

HB 1235

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1                   A bill to be entitled  
2           An act relating to captive insurance; amending s. 628.901,  
3           F.S.; providing definitions; amending s. 628.905, F.S.;  
4           expanding the kinds of insurance for which a captive  
5           insurer may seek licensure; limiting the risks that  
6           certain captive insurers may insure; specifying  
7           requirements and conditions relating to a captive  
8           insurer's authority to conduct business; requiring that  
9           before licensure certain captive insurers must file or  
10          submit to the Commissioner of Insurance Regulation  
11          specified information, documents, and statements;  
12          requiring a captive insurance company to file specific  
13          evidence with the commissioner relating to the financial  
14          condition and quality of management and operations of the  
15          company; requiring an applicant-sponsored captive insurer  
16          to file with the commissioner a business plan, certain  
17          statements, sample contracts, and certain evidence  
18          relating to expenses; requiring a captive insurance  
19          company to pay certain fees and costs relating to an  
20          application for licensure and renewal; authorizing initial  
21          licensure until a date certain and requiring annual  
22          renewal thereafter on such date; authorizing a foreign or  
23          alien captive insurance company to become a domestic  
24          captive insurance company by complying with specified  
25          requirements; authorizing the commissioner to waive any  
26          requirements for public hearings relating to the  
27          redomestication of an alien captive insurance company;  
28          amending s. 628.907, F.S.; revising capitalization and

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 security requirements for specified captive insurance  
30 companies; requiring capital of specified captive  
31 insurance companies to be held in certain forms; requiring  
32 contributions to captive insurance companies that are  
33 nonprofit corporations to be in a certain form;  
34 authorizing the commission to issue a captive insurance  
35 company license conditioned upon certain evidence relating  
36 to possession of specified capital; authorizing revocation  
37 of a conditional license under certain circumstances;  
38 authorizing the commissioner to prescribe certain  
39 additional capital and net asset requirements; requiring  
40 such additional requirements relating to capital and net  
41 assets to be held in specified forms; requiring certain  
42 security of a branch captive insurance company to be trust  
43 funded by specified types of assets made payable to  
44 certain policyholders and insurers; providing limitations  
45 on the payment of dividends by a captive insurance  
46 company; prohibiting distributions by a captive insurance  
47 company that is a nonprofit corporation without  
48 commissioner approval; requiring certain irrevocable  
49 letters of credit to meet certain standards; creating s.  
50 628.908, F.S.; prohibiting the issuance of a license to  
51 specified captive insurance companies unless such  
52 companies possess and maintain certain levels of  
53 unimpaired surplus; requiring unimpaired surplus to be in  
54 specified forms; authorizing a sponsored captive insurance  
55 company that does not assume risk to maintain unimpaired  
56 surplus in certain securities approved by the

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

85 | authorizing the commissioner to allow a captive  
86 | reinsurance company to write reinsurance contracts  
87 | covering risks in any state; specifying that a captive  
88 | reinsurance company is subject to specified requirements  
89 | and must meet specified conditions to conduct business in  
90 | this state; creating s. 628.914, F.S.; specifying  
91 | requirements and conditions relating to the capitalization  
92 | or maintenance of reserves by a captive reinsurance  
93 | company; creating s. 628.9141, F.S.; specifying  
94 | requirements and conditions relating to the incorporation  
95 | of a captive reinsurance company; creating s. 628.9142,  
96 | F.S.; providing for the effect on reserves of certain  
97 | actions taken by a captive insurance company relating to  
98 | providing reinsurance for specified risks; creating s.  
99 | 628.9143, F.S.; requiring a captive reinsurance company to  
100 | annually pay a specified tax amount; prohibiting any other  
101 | taxation of a captive reinsurance company other than an  
102 | occupation tax and certain ad valorem taxes; subjecting a  
103 | captive reinsurance company to sanctions for failures  
104 | relating to the payment of taxes; creating s. 628.918,  
105 | F.S.; requiring a specified percentage of a captive  
106 | reinsurance company's assets to be managed by an asset  
107 | manager domiciled in this state; creating s. 628.919,  
108 | F.S.; authorizing the Financial Services Commission to  
109 | adopt rules establishing certain standards for control of  
110 | an unaffiliated business by a parent or affiliated company  
111 | relating to coverage by a pure captive insurance company;  
112 | creating s. 628.920, F.S.; providing for the conversion of

113 certain stock, mutual corporations, or limited liability  
 114 companies into reciprocal insurers; requiring a specified  
 115 plan for such conversions or mergers; specifying  
 116 requirements and conditions for the approval of a  
 117 conversion or merger plan by the commissioner; creating s.  
 118 628.921, F.S.; providing requirements and conditions  
 119 relating to the formation of a sponsored captive insurance  
 120 company and the establishment of protected cells; creating  
 121 s. 628.922, F.S.; providing requirements and conditions  
 122 applicable to a sponsor of a sponsored captive insurance  
 123 company; creating s. 628.923, F.S.; authorizing specified  
 124 entities to be participants in sponsored captive insurance  
 125 companies under certain circumstances; creating s.  
 126 628.924, F.S.; requiring that a licensed captive insurance  
 127 company must be considered for issuance of a certificate  
 128 of authority as an insurer under certain circumstances;  
 129 providing an effective date.

130  
 131 Be It Enacted by the Legislature of the State of Florida:

132  
 133 Section 1. Section 628.901, Florida Statutes, is amended  
 134 to read:

135 628.901 Definitions ~~"Captive insurer" defined.~~ As used in  
 136 ~~For the purposes of this part, unless the context requires~~  
 137 otherwise: except as provided in s. 628.903, a "captive insurer"  
 138 ~~is a domestic insurer established under part I to insure the~~  
 139 ~~risks of a specific corporation or group of corporations under~~  
 140 ~~common ownership owned by the corporation or corporations from~~

141 ~~which it accepts risk under a contract of insurance.~~

142 (1) "Affiliated company" means a company in the same  
 143 corporate system as a parent, an industrial insured, or a member  
 144 organization by virtue of common ownership, control, operation,  
 145 or management.

146 (2) "Alien captive insurance company" means an insurance  
 147 company formed to write insurance business for its parents and  
 148 affiliates and licensed under the laws of an alien jurisdiction  
 149 which imposes statutory or regulatory standards in a form  
 150 acceptable to the commissioner on companies transacting the  
 151 business of insurance in the alien jurisdiction.

152 (3) "Association" means a legal association of  
 153 individuals, corporations, limited liability companies,  
 154 partnerships, political subdivisions, or associations that has  
 155 been in continuous existence for at least 1 year:

156 (a) The member organizations of which collectively, or  
 157 which does itself:

158 1. Own, control, or hold with power to vote all of the  
 159 outstanding voting securities of an association captive  
 160 insurance company incorporated as a stock insurer or organized  
 161 as a limited liability company; or

162 2. Have complete voting control over an association  
 163 captive insurance company organized as a mutual insurer; or

164 (b) The member organizations of which collectively  
 165 constitute all of the subscribers of an association captive  
 166 insurance company formed as a reciprocal insurer.

167 (4) "Association captive insurance company" means a  
 168 company that insures risks of the member organizations of the

169 association and their affiliated companies.

170 (5) "Branch business" means any insurance business  
171 transacted by a branch captive insurance company in this state.

172 (6) "Branch captive insurance company" means an alien  
173 captive insurance company licensed by the commissioner to  
174 transact the business of insurance in this state through a  
175 business unit with a principal place of business in this state.

176 (7) "Branch operations" means any business operations of a  
177 branch captive insurance company in this state.

178 (8) "Captive insurance company" means a pure captive  
179 insurance company, association captive insurance company,  
180 captive reinsurance company, sponsored captive insurance  
181 company, special purpose captive insurance company, or  
182 industrial insured captive insurance company formed or licensed  
183 under this chapter. For purposes of this chapter, a branch  
184 captive insurance company must be a pure captive insurance  
185 company with respect to operations in this state, unless  
186 otherwise permitted by the commissioner.

187 (9) "Captive reinsurance company" means a reinsurance  
188 company that is formed or licensed under this chapter and is  
189 wholly owned by a qualifying reinsurance parent company. A  
190 captive reinsurance company is a stock corporation.

191 (10) "Commissioner" means the Commissioner of the Office  
192 of Insurance Regulation or the commissioner's designee.

193 (11) "Consolidated debt to total capital ratio" means the  
194 ratio of the sum of all debts and hybrid capital instruments as  
195 described in paragraph (a) to total capital as described in  
196 paragraph (b).

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197 (a) Debts and hybrid capital instruments include, but are  
198 not limited to, all borrowings from banks, all senior debt, all  
199 subordinated debts, all trust preferred shares, and all other  
200 hybrid capital instruments that are not included in the  
201 determination of consolidated GAAP net worth issued and  
202 outstanding.

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

207 (12) "Consolidated GAAP net worth" means the consolidated  
208 owners' equity determined in accordance with generally accepted  
209 accounting principles for reporting to the United States  
210 Securities and Exchange Commission.

211 (13) "Controlled unaffiliated business" means a company:

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

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

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

218 (14) "GAAP" means generally accepted accounting  
219 principles.

220 (15) "Industrial insured" means an insured as defined in  
221 s. 628.903(1).

222 (16) "Industrial insured captive insurance company" means  
223 a company that insures risks of the industrial insureds that  
224 comprise the industrial insured group and their affiliated

225 companies.

226 (17) "Industrial insured group" means a group that meets  
 227 either of the following criteria:

228 (a) A group of industrial insureds that collectively:

229 1. Own, control, or hold with power to vote all of the  
 230 outstanding voting securities of an industrial insured captive  
 231 insurance company incorporated as a stock insurer or limited  
 232 liability company; or

233 2. Have complete voting control over an industrial insured  
 234 captive insurance company incorporated as a mutual insurer; or

235 (b) A group which is created under the Liability Risk  
 236 Retention Act of 1986, 15 U.S.C. s. 3901, et seq., as amended,  
 237 and a corporation or other limited liability association taxable  
 238 as a stock insurance company or a mutual insurer under the  
 239 insurance code.

240 (18) "Member organization" means any individual,  
 241 corporation, limited liability company, partnership, or  
 242 association that belongs to an association.

243 (19) "Office" means the Office of Insurance Regulation.

244 (20) "Parent" means any corporation, limited liability  
 245 company, partnership, or individual that directly or indirectly  
 246 owns, controls, or holds with power to vote more than 50 percent  
 247 of the outstanding voting interests of a captive insurance  
 248 company.

249 (21) "Participant" means an entity as defined in s.  
 250 628.923, and any affiliates of that entity, that are insured by  
 251 a sponsored captive insurance company, where the losses of the  
 252 participant are limited through a participant contract to the

253 assets of a protected cell.

254 (22) "Participant contract" means a contract by which a  
 255 sponsored captive insurance company insures the risks of a  
 256 participant and limits the losses of the participant to the  
 257 assets of a protected cell.

258 (23) "Protected cell" means a separate account established  
 259 and maintained by a sponsored captive insurance company for one  
 260 participant.

261 (24) "Pure captive insurance company" means a company that  
 262 insures risks of its parent, affiliated companies, controlled  
 263 unaffiliated business, or a combination thereof.

264 (25) "Qualifying reinsurer parent company" means a  
 265 reinsurer authorized to write reinsurance by this state and that  
 266 has a consolidated GAAP net worth of not less than \$500 million  
 267 and a consolidated debt to total capital ratio of not greater  
 268 than 0.50.

269 (26) "Special purpose captive insurance company" means a  
 270 captive insurance company that is formed or licensed under this  
 271 chapter that does not meet the definition of any other type of  
 272 captive insurance company defined in this section.

273 (27) "Sponsor" means an entity that meets the requirements  
 274 of s. 628.922, and is approved by the commissioner to provide  
 275 all or part of the capital and surplus required by applicable  
 276 law and to organize and operate a sponsored captive insurance  
 277 company.

278 (28) "Sponsored captive insurance company" means a captive  
 279 insurance company:

280 (a) In which the minimum capital and surplus required by

281 applicable law is provided by one or more sponsors;  
 282 (b) That is formed or licensed under this chapter;  
 283 (c) That insures the risks of separate participants  
 284 through the contract; and  
 285 (d) That segregates each participant's liability through  
 286 one or more protected cells.  
 287 (29) "Treasury rates" means the United States Treasury  
 288 strips asked yield as published in the Wall Street Journal as of  
 289 a balance sheet date.  
 290 Section 2. Section 628.905, Florida Statutes, is amended  
 291 to read:  
 292 628.905 Licensing; authority.—  
 293 (1) Any captive insurer, when permitted by its charter or  
 294 articles of incorporation, may apply to the commissioner ~~office~~  
 295 for a license to do any and all insurance authorized under the  
 296 insurance code, provide commercial property, commercial  
 297 casualty, and commercial marine insurance coverage other than  
 298 workers' compensation and employer's liability insurance, except  
 299 that: coverage, except that an industrial insured captive  
 300 insurer may apply for a license to provide workers' compensation  
 301 and employer's liability insurance as set forth in subsection  
 302 (6).  
 303 (a) A pure captive insurance company may not insure any  
 304 risks other than those of its parent, affiliated companies,  
 305 controlled unaffiliated businesses, or a combination thereof.  
 306 (b) An association captive insurance company may not  
 307 insure any risks other than those of the member organizations of  
 308 its association and their affiliated companies.

309 (c) An industrial insured captive insurance company may  
 310 not insure any risks other than those of the industrial insureds  
 311 that comprise the industrial insured group and their affiliated  
 312 companies.

313 (d) In general, a special purpose captive insurance  
 314 company may only insure the risks of its parent. Notwithstanding  
 315 any other provisions of this chapter, a special purpose captive  
 316 insurance company may provide insurance or reinsurance, or both,  
 317 for risks as approved by the commissioner.

318 (e) A captive insurance company may not provide personal  
 319 motor vehicle or homeowners' insurance coverage or any component  
 320 of such coverages.

321 (f) A captive insurance company may not accept or cede  
 322 reinsurance except as provided in this part.

323 (2) To conduct insurance business in this state, a ~~no~~  
 324 ~~captive insurer, other than an industrial insured captive~~  
 325 ~~insurer, shall: insure or accept reinsurance on any risks other~~  
 326 ~~than those of its parent and affiliated companies.~~

327 (a) Obtain from the commissioner a license authorizing it  
 328 to conduct insurance business in this state;

329 (b) Hold at least one board of directors' meeting or, in  
 330 the case of a reciprocal insurer, a subscriber's advisory  
 331 committee meeting or, in the case of a limited liability  
 332 company, a meeting of the managing board each year in this  
 333 state;

334 (c) Maintain its principal place of business in this state  
 335 or, in the case of a branch captive insurance company, maintain  
 336 the principal place of business for its branch operations in

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337 this state; and

338 (d) Appoint a resident registered agent to accept service  
339 of process and to otherwise act on its behalf in this state. In  
340 the case of a captive insurance company:

341 1. Formed as a corporation, a nonprofit corporation, or a  
342 limited liability company, whenever the registered agent cannot  
343 with reasonable diligence be found at the registered office of  
344 the captive insurance company, the Chief Financial Officer of  
345 this state must be an agent of the captive insurance company  
346 upon whom any process, notice, or demand may be served.

347 2. Formed as a reciprocal insurer, whenever the registered  
348 agent cannot with reasonable diligence be found at the  
349 registered office of the captive insurance company, the Chief  
350 Financial Officer of this state must be an agent of the captive  
351 insurance company upon whom any process, notice, or demand may  
352 be served.

353 (3) (a) Before receiving a license, a captive insurance  
354 company:

355 1. Formed as a corporation or a nonprofit corporation must  
356 file with the commissioner a certified copy of its articles of  
357 incorporation and bylaws, a statement under oath of its  
358 president and secretary showing its financial condition, and any  
359 other statements or documents required by the commissioner.

360 2. Formed as a limited liability company must file with  
361 the commissioner a certified copy of its articles of  
362 organization and operating agreement, a statement under oath by  
363 its managers showing its financial condition, and any other  
364 statements or documents required by the commissioner.

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- 365        3. Formed as a reciprocal must:
- 366        a. File with the commissioner a certified copy of the
- 367 power of attorney of its attorney-in-fact, a certified copy of
- 368 its subscribers' agreement, a statement under oath of its
- 369 attorney-in-fact showing its financial condition, and any other
- 370 statements or documents required by the commissioner; and
- 371        b. Submit to the commissioner for approval a description
- 372 of the coverages, deductibles, coverage limits, and rates and
- 373 any other information the commissioner may reasonably require.
- 374 If there is a subsequent material change in an item in the
- 375 description, the reciprocal captive insurance company must
- 376 submit to the commissioner for approval an appropriate revision
- 377 and may not offer any additional kinds of insurance until a
- 378 revision of the description is approved by the commissioner. The
- 379 reciprocal captive insurance company must inform the
- 380 commissioner of any material change in rates within 30 days
- 381 after the adoption of the change.
- 382        (b) In addition to the information required by paragraph
- 383 (a), an applicant captive insurance company must file with the
- 384 commissioner evidence of:
- 385        1. The amount and liquidity of the proposed captive
- 386 insurance company's assets relative to the risks to be assumed;
- 387        2. The adequacy of the expertise, experience, and
- 388 character of the person or persons who will manage the company;
- 389        3. The overall soundness of the company's plan of
- 390 operation;
- 391        4. The adequacy of the loss prevention programs of the
- 392 company's parent, member organizations, or industrial insureds,

393 as applicable; and

394 5. Any other factors considered relevant by the  
 395 commissioner in ascertaining whether the company will be able to  
 396 meet its policy obligations.

397 (c) In addition to the information required by paragraphs  
 398 (a) and (b), an applicant-sponsored captive insurance company  
 399 must file with the commissioner:

400 1. A business plan demonstrating how the applicant will  
 401 account for the loss and expense experience of each protected  
 402 cell at a level of detail found to be sufficient by the  
 403 commissioner and how the applicant will report the experience to  
 404 the commissioner;

405 2. A statement acknowledging that all financial records of  
 406 the sponsored captive insurance company, including records  
 407 pertaining to any protected cells, must be made available for  
 408 inspection or examination by the commissioner;

409 3. All contracts or sample contracts between the sponsored  
 410 captive insurance company and any participants; and

411 4. Evidence that expenses will be allocated to each  
 412 protected cell in an equitable manner ~~In addition to information~~  
 413 ~~otherwise required by this code, each applicant captive insurer~~  
 414 ~~shall file with the office evidence of the adequacy of the loss~~  
 415 ~~prevention program of its insureds.~~

416 (4) (a) A captive insurance company must pay to the office  
 417 a nonrefundable fee of \$200 for processing its application for  
 418 license. In addition, the commissioner may retain legal,  
 419 financial, and examination services from outside the office to  
 420 examine and investigate the application, the reasonable cost of

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421 which may be charged against the applicant, or the commissioner  
422 may use internal resources to examine and investigate the  
423 application for a fee of \$2,400.

424 (b) In addition, a captive insurance company must pay a  
425 license fee of \$300 for 1 year of registration and an annual  
426 renewal fee of \$500.

427 (c) The office may charge a fee of \$15 for any document  
428 requiring certification of authenticity or the signature of the  
429 commissioner or his or her designee ~~An industrial insured~~  
430 ~~captive insurer need not be incorporated in this state if it has~~  
431 ~~been validly incorporated under the laws of another~~  
432 ~~jurisdiction.~~

433 (5) If the commissioner is satisfied that the documents  
434 and statements filed by the captive insurance company comply  
435 with the provisions of this chapter, the commissioner may grant  
436 a license authorizing the company to conduct insurance business  
437 in this state until the next succeeding March 1, at which time  
438 the license may be renewed ~~An industrial insured captive insurer~~  
439 ~~is subject to all provisions of this part except as otherwise~~  
440 ~~indicated.~~

441 (6) Upon approval of the commissioner or his or her  
442 designee, a foreign or alien captive insurance company may  
443 become a domestic captive insurance company by complying with  
444 all of the requirements of law relative to the organization and  
445 licensing of a domestic captive insurance company of the same or  
446 equivalent type in this state and by filing with the Secretary  
447 of State its articles of association, charter, or other  
448 organizational documents, together with any appropriate

449 amendments that have been adopted in accordance with the laws of  
 450 this state to bring those articles of association, charter, or  
 451 other organizational documents into compliance with the laws of  
 452 this state, along with a certificate of good standing issued by  
 453 the commissioner. After this is accomplished, the captive  
 454 insurance company is entitled to the necessary or appropriate  
 455 certificates and licenses to continue transacting business in  
 456 this state and is subject to the authority and jurisdiction of  
 457 this state. In connection with this redomestication, the  
 458 commissioner may waive any requirements for public hearings. It  
 459 is not necessary for a company redomesticating into this state  
 460 to merge, consolidate, transfer assets, or otherwise engage in  
 461 any other reorganization, other than as specified in this  
 462 section ~~An industrial insured captive insurer may not provide~~  
 463 ~~workers' compensation and employer's liability insurance except~~  
 464 ~~in excess of at least \$25 million in the annual aggregate.~~

465 Section 3. Section 628.907, Florida Statutes, is amended  
 466 to read:

467 628.907 Capitalization requirements; security requirements  
 468 for branch captive insurance companies; restriction on payment  
 469 of dividends ~~Minimum capital and surplus.-~~

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

473 (a) ~~(1)~~ In the case of a pure captive insurance company,  
 474 not less than \$100,000. ~~Unimpaired paid-in capital of at least~~  
 475 ~~\$500,000; and~~

476 (b) ~~(2)~~ In the case of an association captive insurance

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477 company incorporated as a stock insurer or organized as a  
478 limited liability company, not less than \$400,000. ~~Unimpaired~~  
479 ~~surplus of at least \$250,000.~~

480 (c) In the case of an industrial insured captive insurance  
481 company incorporated as a stock insurer or organized as a  
482 limited liability company, not less than \$200,000.

483 (d) In the case of a sponsored captive insurance company,  
484 not less than \$500,000. However, if the sponsored captive  
485 insurance company does not assume any risk, the risks insured by  
486 the protected cells are homogeneous, and there are no more than  
487 10 cells, the commissioner may reduce this amount to an amount  
488 not less than \$150,000.

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

494 (2) (a) Except for a sponsored captive insurance company  
495 that does not assume any risk, the capital must be in the form  
496 of cash, cash equivalent, or an irrevocable letter of credit  
497 issued by a bank chartered by this state or a member bank of the  
498 Federal Reserve System with a branch office in this state, or as  
499 approved by the commissioner.

500 (b) For a sponsored captive insurance company that does  
501 not assume any risk, the capital may also be in the form of  
502 other high-quality securities as approved by the commissioner.

503 (3) The commissioner may not issue a license to a captive  
504 insurance company incorporated as a nonprofit corporation unless

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505 the company possesses and maintains unrestricted net assets of:

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

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

513 (4) Contributions to a captive insurance company  
514 incorporated as a nonprofit corporation must be in the form of  
515 cash, cash equivalent, or an irrevocable letter of credit issued  
516 by a bank chartered by this state or a member bank of the  
517 Federal Reserve System with a branch office in this state, or as  
518 approved by the commissioner.

519 (5) For purposes of this section, the commissioner may  
520 issue a license expressly conditioned upon the captive insurance  
521 company providing to the commissioner satisfactory evidence of  
522 possession of the minimum required unimpaired paid-in capital.  
523 Until this evidence is provided, the captive insurance company  
524 may not issue any policy, assume any liability, or otherwise  
525 provide coverage. The commissioner may revoke the conditional  
526 license without legal recourse by the company if satisfactory  
527 evidence of the required capital is not provided within a  
528 maximum period of time, not to exceed 1 year, to be established  
529 by the commissioner at the time the conditional license is  
530 issued.

531 (6) The commissioner may prescribe additional capital or  
532 net assets based upon the type, volume, and nature of insurance

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533 business transacted. Contributions in connection with these  
534 prescribed additional net assets or capital must be in the form  
535 of:

536 (a) Cash;  
537 (b) Cash equivalent;  
538 (c) An irrevocable letter of credit issued by a bank  
539 chartered by this state or a member bank of the Federal Reserve  
540 System with a branch office in this state, or as approved by the  
541 commissioner; or

542 (d) Securities invested as provided in part II of chapter  
543 625.

544 (7) In the case of a branch captive insurance company, as  
545 security for the payment of liabilities attributable to branch  
546 operations, the commissioner must require that a trust fund,  
547 funded by an irrevocable letter of credit or other acceptable  
548 asset, be established and maintained in the United States for  
549 the benefit of United States policyholders and United States  
550 ceding insurers under insurance policies issued or reinsurance  
551 contracts issued or assumed, by the branch captive insurance  
552 company through its branch operations. The amount of the  
553 security may be no less than the capital and surplus required by  
554 this chapter and the reserves on these insurance policies or  
555 reinsurance contracts, including reserves for losses, allocated  
556 loss adjustment expenses, incurred but not reported losses, and  
557 unearned premiums with regard to business written through branch  
558 operations. However, the commissioner may permit a branch  
559 captive insurance company that is required to post security for  
560 loss reserves on branch business by its reinsurer to reduce the

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561 funds in the trust account required by this section by the same  
562 amount as long as the security remains posted with the  
563 reinsurer. If the form of security selected is a letter of  
564 credit, the letter of credit must be established by, or issued  
565 or confirmed by, a bank chartered in this state or a member bank  
566 of the Federal Reserve System.

567 (8) (a) A captive insurance company may not pay a dividend  
568 out of, or other distribution with respect to, capital or  
569 surplus in excess of the limitations set forth in this chapter  
570 without the prior approval of the commissioner. Approval of an  
571 ongoing plan for the payment of dividends or other distributions  
572 must be conditioned upon the retention, at the time of each  
573 payment, of capital or surplus in excess of amounts specified  
574 by, or determined in accordance with formulas approved by, the  
575 commissioner.

576 (b) A captive insurance company incorporated as a  
577 nonprofit corporation may not make any distributions without the  
578 prior approval of the commissioner.

579 (9) An irrevocable letter of credit, which is issued by a  
580 financial institution other than a bank chartered by this state  
581 or a member bank of the Federal Reserve System, must meet the  
582 same standards as an irrevocable letter of credit which has been  
583 issued by a bank chartered by this state or a member bank of the  
584 Federal Reserve System.

585 Section 4. Section 628.908, Florida Statutes, is created  
586 to read:

587 628.908 Surplus requirements; restriction on payment of  
588 dividends.—

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589       (1) The commissioner may not issue a license to a captive  
590 insurance company unless the company possesses and maintains  
591 unimpaired surplus of:

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

594       (b) In the case of an association captive insurance  
595 company incorporated as a stock insurer or organized as a  
596 limited liability company, not less than \$350,000.

597       (c) In the case of an industrial insured captive insurance  
598 company incorporated as a stock insurer or organized as a  
599 limited liability company, not less than \$300,000.

600       (d) In the case of an association captive insurance  
601 company incorporated as a mutual insurer, not less than  
602 \$750,000.

603       (e) In the case of an industrial insured captive insurance  
604 company incorporated as a mutual insurer, not less than  
605 \$500,000.

606       (f) In the case of a sponsored captive insurance company,  
607 not less than \$500,000. However, if the sponsored captive  
608 insurance company does not assume any risk, the risks insured by  
609 the protected cells are homogeneous, and there are no more than  
610 10 cells, the commissioner may reduce this amount to an amount  
611 not less than \$150,000.

612       (g) In the case of a special purpose captive insurance  
613 company, an amount determined by the commissioner after giving  
614 due consideration to the company's business plan, feasibility  
615 study, and pro forma financial statements and projections,  
616 including the nature of the risks to be insured.

617 (2) (a) Except for a sponsored captive insurance company  
 618 that does not assume any risk, the surplus must be in the form  
 619 of cash, cash equivalent, or an irrevocable letter of credit  
 620 issued by a bank chartered by this state or a member bank of the  
 621 Federal Reserve System with the branch office in this state and  
 622 approved by the commissioner.

623 (b) For a sponsored captive insurance company that does  
 624 not assume any risk, the surplus may also be in the form of  
 625 other high-quality securities, as approved by the commissioner.

626 (3) Notwithstanding the requirements of this section, a  
 627 captive insurance company organized as a reciprocal insurer  
 628 under this chapter may not be issued a license unless it  
 629 possesses and thereafter maintains unimpaired surplus of \$1  
 630 million.

631 (4) For purposes of subsections (1) and (2), the  
 632 commissioner may issue a license expressly conditioned upon the  
 633 captive insurance company providing to the commissioner  
 634 satisfactory evidence of possession of the minimum required  
 635 unimpaired surplus. Until this evidence is provided, the captive  
 636 insurance company may not issue any policy, assume any  
 637 liability, or otherwise provide coverage. The commissioner may  
 638 revoke the conditional license without legal recourse by the  
 639 company if satisfactory evidence of the required capital is not  
 640 provided within a maximum period of time, not to exceed 1 year,  
 641 to be established by the commissioner at the time the  
 642 conditional license is issued.

643 (5) A captive insurance company may not pay a dividend out  
 644 of, or other distribution with respect to, capital or surplus in

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645 excess of the limitations set forth in this chapter without the  
646 prior approval of the commissioner. Approval of an ongoing plan  
647 for the payment of dividends or other distribution must be  
648 conditioned upon the retention, at the time of each payment, of  
649 capital or surplus in excess of amounts specified by, or  
650 determined in accordance with formulas approved by, the  
651 commissioner.

652 (6) An irrevocable letter of credit, which is issued by a  
653 financial institution other than a bank chartered by this state  
654 or a member bank of the Federal Reserve System, must meet the  
655 same standards as an irrevocable letter of credit which has been  
656 issued by a bank chartered by this state or a member bank of the  
657 Federal Reserve System.

658 Section 5. Section 628.909, Florida Statutes, is amended  
659 to read:

660 628.909 Applicability of other laws.—

661 (1) The Florida Insurance Code shall not apply to captive  
662 insurers or industrial insured captive insurers except as  
663 provided in this part and subsections (2) and (3).

664 (2) The following provisions of the Florida Insurance Code  
665 shall apply to captive insurers who are not industrial insured  
666 captive insurers to the extent that such provisions are not  
667 inconsistent with this part:

668 (a) Chapter 624, except for ss. 624.407, 624.408,  
669 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

670 (b) Chapter 625, part II.

671 (c) Chapter 626, part IX.

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

673 provided.

674 (e) Chapter 628.

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

678 (a) Chapter 624, except for ss. 624.407, 624.408,  
679 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

680 (b) Chapter 625, part II, if the industrial insured  
681 captive insurer is incorporated in this state.

682 (c) Chapter 626, part IX.

683 (d) Sections 627.730-627.7405 when no-fault coverage is  
684 provided.

685 (e) Chapter 628, except for ss. 628.341, 628.351, and  
686 628.6018.

687 Section 6. Section 628.910, Florida Statutes, is created  
688 to read:

689 628.910 Incorporation options and requirements.-

690 (1) A pure captive insurance company or a sponsored  
691 captive insurance company may be:

692 (a) Incorporated as a stock insurer with its capital  
693 divided into shares and held by the stockholders;

694 (b) Incorporated as a public benefit, mutual benefit, or  
695 religious nonprofit corporation with members in accordance with  
696 the Florida Not For Profit Corporation Act; or

697 (c) Organized as a limited liability company with its  
698 capital divided into capital accounts and held by its members.

699 (2) An association captive insurance company or an  
700 industrial insured captive insurance company may be:

- 701        (a) Incorporated as a stock insurer with its capital  
 702 divided into shares and held by the stockholders;
- 703        (b) Organized as a limited liability company with its  
 704 capital divided into capital accounts and held by its members;
- 705        (c) Incorporated as a mutual insurer without capital  
 706 stock, the governing body of which is elected by the member  
 707 organizations of its association; or
- 708        (d) Organized as a reciprocal insurer in accordance with  
 709 chapter 629.
- 710        (3) A captive insurance company may not have fewer than  
 711 three incorporators or organizers of whom not fewer than two  
 712 must be residents of this state.
- 713        (4) In the case of a captive insurance company formed as a  
 714 corporation, a nonprofit corporation, or a limited liability  
 715 company, before the articles of incorporation or articles of  
 716 organization are transmitted to the Secretary of State, the  
 717 incorporators or organizers shall petition the commissioner to  
 718 issue a certificate setting forth a finding that the  
 719 establishment and maintenance of the proposed entity will  
 720 promote the general good of the state. In arriving at this  
 721 finding, the commissioner must consider:
- 722            (a) The character, reputation, financial standing, and  
 723 purposes of the incorporators or organizers;
- 724            (b) The character, reputation, financial responsibility,  
 725 insurance experience, and business qualifications of the  
 726 officers and directors or managers; and
- 727            (c) Other aspects as the commissioner considers advisable.

728       (5) The articles of incorporation or articles of  
729 organization, the certificate issued pursuant to this section,  
730 and the organization fees required by the Florida Business  
731 Corporation Act or the Florida Not For Profit Corporation Act,  
732 as applicable, must be transmitted to the Secretary of State,  
733 who must record both the articles of incorporation or articles  
734 of organization and the certificate.

735       (6) In the case of a captive insurance company formed as a  
736 reciprocal insurer, the organizers must petition the  
737 commissioner to issue a certificate setting forth the  
738 commissioner's finding that the establishment and maintenance of  
739 the proposed association will promote the general good of the  
740 state. In arriving at this finding, the commissioner must  
741 consider:

742           (a) The character, reputation, financial standing, and  
743 purposes of the incorporators or organizers;

744           (b) The character, reputation, financial responsibility,  
745 insurance experience, and business qualifications of the  
746 officers and directors or managers; and

747           (c) Other aspects the commissioner considers advisable.

748       (7) In the case of a captive insurance company licensed as  
749 a branch captive insurance company, the alien captive insurance  
750 company must petition the commissioner to issue a certificate  
751 setting forth the commissioner's finding that, after considering  
752 the character, reputation, financial responsibility, insurance  
753 experience, and business qualifications of the officers and  
754 directors or managers of the alien captive insurance company,  
755 the licensing and maintenance of the branch operations will

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756 promote the general good of the state. The alien captive  
757 insurance company may register to do business in this state  
758 after the commissioner's certificate has been issued.

759 (8) The capital stock or membership interests of a captive  
760 insurance company incorporated as a stock insurer or limited  
761 liability company must be issued at not less than par value.

762 (9) In the case of a captive insurance company formed as a  
763 corporation or a nonprofit corporation, at least one of the  
764 members of the board of directors of a captive insurance company  
765 incorporated in this state must be a resident of this state.

766 (10) In the case of a captive insurance company formed as  
767 a limited liability company, at least one of the managers of the  
768 captive insurance company must be a resident of this state.

769 (11) In the case of a captive insurance company formed as  
770 a reciprocal insurer, at least one of the members of the  
771 subscribers' advisory committee must be a resident of this  
772 state.

773 (12) A captive insurance company formed as a corporation,  
774 a nonprofit corporation, or a limited liability company,  
775 pursuant to the provisions of this chapter, has the privileges  
776 and is subject to the provisions of the general corporation law,  
777 including the Florida Not For Profit Corporation Act for  
778 nonprofit corporations and the Florida Limited Liability Company  
779 Act for limited liability companies, as applicable, as well as  
780 the applicable provisions contained in this chapter. If a  
781 conflict occurs between a provision of the general corporation  
782 law, including the Florida Not For Profit Corporation Act for  
783 nonprofit corporations and the Florida Limited Liability Company

784 Act for limited liability companies, as applicable, and a  
 785 provision of this chapter, the latter controls. The provisions  
 786 of this title pertaining to mergers, consolidations,  
 787 conversions, mutualizations, and redomestications apply in  
 788 determining the procedures to be followed by a captive insurance  
 789 company in carrying out any of the transactions described in  
 790 such provisions, except the commissioner may waive or modify the  
 791 requirements for public notice and hearing in accordance with  
 792 regulations which the commissioner may adopt addressing  
 793 categories of transactions. If a notice of public hearing is  
 794 required, but no one requests a hearing, the commissioner may  
 795 cancel the hearing.

796 (13) A captive insurance company formed as a reciprocal  
 797 insurer pursuant to the provisions of this chapter has the  
 798 privileges and is subject to chapter 629 in addition to the  
 799 applicable provisions of this part. If a conflict occurs between  
 800 the provisions of chapter 629 and the provisions of this part,  
 801 the latter controls. To the extent a reciprocal insurer is made  
 802 subject to other provisions of this title pursuant to chapter  
 803 629, the provisions are not applicable to a reciprocal insurer  
 804 formed pursuant to the provisions of this chapter unless the  
 805 provisions are expressly made applicable to a captive insurance  
 806 company pursuant to the provisions of this chapter.

807 (14) The articles of incorporation or bylaws of a captive  
 808 insurance company may authorize a quorum of a board of directors  
 809 to consist of no fewer than one-third of the fixed or prescribed  
 810 number of directors as provided for by the Florida Business  
 811 Corporation Act or the Florida Not For Profit Corporation Act.

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812 In the case of a limited liability company, the articles of  
813 organization or operating agreement of a captive insurance  
814 company may authorize a quorum to consist of no fewer than one-  
815 third of the managers required by the articles of organization  
816 or the operating agreement.

817 Section 7. Section 628.911, Florida Statutes, is amended  
818 to read:

819 628.911 Reports and statements.-

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

823 (2) Annually before March 1, a captive insurance company  
824 or a captive reinsurance company ~~insurer shall, within 60 days~~  
825 ~~after the end of its fiscal year and as often as the office may~~  
826 ~~deem necessary,~~ submit to the commissioner ~~office~~ a report of  
827 its financial condition verified by oath of two of its executive  
828 officers. Except as provided in this part, a captive insurance  
829 company or a captive reinsurance company must report using  
830 generally accepted accounting principles, unless the  
831 commissioner approves the use of statutory accounting  
832 principles, with useful or necessary modifications or  
833 adaptations required or approved or accepted by the commissioner  
834 for the type of insurance and kinds of insurers to be reported  
835 upon, and as supplemented by additional information required by  
836 the commissioner. The Financial Services Commission may adopt by  
837 rule the form in which captive insurance companies ~~insurers~~  
838 shall report.

839 (3) (a) A pure captive insurance company may make written

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840 application for filing the required report on a fiscal year-end  
841 that is consistent with the parent company's fiscal year. If an  
842 alternative reporting date is granted, the annual report is due  
843 60 days after the fiscal year-end.

844 (b) In order to provide sufficient detail to support the  
845 premium tax return, the pure captive insurance company must file  
846 before March 1 of each year for each calendar year-end pages 1-7  
847 of the NAIC Annual Statement, verified by oath of two of its  
848 executive officers.

849 (4) Sixty days after the fiscal year end, a branch captive  
850 insurance company must file with the commissioner a copy of all  
851 reports and statements required to be filed under the laws of  
852 the jurisdiction in which the alien captive insurance company is  
853 formed, verified by oath by two of its executive officers. If  
854 the commissioner is satisfied that the annual report filed by  
855 the alien captive insurance company in its domiciliary  
856 jurisdiction provides adequate information concerning the  
857 financial condition of the alien captive insurance company, the  
858 commissioner may waive the requirement for completion of the  
859 captive annual statement for business written in the alien  
860 jurisdiction. Such waiver must be in writing and subject to  
861 public inspection.

862 Section 8. Section 628.912, Florida Statutes, is created  
863 to read:

864 628.912 Discounting of loss and loss adjustment expense  
865 reserves.—

866 (1) A sponsored captive insurance company and a captive  
867 reinsurance company may discount its loss and loss adjustment

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868 expense reserves at treasury rates applied to the applicable  
869 payments projected through the use of the expected payment  
870 pattern associated with the reserves.

871 (2) A sponsored captive insurance company and a captive  
872 reinsurance company must file annually an actuarial opinion on  
873 loss and loss adjustment expense reserves provided by an  
874 independent actuary. The actuary may not be an employee of the  
875 captive company or its affiliates.

876 (3) The commissioner may disallow the discounting of  
877 reserves if a sponsored captive insurance company or a captive  
878 reinsurance company violates a provision of this part.

879 Section 9. Section 628.913, Florida Statutes, is amended  
880 to read:

881 (Substantial rewording of section. See  
882 s. 628.913, F.S., for present text.)  
883 628.913 Captive reinsurance companies.—

884 (1) A captive reinsurance company, if permitted by its  
885 articles of incorporation or charter, may apply to the  
886 commissioner for a license to write reinsurance covering  
887 property and casualty insurance or reinsurance contracts. A  
888 captive reinsurance company authorized by the commissioner may  
889 write reinsurance contracts covering risks in any state.

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

892 (a) Obtain from the commissioner a license authorizing it  
893 to conduct business as a captive reinsurance company in this  
894 state;

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

897 (c) Maintain its principal place of business in this  
 898 state; and

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

901 (3) Before receiving a license, a captive reinsurance  
 902 company must file with the commissioner:

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

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

906 (c) Other documents required by the commissioner.

907 (4) In addition to the information required by this  
 908 section, the captive reinsurance company must file with the  
 909 commissioner evidence of:

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

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

914 (c) The overall soundness of the company's plan of  
 915 operation; and

916 (d) Other overall factors considered relevant by the  
 917 commissioner in ascertaining if the company would be able to  
 918 meet its policy obligations.

919 Section 10. Section 628.914, Florida Statutes, is created  
 920 to read:

921 628.914 Minimum capitalization or reserves for captive  
 922 reinsurance companies.-

923       (1) The commissioner may not issue a license to a captive  
 924 reinsurance company unless the company possesses and maintains  
 925 capital or unimpaired surplus of not less than the greater of  
 926 \$300 million or 10 percent of reserves. The surplus may be in  
 927 the form of cash or securities.

928       (2) The commissioner may prescribe additional capital or  
 929 surplus based upon the type, volume, and nature of the insurance  
 930 business transacted.

931       (3) A captive reinsurance company may not pay a dividend  
 932 out of, or other distribution with respect to, capital or  
 933 surplus in excess of the limitations without the prior approval  
 934 of the commissioner. Approval of an ongoing plan for the payment  
 935 of dividends or other distributions must be conditioned upon the  
 936 retention, at the time of each payment, of capital or surplus in  
 937 excess of amounts specified by, or determined in accordance with  
 938 formulas approved by, the commissioner.

939       Section 11. Section 628.9141, Florida Statutes, is created  
 940 to read:

941       628.9141 Incorporation of a captive reinsurance company.—

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

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

948       (3) Before the articles of incorporation are transmitted  
 949 to the Secretary of State, the incorporators shall petition the  
 950 commissioner to issue a certificate finding that the

951 establishment and maintenance of the proposed corporation  
 952 promotes the general good of this state. In arriving at this  
 953 finding, the commissioner must consider:

954 (a) The character, reputation, financial standing, and  
 955 purposes of the incorporators;

956 (b) The character, reputation, financial responsibility,  
 957 insurance experience, and business qualifications of the  
 958 officers and directors; and

959 (c) Other factors the commissioner considers advisable.

960 (4) The capital stock of a captive reinsurance company  
 961 must be issued at par value or greater.

962 (5) At least one of the members of the board of directors  
 963 of a captive reinsurance company incorporated in this state must  
 964 be a resident of this state.

965 Section 12. Section 628.9142, Florida Statutes, is created  
 966 to read:

967 628.9142 Reinsurance; effect on reserves.-

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

970 (2) A captive insurance company may take credit for  
 971 reserves on risks or portions of risks ceded to authorized  
 972 insurers or reinsurers and unauthorized insurers or reinsurers  
 973 complying with the provisions of s. 624.610. A captive insurer  
 974 may not take credit for reserves on risks or portions of risks  
 975 ceded to an unauthorized insurer or reinsurer if the insurer or  
 976 reinsurer is not in compliance with s. 624.610.

977 Section 13. Section 628.9143, Florida Statutes, is created  
 978 to read:

979 628.9143 Annual captive reinsurance tax.-

980 (1) A captive reinsurance company must pay to the office  
 981 by March 1 of each year a captive reinsurance tax of \$5,000.

982 (2) The tax provided in this section is the only tax  
 983 collectible under the laws of this state from a captive  
 984 reinsurance company, and no tax on reinsurance premiums, other  
 985 than occupation tax, nor any other taxes, except ad valorem  
 986 taxes on real and personal property used in the production of  
 987 income, may be levied or collected from a captive reinsurance  
 988 company by the state or a county, city, or municipality within  
 989 this state.

990 (3) A captive reinsurance company failing to make returns  
 991 or to pay all taxes required by this section is subject to  
 992 sanctions provided in this part.

993 Section 14. Section 628.918, Florida Statutes, is created  
 994 to read:

995 628.918 Management of assets of captive reinsurance  
 996 company.-At least 35 percent of the assets of a captive  
 997 reinsurance company must be managed by an asset manager  
 998 domiciled in this state.

999 Section 15. Section 628.919, Florida Statutes, is created  
 1000 to read:

1001 628.919 Regulations establishing standards to ensure risk  
 1002 management control by parent company.-The Financial Services  
 1003 Commission shall adopt rules establishing standards to ensure  
 1004 that a parent or affiliated company is able to exercise control  
 1005 of the risk management function of any controlled unaffiliated  
 1006 business to be insured by the pure captive insurance company.

1007 Section 16. Section 628.920, Florida Statutes, is created  
 1008 to read:

1009 628.920 Conversion of certain stock, mutual corporations,  
 1010 or limited liability companies into reciprocal insurers; plan  
 1011 for conversion.—

1012 (1) An association captive insurance company or industrial  
 1013 insured group formed as a stock or mutual corporation or a  
 1014 limited liability company may be converted to or merged with and  
 1015 into a reciprocal insurer in accordance with a plan and the  
 1016 provisions of this section.

1017 (2) A plan for this conversion or merger:

1018 (a) Must be fair and equitable to the:

- 1019 1. Shareholders, in the case of a stock insurer;
- 1020 2. Members, in the case of a limited liability company; or
- 1021 3. Policyholders, in the case of a mutual insurer; and

1022 (b) Must provide for the purchase of the shares of any  
 1023 nonconsenting shareholder of a stock insurer, of the member  
 1024 interest of any nonconsenting member of a limited liability  
 1025 company, of the policyholder interest of any nonconsenting  
 1026 policyholder of a mutual insurer in substantially the same  
 1027 manner and subject to the same rights and conditions as are  
 1028 accorded a dissenting shareholder, dissenting member, or a  
 1029 dissenting policyholder pursuant to the provisions of this  
 1030 chapter, provided the merger of a limited liability company  
 1031 requires the consent of all members unless waived in an  
 1032 operating agreement signed by all of the members of the limited  
 1033 liability company.

1034 (3) In the case of a conversion authorized under this  
 1035 section:

1036 (a) The conversion must be accomplished under a reasonable  
 1037 plan and procedure as may be approved by the commissioner.  
 1038 However, the commissioner may not approve the plan of conversion  
 1039 unless the plan:

1040 1. Satisfies the provisions of this section;

1041 2. Provides for a hearing, of which notice has been given  
 1042 to the insurer, its directors, officers, and stockholders, in  
 1043 the case of a stock insurer; members and managers, in the case  
 1044 of a limited liability company; or policyholders, in the case of  
 1045 a mutual insurer, all of whom have the right to appear at the  
 1046 hearing, except that the director may waive or modify the  
 1047 requirements for the hearing. However, if a notice of hearing is  
 1048 required, but no hearing is requested, the commissioner may  
 1049 cancel the hearing;

1050 3. Provides for the conversion of existing stockholder,  
 1051 member, or policyholder interests into subscriber interests in  
 1052 the resulting reciprocal insurer, proportionate to stockholder,  
 1053 member, or policyholder interests in the stock or mutual insurer  
 1054 or limited liability company; and

1055 4. Is approved:

1056 a. In the case of a stock insurer or limited liability  
 1057 company, by a majority of the shares or interests entitled to  
 1058 vote represented in person or by proxy at a duly called regular  
 1059 or special meeting at which a quorum is present;

1060 b. In the case of a mutual insurer, by a majority of the  
 1061 voting interests of policyholders represented in person or by

1062 proxy at a duly called regular or special meeting at which a  
 1063 quorum is present;

1064 (b) The commissioner shall approve the plan of conversion  
 1065 if the commissioner finds that the conversion will promote the  
 1066 general good of the state in conformity with those standards  
 1067 provided in this part;

1068 (c) If the commissioner approves the plan, the  
 1069 commissioner must amend the converting insurer's certificate of  
 1070 authority to reflect conversion to a reciprocal insurer and  
 1071 issue the amended certificate of authority to the company's  
 1072 attorney-in-fact;

1073 (d) Upon issuance of an amended certificate of authority  
 1074 of a reciprocal insurer by the commissioner, the conversion is  
 1075 effective; and

1076 (e) Upon the effectiveness of the conversion, the  
 1077 corporate existence of the converting insurer must cease and the  
 1078 resulting reciprocal insurer must notify the Secretary of State  
 1079 of the conversion.

1080 (4) A merger authorized pursuant to the provisions of this  
 1081 section must be accomplished substantially in accordance with  
 1082 the procedures provided in this part, except that, only for  
 1083 purposes of the merger:

1084 (a) The plan or merger must satisfy the requirements of  
 1085 subsection (2);

1086 (b) The subscribers' advisory committee of a reciprocal  
 1087 insurer must be equivalent to the board of directors of a stock  
 1088 or mutual insurance company or the managers of a limited  
 1089 liability company;

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1090 (c) The subscribers of a reciprocal insurer must be the  
1091 equivalent of the policyholders of a mutual insurance company;

1092 (d) If a subscribers' advisory committee does not have a  
1093 president or secretary, the officers of the committee having  
1094 substantially equivalent duties are considered the president and  
1095 secretary of the committee;

1096 (e) The commissioner must approve the articles of merger  
1097 if the commissioner finds that the merger will promote the  
1098 general good of the state in conformity with those standards  
1099 provided in this part. If the commissioner approves the articles  
1100 of merger, the commissioner must endorse his or her approval on  
1101 the articles and the surviving insurer must present the  
1102 endorsement of the commissioner to the Secretary of State at the  
1103 Secretary of State's office;

1104 (f) Notwithstanding the provisions of this part, the  
1105 commissioner may permit the formation, without surplus, of a  
1106 captive insurance company organized as a reciprocal insurer,  
1107 into which an existing captive insurance company may be merged  
1108 for the purpose of facilitating a transaction provided for in  
1109 this section. However, there may be no more than one authorized  
1110 insurance company surviving the merger; and

1111 (g) An alien insurer may be a party to a merger authorized  
1112 pursuant to the provisions of subsection (1) if the requirements  
1113 for the merger between a domestic and a foreign insurer pursuant  
1114 to the provisions of this chapter apply to a merger between a  
1115 domestic and an alien insurer provided by this subsection. The  
1116 alien insurer must be treated as a foreign insurer pursuant to

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1117 the provisions of this chapter and other jurisdictions must be  
1118 the equivalent of a state.

1119 Section 17. Section 628.921, Florida Statutes, is created  
1120 to read:

1121 628.921 Formation of sponsored captive insurance company;  
1122 establishing protected cells.-

1123 (1) One or more sponsors may form a sponsored captive  
1124 insurance company under this part.

1125 (2) A sponsored captive insurance company formed or  
1126 licensed under this part may establish and maintain one or more  
1127 protected cells to insure risks of one or more participants,  
1128 subject to the following conditions:

1129 (a) The shareholders of a sponsored captive insurance  
1130 company must be limited to its participants and sponsors;

1131 (b) Each protected cell must be accounted for separately  
1132 on the books and records of the sponsored captive insurance  
1133 company to reflect the financial condition and results of  
1134 operations of the protected cell, net income or loss, dividends  
1135 or other distributions to participants, and other factors that  
1136 may be provided in the participant contract or required by the  
1137 commissioner;

1138 (c) The assets of a protected cell must not be chargeable  
1139 with liabilities arising out of any other insurance business the  
1140 sponsored captive insurance company may conduct;

1141 (d) Sale, exchange, or other transfer of assets may not be  
1142 made by the sponsored captive insurance company between or among  
1143 any of its protected cells without the consent of the protected  
1144 cells;

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1145 (e) Sale, exchange, transfer of assets, dividend, or  
1146 distribution may not be made from a protected cell to a sponsor  
1147 or participant without the commissioner's approval, nor may the  
1148 approval be given if the sale, exchange, transfer, dividend, or  
1149 distribution would result in insolvency or impairment with  
1150 respect to a protected cell;

1151 (f) A sponsored captive insurance company must annually  
1152 file with the commissioner financial reports the commissioner  
1153 requires, which must include, but are not limited to, accounting  
1154 statements detailing the financial experience of each protected  
1155 cell;

1156 (g) A sponsored captive insurance company must notify the  
1157 commissioner in writing within 10 business days after a  
1158 protected cell becomes insolvent or otherwise unable to meet its  
1159 claim or expense obligations; and

1160 (h) A participant contract may not take effect without the  
1161 commissioner's prior written approval, and the addition of each  
1162 new protected cell and withdrawal of any participant of any  
1163 existing protected cell constitutes a change in the business  
1164 plan, which requires the commissioner's prior written approval.

1165 Section 18. Section 628.922, Florida Statutes, is created  
1166 to read:

1167 628.922 Requirements applicable to sponsors.—A sponsor of  
1168 a sponsored captive insurance company must be an insurer  
1169 licensed pursuant to the laws of a state, an insurance holding  
1170 company that controls an insurer licensed under the laws of any  
1171 state and subject to registration under the insurance holding  
1172 company system laws of the state of domicile of the insurer, a

1173 reinsurer authorized or approved under the laws of a state, or a  
 1174 captive insurance company formed or licensed under this chapter.  
 1175 A risk retention group may not be either a sponsor or a  
 1176 participant of a sponsored captive insurance company. The  
 1177 business written by a sponsored captive insurance company with  
 1178 respect to each protected cell must be:

1179 (1) Fronted by an insurance company licensed under the  
 1180 laws of:

1181 (a) Any state; or  
 1182 (b) Any jurisdiction if the insurance company is a wholly  
 1183 owned subsidiary of an insurance company licensed under the laws  
 1184 of any state;

1185 (2) Reinsured by a reinsurer authorized or approved by  
 1186 this state; or

1187 (3) Secured by a trust fund in the United States for the  
 1188 benefit of policyholders and claimants funded by an irrevocable  
 1189 letter of credit or other asset acceptable to the commissioner.  
 1190 The amount of security provided by the trust fund may not be  
 1191 less than the reserves associated with those liabilities,  
 1192 including reserves for losses, allocated loss adjustment  
 1193 expenses, incurred but unreported losses, and unearned premiums  
 1194 for business written through the participant's protected cell.  
 1195 The commissioner may require the sponsored captive to increase  
 1196 the funding of a trust established under this subsection. If the  
 1197 form of security in the trust is a letter of credit, the letter  
 1198 of credit must be established, issued, or confirmed by a bank  
 1199 chartered in this state, a member of the Federal Reserve System,  
 1200 or a bank chartered by another state if that state-chartered

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1201 bank is acceptable to the commissioner. A trust and trust  
 1202 instrument maintained under this subsection must be in a form  
 1203 and upon terms approved by the commissioner.

1204 Section 19. Section 628.923, Florida Statutes, is created  
 1205 to read:

1206 628.923 Participants in sponsored captive insurance  
 1207 companies.—

1208 (1) An association, a corporation, a limited liability  
 1209 company, a partnership, a trust, or another business entity may  
 1210 be a participant in a sponsored captive insurance company formed  
 1211 or licensed under this part.

1212 (2) A sponsor may be a participant in a sponsored captive  
 1213 insurance company.

1214 (3) A participant need not be a shareholder of the  
 1215 sponsored captive insurance company or an affiliate of the  
 1216 company.

1217 (4) A participant may insure only its own risks through a  
 1218 sponsored captive insurance company, unless otherwise approved  
 1219 by the commissioner.

1220 Section 20. Section 628.924, Florida Statutes, is created  
 1221 to read:

1222 628.924 Eligibility of licensed captive insurance company  
 1223 for certificate of authority to act as insurer.—A licensed  
 1224 captive insurance company that meets the necessary requirements  
 1225 of this part imposed upon an insurer must be considered for  
 1226 issuance of a certificate of authority to act as an insurer in  
 1227 this state.

1228 Section 21. This act shall take effect July 1, 2011.