of specified
44 capital; authorizing revocation of a conditional
45 license under certain circumstances; authorizing the
46 office to prescribe certain additional capital and net
47 asset requirements; requiring such additional
48 requirements relating to capital and net assets to be
49 held in specified forms; requiring dividends or
50 distributions of capital or surplus to meet certain
51 conditions and be approved by the office; requiring
52 certain irrevocable letters of credit to meet certain
53 standards; creating s. 628.908, F.S.; prohibiting the
54 issuance of a license to specified captive insurance
55 companies unless such companies possess and maintain
56 certain levels of unimpaired surplus; authorizing the

57 office to condition issuance of a captive insurance
58 company license upon the provision of certain evidence
59 relating to the possession of a minimum amount of
60 unimpaired surplus; authorizing revocation of a
61 conditional license under certain circumstances;
62 requiring dividends or distributions of capital or
63 surplus to meet certain conditions and be approved by
64 the office; requiring certain irrevocable letters of
65 credit to meet certain standards; amending s. 628.909,
66 F.S.; providing for applicability of certain statutory
67 provisions to specified captive insurers; creating s.
68 628.910, F.S.; providing requirements, options, and
69 conditions relating to how a captive insurance company
70 may be incorporated or organized as a business;
71 amending s. 628.911, F.S.; providing reporting
72 requirements for captive insurance companies and
73 captive reinsurance companies; creating s. 628.912,
74 F.S.; authorizing a captive reinsurance company to
75 discount specified losses subject to certain
76 conditions; amending s. 628.913, F.S.; authorizing a
77 captive reinsurance company to apply to the office for
78 licensure to write reinsurance covering property and
79 casualty insurance or reinsurance contracts;
80 authorizing the office to allow a captive reinsurance
81 company to write reinsurance contracts covering risks
82 in any state; prohibiting such captive reinsurance
83 company from directly insuring risks; specifying that
84 a captive reinsurance company is subject to specified

85 requirements and must meet specified conditions to
86 conduct business in this state; creating s. 628.914,
87 F.S.; specifying requirements and conditions relating
88 to the capitalization or maintenance of reserves by a
89 captive reinsurance company; creating s. 628.9141,
90 F.S.; specifying requirements and conditions relating
91 to the incorporation of a captive reinsurance company;
92 creating s. 628.9142, F.S.; providing for the effect
93 on reserves of certain actions taken by a captive
94 insurance company relating to providing reinsurance
95 for specified risks; creating s. 628.918, F.S.;

96 requiring a specified percentage of a captive
97 reinsurance company's assets to be managed by an asset
98 manager domiciled in this state; creating s. 628.919,
99 F.S.; authorizing the Financial Services Commission to
100 adopt rules establishing certain standards for control
101 of an unaffiliated business by a parent or affiliated
102 company relating to coverage by a pure captive
103 insurance company; creating s. 628.920, F.S.;

104 requiring that a licensed captive insurance company
105 must be considered for issuance of a certificate of
106 authority as an insurer under certain circumstances;
107 amending s. 626.7491, F.S.; conforming a cross-
108 reference; repealing s. 628.903, F.S., relating to
109 "industrial insured captive insurer" defined, to
110 conform to changes made by this act; providing an
111 effective date.

112

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

114

115 Section 1. Section 628.901, Florida Statutes, is amended
 116 to read:

117 628.901 Definitions ~~"Captive insurer" defined.~~ As used in
 118 ~~For the purposes of this part, unless the context requires~~
 119 ~~otherwise, the term: except as provided in s. 628.903, a~~
 120 ~~"captive insurer" is a domestic insurer established under part I~~
 121 ~~to insure the risks of a specific corporation or group of~~
 122 ~~corporations under common ownership owned by the corporation or~~
 123 ~~corporations from which it accepts risk under a contract of~~
 124 ~~insurance.~~

125 (1) "Affiliated company" means a company in the same
 126 corporate system as a parent, an industrial insured, or a member
 127 organization by virtue of common ownership, control, operation,
 128 or management.

129 (2) "Association" means a legal association of
 130 individuals, corporations, limited liability companies,
 131 partnerships, political subdivisions, or associations that has
 132 been in continuous existence for at least 1 year, the member
 133 organizations of which collectively, or which does itself:

134 (a) Own, control, or hold with power to vote all of the
 135 outstanding voting securities of an association captive
 136 insurance company incorporated as a stock insurer; or

137 (b) Have complete voting control over an association
 138 captive insurance company organized as a mutual insurer.

139 (3) "Association captive insurance company" means a
 140 company that insures risks of the member organizations of the

141 association and their affiliated companies.

142 (4) "Captive insurance company" means a domestic insurer
143 established under this part. A captive insurance company
144 includes a pure captive insurance company, association captive
145 insurance company, special purpose captive insurance company, or
146 industrial insured captive insurance company formed and licensed
147 under this part.

148 (5) "Captive reinsurance company" means a reinsurance
149 company that is formed and licensed under this part and is
150 wholly owned by a qualifying reinsurance parent company. A
151 captive reinsurance company is a stock corporation and may only
152 reinsure risks. A captive reinsurance company may not directly
153 insure risks.

154 (6) "Consolidated debt to total capital ratio" means the
155 ratio of the sum of all debts and hybrid capital instruments as
156 described in paragraph (a) to total capital as described in
157 paragraph (b).

158 (a) Debts and hybrid capital instruments include, but are
159 not limited to, all borrowings from banks, all senior debt, all
160 subordinated debts, all trust preferred shares, and all other
161 hybrid capital instruments that are not included in the
162 determination of consolidated GAAP net worth issued and
163 outstanding.

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

168 (7) "Consolidated GAAP net worth" means the consolidated

169 owners' equity determined in accordance with generally accepted
170 accounting principles for reporting to the United States
171 Securities and Exchange Commission.

172 (8) "Controlled unaffiliated business" means a company:

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

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

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

179 (9) "GAAP" means generally accepted accounting principles.

180 (10) "Industrial insured" means an insured that:

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

182 (b) Procures insurance through the use of a full-time
183 employee of the insured who acts as an insurance manager or
184 buyer or through the services of a person licensed as a property
185 and casualty insurance agent, broker, or consultant in such
186 person's state of domicile;

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

188 (d) Pays annual premiums of at least \$200,000 for each
189 line of insurance purchased from the industrial insured captive
190 insurer or at least \$75,000 for any line of coverage in excess
191 of at least \$25 million in the annual aggregate. The purchase of
192 umbrella or general liability coverage in excess of \$25 million
193 in the annual aggregate shall be deemed to be the purchase of a
194 single line of insurance.

195 (11) "Industrial insured captive insurance company" means
196 a captive insurance company that provides insurance only to the

197 industrial insureds that are its stockholders or members, and
198 affiliates thereof, or to the stockholders, and affiliates
199 thereof, of its parent corporation. An industrial insured
200 captive insurance company may also provide reinsurance to
201 insurers only on risks written by such insurers for the
202 industrial insureds who are the stockholders or members, and
203 affiliates thereof, of the industrial insured captive insurance
204 company, or the stockholders, and affiliates thereof, of the
205 parent corporation of the industrial insured captive insurance
206 company.

207 (12) "Member organization" means any individual,
208 corporation, limited liability company, partnership, or
209 association that belongs to an association.

210 (13) "Office" means the Office of Insurance Regulation.

211 (14) "Parent" means any corporation, limited liability
212 company, partnership, or individual that directly or indirectly
213 owns, controls, or holds with power to vote more than 50 percent
214 of the outstanding voting interests of a captive insurance
215 company.

216 (15) "Pure captive insurance company" means a company that
217 insures risks of its parent, affiliated companies, controlled
218 unaffiliated businesses, or a combination thereof.

219 (16) "Qualifying reinsurer parent company" means a
220 reinsurer that currently holds a certificate of authority or
221 letter of eligibility or is an accredited or a satisfactory
222 nonapproved reinsurer in this state possessing a consolidated
223 GAAP net worth of not less than \$500 million and a consolidated
224 debt to total capital ratio of not greater than 0.50.

225 (17) "Special purpose captive insurance company" means a
 226 captive insurance company that is formed or licensed under this
 227 chapter that does not meet the definition of any other type of
 228 captive insurance company defined in this section.

229 (18) "Treasury rates" means the United States Treasury
 230 STRIPS asked yield as published in the Wall Street Journal as of
 231 a balance sheet date.

232 Section 2. Section 628.905, Florida Statutes, is amended
 233 to read:

234 628.905 Licensing; authority.—

235 (1) Any captive insurer, when permitted by its charter or
 236 articles of incorporation, may apply to the office for a license
 237 to do any and all insurance authorized under the insurance code,
 238 ~~provide commercial property, commercial casualty, and commercial~~
 239 ~~marine insurance coverage other than workers' compensation,~~
 240 health, personal motor vehicle, and personal residential
 241 property and employer's liability insurance coverage, except
 242 that: an industrial insured captive insurer may apply for a
 243 license to provide workers' compensation and employer's
 244 liability insurance as set forth in subsection (6).

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

248 (b) An association captive insurance company may not
 249 insure any risks other than those of the member organizations of
 250 its association and their affiliated companies. An association
 251 captive insurance company shall have stamped or written upon the
 252 first page of the policy or the certificate, cover note, or

253 confirmation of insurance the words: "THIS INSURANCE IS ISSUED
 254 PURSUANT TO THE FLORIDA CAPTIVE INSURERS LAW. PERSONS INSURED BY
 255 CAPTIVE INSURANCE COMPANIES DO NOT HAVE THE PROTECTION OF THE
 256 FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF
 257 RECOVERY FOR THE OBLIGATION OF AN INSOLVENT INSURER." An
 258 association captive insurance company shall also have stamped or
 259 printed on the face of the policy in at least 14-point, boldface
 260 type the following statement: "CAPTIVE INSURANCE COMPANIES'
 261 POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA
 262 REGULATORY AGENCY."

263 (c) An industrial insured captive insurance company may
 264 not insure any risks other than those of the industrial insureds
 265 that comprise the industrial insured group and their affiliated
 266 companies.

267 (d) A special purpose captive insurance company may only
 268 insure the risks of its parent.

269 (e) A captive insurance company may not accept or cede
 270 reinsurance except as provided in this part.

271 (2) To conduct insurance business in this state, a ~~No~~
 272 ~~captive insurer, other than an industrial insured captive~~
 273 ~~insurer, shall: insure or accept reinsurance on any risks other~~
 274 ~~than those of its parent and affiliated companies.~~

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

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

279 (c) Maintain its principal place of business in this
 280 state; and

281 (d) Appoint a resident registered agent to accept service
282 of process and to otherwise act on its behalf in this state. In
283 the case of a captive insurance company formed as a corporation
284 or a nonprofit corporation, whenever the registered agent cannot
285 with reasonable diligence be found at the registered office of
286 the captive insurance company, the Chief Financial Officer of
287 this state must be an agent of the captive insurance company
288 upon whom any process, notice, or demand may be served.

289 (3)(a) Before receiving a license, a captive insurance
290 company formed as a corporation or a nonprofit corporation must
291 file with the office a certified copy of its articles of
292 incorporation and bylaws, a statement under oath of its
293 president and secretary showing its financial condition, and any
294 other statements or documents required by the office.

295 (b) In addition to the information required by paragraph
296 (a), an applicant captive insurance company must file with the
297 office evidence of:

298 1. The amount and liquidity of the proposed captive
299 insurance company's assets relative to the risks to be assumed;

300 2. The adequacy of the expertise, experience, and
301 character of the person or persons who will manage the company;

302 3. The overall soundness of the company's plan of
303 operation;

304 4. The adequacy of the loss prevention programs of the
305 company's parent, member organizations, or industrial insureds,
306 as applicable; and

307 5. Any other factors considered relevant by the office in
308 ascertaining whether the company will be able to meet its policy

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309 obligations ~~In addition to information otherwise required by~~
310 ~~this code, each applicant captive insurer shall file with the~~
311 ~~office evidence of the adequacy of the loss prevention program~~
312 ~~of its insureds.~~

313 (4) (a) A captive insurance company must pay to the office
314 a nonrefundable fee of \$1,500 for processing its application for
315 licensure.

316 (b) In addition, a captive insurance company must pay an
317 annual renewal fee of \$1,000.

318 (c) The office may charge a fee of \$5 for any document
319 requiring certification of authenticity or the signature of the
320 commissioner or his or her designee. An industrial insured
321 captive insurer need not be incorporated in this state if it has
322 been validly incorporated under the laws of another jurisdiction
323 ~~An industrial insured captive insurer need not be incorporated~~
324 ~~in this state if it has been validly incorporated under the laws~~
325 ~~of another jurisdiction.~~

326 (5) If the commissioner is satisfied that the documents
327 and statements filed by the captive insurance company comply
328 with this chapter, the commissioner may grant a license
329 authorizing the company to conduct insurance business in this
330 state until the next succeeding March 1, at which time the
331 license may be renewed ~~An industrial insured captive insurer is~~
332 ~~subject to all provisions of this part except as otherwise~~
333 ~~indicated.~~

334 (6) Upon approval of the office, a foreign or alien
335 captive insurance company may become a domestic captive
336 insurance company by complying with all of the requirements of

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337 law relative to the organization and licensing of a domestic
338 captive insurance company of the same or equivalent type in this
339 state and by filing with the Secretary of State its articles of
340 association, charter, or other organizational documents,
341 together with any appropriate amendments that have been adopted
342 in accordance with the laws of this state to bring the articles
343 of association, charter, or other organizational documents into
344 compliance with the laws of this state, along with a certificate
345 of good standing issued by the office. After this is
346 accomplished, the captive insurance company is entitled to the
347 necessary or appropriate certificates and licenses to continue
348 transacting business in this state and is subject to the
349 authority and jurisdiction of this state. In connection with
350 this redomestication, the office may waive any requirements for
351 public hearings. It is not necessary for a captive insurance
352 company redomesticating into this state to merge, consolidate,
353 transfer assets, or otherwise engage in any other
354 reorganization, other than as specified in this section ~~An~~
355 industrial insured captive insurer may not provide workers'
356 compensation and employer's liability insurance except in excess
357 of at least \$25 million in the annual aggregate.

358 Section 3. Section 628.906, Florida Statutes, is created
359 to read:

360 628.906 Application requirements; restrictions on
361 eligibility of officers and directors.-

362 (1) To evidence competence and trustworthiness of its
363 officers and directors, the application for authority to act as
364 a captive insurance company or captive reinsurance company shall

365 include, but not be limited to, background investigations,
366 biographical affidavits, and fingerprint cards for all officers
367 and directors.

368 (2) The office may deny, suspend, or revoke the authority
369 to transact captive insurance or captive reinsurance in this
370 state if any person who was an officer or director of an
371 insurer, reinsurer, captive insurance company, captive
372 reinsurance company, financial institution, or financial
373 services business doing business in the United States, any
374 state, or under the law of any other country and who served in
375 that capacity within the 2-year period before the date the
376 insurer, reinsurer, captive insurance company, captive
377 reinsurance company, financial institution, or financial
378 services business became insolvent serves as an officer or
379 director of a captive insurance company or officer or director
380 of a captive reinsurance company authorized in this state,
381 unless the officer or director demonstrates that his or her
382 personal actions or omissions were not a contributing cause to
383 the insolvency.

384 (3) The office may deny, suspend, or revoke the authority
385 to transact insurance or reinsurance in this state of any
386 captive insurance company or captive reinsurance company if any
387 person, including any stockholder or incorporator, who exercises
388 or has the ability to exercise effective control of the captive
389 insurance company or captive reinsurance company, or who
390 influences or has the ability to influence the transaction of
391 the business of the captive insurance company or captive
392 reinsurance company, has been found guilty of, or has pleaded

393 guilty or nolo contendere to, any felony or crime involving
 394 moral turpitude, including a crime of dishonesty or breach of
 395 trust, punishable by imprisonment of 1 year or more under the
 396 laws of the United States or any state thereof or under the laws
 397 of any other country without regard to whether a judgment of
 398 conviction has been entered by the court having jurisdiction in
 399 such case. However, in the case of a captive insurance company
 400 or captive reinsurance company operating under a subsisting
 401 certificate of authority or license, the captive insurance
 402 company or captive reinsurance company shall remove any such
 403 person immediately upon discovery of the conditions set forth in
 404 this subsection when applicable to such person or upon the order
 405 of the office, and the failure to so act shall be grounds for
 406 revocation or suspension of the captive insurance company's or
 407 captive reinsurance company's license.

408 Section 4. Section 628.907, Florida Statutes, is amended
 409 to read:

410 628.907 Minimum capital and net assets requirements;
 411 restriction on payment of dividends ~~surplus.~~

412 (1) A ~~No~~ captive insurer may not ~~shall~~ be issued a license
 413 unless it possesses and thereafter maintains unimpaired paid-in
 414 capital of:

415 (a) ~~(1)~~ In the case of a pure captive insurance company,
 416 not less than \$100,000. ~~Unimpaired paid-in capital of at least~~
 417 ~~\$500,000; and~~

418 (b) ~~(2)~~ In the case of an association captive insurance
 419 company incorporated as a stock insurer, not less than \$400,000
 420 ~~Unimpaired surplus of at least \$250,000.~~

421 (c) In the case of an industrial insured captive insurance
422 company incorporated as a stock insurer, not less than \$200,000.

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

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

431 (a) In the case of a pure captive insurance company, not
432 less than \$250,000.

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

438 (3) Contributions to a captive insurance company
439 incorporated as a nonprofit corporation must be in the form of
440 cash, cash equivalent, or an irrevocable letter of credit issued
441 by a bank chartered by this state or a member bank of the
442 Federal Reserve System with a branch office in this state, or as
443 approved by the office.

444 (4) For purposes of this section, the office may issue a
445 license expressly conditioned upon the captive insurance company
446 providing to the office satisfactory evidence of possession of
447 the minimum required unimpaired paid-in capital. Until this
448 evidence is provided, the captive insurance company may not

449 issue any policy, assume any liability, or otherwise provide
450 coverage. The office may revoke the conditional license if
451 satisfactory evidence of the required capital is not provided
452 within a maximum period of time, not to exceed 1 year, to be
453 established by the office at the time the conditional license is
454 issued.

455 (5) The office may prescribe additional capital or net
456 assets based upon the type, volume, and nature of insurance
457 business transacted. Contributions in connection with these
458 prescribed additional net assets or capital must be in the form
459 of:

460 (a) Cash;

461 (b) Cash equivalent;

462 (c) An irrevocable letter of credit issued by a bank
463 chartered by this state or a member bank of the Federal Reserve
464 System with a branch office in this state, or as approved by the
465 office; or

466 (d) Securities invested as provided in part II of chapter
467 625.

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

476 (7) An irrevocable letter of credit that is issued by a

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

482 Section 5. Section 628.908, Florida Statutes, is created
483 to read:

484 628.908 Surplus requirements; restriction on payment of
485 dividends.-

486 (1) The office may not issue a license to a captive
487 insurance company unless the company possesses and maintains
488 unimpaired surplus of:

489 (a) In the case of a pure captive insurance company, not
490 less than \$150,000.

491 (b) In the case of an association captive insurance
492 company incorporated as a stock insurer, not less than \$350,000.

493 (c) In the case of an industrial insured captive insurance
494 company incorporated as a stock insurer, not less than \$300,000.

495 (d) In the case of an association captive insurance
496 company incorporated as a mutual insurer, not less than
497 \$750,000.

498 (e) In the case of an industrial insured captive insurance
499 company incorporated as a mutual insurer, not less than
500 \$500,000.

501 (f) In the case of a special purpose captive insurance
502 company, an amount determined by the office after giving due
503 consideration to the company's business plan, feasibility study,

504 and pro forma financial statements and projections, including
505 the nature of the risks to be insured.

506 (2) For purposes of this section, the office may issue a
507 license expressly conditioned upon the captive insurance company
508 providing to the office satisfactory evidence of possession of
509 the minimum required unimpaired surplus. Until this evidence is
510 provided, the captive insurance company may not issue any
511 policy, assume any liability, or otherwise provide coverage. The
512 office may revoke the conditional license if satisfactory
513 evidence of the required surplus is not provided within a
514 maximum period of time, not to exceed 1 year, to be established
515 by the office at the time the conditional license is issued.

516 (3) A captive insurance company may not pay a dividend out
517 of, or other distribution with respect to, capital or surplus in
518 excess of the limitations set forth in this chapter without the
519 prior approval of the office. Approval of an ongoing plan for
520 the payment of dividends or other distribution must be
521 conditioned upon the retention, at the time of each payment, of
522 capital or surplus in excess of amounts specified by, or
523 determined in accordance with formulas approved by, the office.

524 (4) An irrevocable letter of credit that is issued by a
525 financial institution other than a bank chartered by this state
526 or a member bank of the Federal Reserve System must meet the
527 same standards as an irrevocable letter of credit that has been
528 issued by a bank chartered by this state or a member bank of the
529 Federal Reserve System.

530 Section 6. Section 628.909, Florida Statutes, is amended
531 to read:

532 628.909 Applicability of other laws.—

533 (1) The Florida Insurance Code does ~~shall~~ not apply to

534 captive insurers or industrial insured captive insurers except

535 as provided in this part and subsections (2) and (3).

536 (2) The following provisions of the Florida Insurance Code

537 ~~shall~~ apply to captive insurers who are not industrial insured

538 captive insurers to the extent that such provisions are not

539 inconsistent with this part:

540 (a) Chapter 624, except for ss. 624.407, 624.408,

541 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

542 (b) Chapter 625, part II.

543 (c) Chapter 626, part IX.

544 (d) Sections 627.730-627.7405, when no-fault coverage is

545 provided.

546 (e) Chapter 628.

547 (3) The following provisions of the Florida Insurance Code

548 ~~shall~~ apply to industrial insured captive insurers to the extent

549 that such provisions are not inconsistent with this part:

550 (a) Chapter 624, except for ss. 624.407, 624.408,

551 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

552 (b) Chapter 625, part II, if the industrial insured

553 captive insurer is incorporated in this state.

554 (c) Chapter 626, part IX.

555 (d) Sections 627.730-627.7405 when no-fault coverage is

556 provided.

557 (e) Chapter 628, except for ss. 628.341, 628.351, and

558 628.6018.

559 Section 7. Section 628.910, Florida Statutes, is created
560 to read:

561 628.910 Incorporation options and requirements.—

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

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

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

568 (2) An association captive insurance company or an
569 industrial insured captive insurance company may be:

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

572 (b) Incorporated as a mutual insurer without capital
573 stock, the governing body of which is elected by the member
574 organizations of its association.

575 (3) A captive insurance company may not have fewer than
576 three incorporators of whom not fewer than two must be residents
577 of this state.

578 (4) In the case of a captive insurance company formed as a
579 corporation or a nonprofit corporation, before the articles of
580 incorporation are transmitted to the Secretary of State, the
581 incorporators shall file the articles of incorporation in
582 triplicate with the office. The office shall promptly examine
583 the articles of incorporation. If the office finds that the
584 articles of incorporation conform to law, it shall endorse its
585 approval on each of the triplicate originals of the articles of
586 incorporation, retain one copy for its files, and return the

587 remaining copies to the incorporators for filing with the
588 Department of State.

589 (5) The articles of incorporation, the certificate issued
590 pursuant to this section, and the organization fees required by
591 the Florida Business Corporation Act or the Florida Not For
592 Profit Corporation Act, as applicable, must be transmitted to
593 the Secretary of State, who must record the articles of
594 incorporation and the certificate.

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

598 (7) In the case of a captive insurance company formed as a
599 corporation or a nonprofit corporation, at least one of the
600 members of the board of directors of a captive insurance company
601 incorporated in this state must be a resident of this state.

602 (8) A captive insurance company formed as a corporation or
603 a nonprofit corporation, pursuant to the provisions of this
604 chapter, has the privileges and is subject to the provisions of
605 the general corporation law, including the Florida Not For
606 Profit Corporation Act for nonprofit corporations, as
607 applicable, as well as the applicable provisions contained in
608 this chapter. If a conflict occurs between a provision of the
609 general corporation law, including the Florida Not For Profit
610 Corporation Act for nonprofit corporations, as applicable, and a
611 provision of this chapter, the latter controls. The provisions
612 of this title pertaining to mergers, consolidations,
613 conversions, mutualizations, and redomestications apply in
614 determining the procedures to be followed by a captive insurance

615 company in carrying out any of the transactions described in
 616 such provisions, except that the office may waive or modify the
 617 requirements for public notice and hearing in accordance with
 618 rules the office may adopt addressing categories of
 619 transactions. If a notice of public hearing is required, but no
 620 one requests a hearing, the office may cancel the hearing.

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

626 Section 8. Section 628.911, Florida Statutes, is amended
 627 to read:

628 628.911 Reports and statements.—

629 (1) A captive insurance company may ~~insurer shall~~ not be
 630 required to make any annual report except as provided in this
 631 part section.

632 (2) Annually no later than March 1, a captive insurance
 633 company or a captive reinsurance company ~~insurer shall, within~~
 634 ~~60 days after the end of its fiscal year and as often as the~~
 635 ~~office may deem necessary,~~ submit to the office a report of its
 636 financial condition verified by oath of two of its executive
 637 officers. Except as provided in this part, a captive insurance
 638 company or a captive reinsurance company must report using
 639 generally accepted accounting principles, unless the office
 640 approves the use of statutory accounting principles, with useful
 641 or necessary modifications or adaptations required or approved
 642 or accepted by the office for the type of insurance and kinds of

643 insurers to be reported upon, and as supplemented by additional
644 information required by the office. The Financial Services
645 Commission may adopt by rule the form in which captive insurance
646 companies ~~insurers~~ shall report.

647 (3) A captive insurance company may make written
648 application for filing the required report on a fiscal year end
649 that is consistent with the parent company's fiscal year. If an
650 alternative reporting date is granted, the annual report is due
651 60 days after the fiscal year end.

652 Section 9. Section 628.912, Florida Statutes, is created
653 to read:

654 628.912 Discounting of loss and loss adjustment expense
655 reserves.—

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

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

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

666 Section 10. Section 628.913, Florida Statutes, is amended
667 to read:

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

670 628.913 Captive reinsurance companies.—

671 (1) A captive reinsurance company, if permitted by its
672 articles of incorporation or charter, may apply to the office
673 for a license to write reinsurance covering property and
674 casualty insurance or reinsurance contracts. A captive
675 reinsurance company authorized by the office may write
676 reinsurance contracts covering risks in any state. However, a
677 captive reinsurance company authorized by the office may not
678 directly insure risks.

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

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

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

685 (c) Maintain its principal place of business in this
686 state; and

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

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

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

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

694 (c) Other documents required by the office.

695 (4) In addition to the information required by this
696 section, the captive reinsurance company must file with the
697 office evidence of:

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

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

702 (c) The overall soundness of the company's plan of
703 operation; and

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

707 Section 11. Section 628.914, Florida Statutes, is created
708 to read:

709 628.914 Minimum capitalization or reserves for captive
710 reinsurance companies.-

711 (1) The office may not issue a license to a captive
712 reinsurance company unless the company possesses and maintains
713 capital or unimpaired surplus of not less than the greater of
714 \$300 million or 10 percent of reserves. The surplus may be in
715 the form of cash or securities as permitted by part II of
716 chapter 625.

717 (2) The office may prescribe additional capital or surplus
718 based upon the type, volume, and nature of the insurance
719 business transacted.

720 (3) A captive reinsurance company may not pay a dividend
721 out of, or other distribution with respect to, capital or
722 surplus in excess of the limitations without the prior approval
723 of the office. Approval of an ongoing plan for the payment of
724 dividends or other distributions must be conditioned upon the
725 retention, at the time of each payment, of capital or surplus in

726 excess of amounts specified by, or determined in accordance with
727 formulas approved by, the office.

728 Section 12. Section 628.9141, Florida Statutes, is created
729 to read:

730 628.9141 Incorporation of a captive reinsurance company.-

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

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

737 (3) Before the articles of incorporation are transmitted
738 to the Secretary of State, the incorporators shall comply with
739 all the requirements of s. 628.091.

740 (4) The capital stock of a captive reinsurance company
741 must be issued at par value of not less than \$1 or more than
742 \$100 per share.

743 (5) At least one of the members of the board of directors
744 of a captive reinsurance company incorporated in this state must
745 be a resident of this state.

746 Section 13. Section 628.9142, Florida Statutes, is created
747 to read:

748 628.9142 Reinsurance; effect on reserves.-

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

751 (2) A captive insurance company may take credit for
752 reserves on risks or portions of risks ceded to authorized
753 insurers or reinsurers and unauthorized insurers or reinsurers

754 complying with the provisions of s. 624.610. A captive insurer
 755 may not take credit for reserves on risks or portions of risks
 756 ceded to an unauthorized insurer or reinsurer if the insurer or
 757 reinsurer is not in compliance with s. 624.610.

758 Section 14. Section 628.918, Florida Statutes, is created
 759 to read:

760 628.918 Management of assets of captive reinsurance
 761 company.—At least 35 percent of the assets of a captive
 762 reinsurance company must be managed by an asset manager
 763 domiciled in this state.

764 Section 15. Section 628.919, Florida Statutes, is created
 765 to read:

766 628.919 Standards to ensure risk management control by
 767 parent company.—The Financial Services Commission shall adopt
 768 rules establishing standards to ensure that a parent or
 769 affiliated company is able to exercise control of the risk
 770 management function of any controlled unaffiliated business to
 771 be insured by the pure captive insurance company.

772 Section 16. Section 628.920, Florida Statutes, is created
 773 to read:

774 628.920 Eligibility of licensed captive insurance company
 775 for certificate of authority to act as insurer.—A licensed
 776 captive insurance company that meets the necessary requirements
 777 of this part imposed upon an insurer must be considered for
 778 issuance of a certificate of authority to act as an insurer in
 779 this state.

780 Section 17. Paragraph (e) of subsection (2) of section
 781 626.7491, Florida Statutes, is amended to read:

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782 626.7491 Business transacted with producer controlled
783 property and casualty insurer.—

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

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

790 1. Any risk retention group as defined in:

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

793 b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq.
794 (1982 and Supp. 1986); or

795 c. Section 627.942(9).

796 2. Any residual market pool or joint underwriting
797 authority or association; and

798 3. Any captive insurance company ~~insurer~~ as defined in s.
799 628.901.

800 Section 18. Section 628.903, Florida Statutes, is
801 repealed.

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