

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1836

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Captive Insurance

DATE: April 2, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

Under current law captive insurance is regulated by the Office of Insurance Regulation (OIR) under part V of ch. 628, F.S., which defines a “captive insurer” as a domestic insurer that is owned by, or is under common ownership with, a specific corporation or group of corporations for which the captive insurer provides insurance coverage.¹ Every captive insurer must maintain unimpaired paid-in capital of at least \$500,000 and unimpaired surplus of at least \$250,000.² Current law also specifically defines “industrial insureds” and “industrial insured captive insurer.”³ An industrial insured captive insurer is a captive insurer that is owned by, and provides insurance coverage for, only industrial insureds. An industrial insured must have gross assets in excess of \$50 million, at least 100 full-time employees, and pay annual premiums of at least \$200,000 for each line of insurance. The industrial insured captive insurer must maintain unimpaired capital and surplus of at least \$20 million.

Other than the requirements for captive insurers and industrial insured captive insurers, current law does not delineate any other type of captive insurance.

The bill redefines “captive insurer” and “industrial insured captive insurer,” and creates and defines seven new captive insurers under ch. 628, F.S.:

- Alien captive insurer
- Association captive insurer

¹ Section 628.901, F.S.

² Section 628.907, F.S.

³ Section 628.903, F.S.

- Branch captive insurer
- Captive reinsurance company
- Pure captive insurer
- Special purpose captive insurer
- Sponsored captive insurer

The bill establishes capital and reserve requirements for each captive insurer and removes the current requirement,⁴ that captive insurers are also subject to the same level of capital⁵ and reserves,⁶ that are specified for various lines of insurance written in this state.

This bill substantially amends the following sections of the Florida Statutes: 628.901, 628.905, 628.907, 628.909, 628.911, and 628.913.

This bill creates the following sections of the Florida Statutes: 628.908, 628.910, 628.912, 628.914, 628.9141, 628.9142, 628.9143, 628.918, 628.919, 628.920, 628.921, 628.922, 628.923, and 628.924.

II. Present Situation:

Captive Insurance

A captive insurer is an insurance company primarily or exclusively insures a business entity, or entities, that owns or is an affiliate of the captive insurer. The insured business entities pay premiums to the captive insurer for specified insurance coverages. A captive insurance arrangement can provide a number of benefits, depending on the type of business arrangement, the domicile of the insured business and the captive insurer, and the coverages involved. Some benefits of captive insurance may include:

- Lower insurance cost. Two elements that an arm's length insurer must recover are acquisition cost (often in the form of agent commissions and advertising) and profit. A captive insurer would not need to factor these elements into the premium it charges.
- Potential tax savings. The premium paid by the insured entity is a deductible expense for Federal income tax purposes, and, under some circumstances, a portion of the captive insurer's income from the collected premium may not be recognized as taxable. Further, a captive insurer may be domiciled in a country where its investment income may receive more favorable tax treatment than in the United States.
- More tailored insurance plan. A captive insurer may be able to create overall savings through coverage and policy provisions that are unique to the individual business being insured.
- Cohesion of interest. Because the control of the insured and the insurer would reside in a single entity, there could be a reduction in some of the areas of potential disagreement over claim verification, investigation and valuation.

In Florida, captive insurance is regulated by the Office of Insurance Regulation (OIR) under Part V of ch. 628, F.S. That part defines a captive insurer to be "a domestic insurer established under

⁴ See s. 628.909(2)(a), F.S.

⁵ Sections 624.407, F.S.

⁶ Sections 624.408, F.S.

part I⁷ to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from which it accepts risk under a contract of insurance.”⁸ Section 628.903(2), F.S., defines an “industrial insured captive insurer” as a captive insurer that:

- Has as its stockholders or members only industrial insureds⁹ that are insured by the captive.
- Provides insurance only to the industrial insureds that are its stockholders or members and affiliates of its parent cooperation.
- Provides reinsurance to insurers only on risks written by such insurers for the industrial insureds who are stockholders or members and affiliates of the industrial insured captive or its parent company.
- Maintains unimpaired capital and surplus of at least \$20 million.

Section 628.907, F.S., requires all captives to maintain unimpaired paid-in capital of at least \$500,000 and unimpaired surplus of at least \$250,000. Section 628.909, F.S., further requires that all captive insurers are also subject to the same level of capital¹⁰ and reserves,¹¹ that are specified for various lines of insurance written in this state.

III. Effect of Proposed Changes:

Section 1 – Amends s. 628.901, F.S., to delete the current definition of captive insurer and replace it with a definition that a captive insurance company means a pure captive insurance company, association captive insurance company, captive reinsurance company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company. The bill further defines the following:

- Affiliated company means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.
- Alien captive insurance company means an insurance company formed to write insurance for its parent and affiliates and licensed under the laws of an alien jurisdiction.
- Association means a legal association of individuals, corporations, limited liability companies, partnerships, political subdivisions, or an association that has been in continuous existence for at least 1 year.
- Association captive insurance company means a company that insures risks of the member organizations of the association and their affiliated companies.
- Branch business means any insurance business transacted by a branch captive insurance company in this state.

⁷ Part I of ch. 628, F.S., is entitled “STOCK AND MUTUAL INSURERS: ORGANIZATION AND CORPORATE PROCEDURES.”

⁸ Section 628.901, F.S.

⁹ Section 628.903(1), F.S. An industrial insured must have gross assets in excess of \$50 million, at least 100 full-time employees, and pay annual premiums of at least \$200,000 for each line of insurance.

¹⁰ Sections 624.407, F.S.

¹¹ Sections 624.408, F.S.

- Branch captive means an alien captive insurance company licensed by the commissioner to transact business of insurance in this state through a business unit with a principal place of business in this state.
- Branch operations mean any business operations of a branch captive insurance in this state.
- Captive reinsurance company means a reinsurance company that is formed or licensed under this chapter and is wholly owned by a qualifying reinsurance parent company.
- Industrial insured captive insurance company means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.
- Industrial insured group means a group that is a group of industrial insureds that collectively own, or control all of the voting securities of an industrial insured captive insurance company or a group created under the Liability Risk Retention Act of 1986, 15 U.S.C. s. 3901, et seq.
- Participant means an entity or affiliate of that entity, that is insured by a sponsored captive insurance company, where the losses of the participant are limited to the assets of a protected cell.
- Protected cell means a separate account established and maintained by a sponsored captive insurance company for one participant.
- Pure captive insurance company means a company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof.
- Qualifying reinsurer parent company means a reinsurer authorized to write reinsurance by this state and that has a consolidated GAAP net worth of not less than \$500 million and a consolidated debt to total capital ratio of not greater than 0.50.
- Special purpose captive insurance company means a captive insurance company that does not meet the definition of any other type of captive insurance company.
- Sponsor means an entity that is approved by the OIR to provide capital and surplus and to organize and operate a sponsored captive insurance company.
- Sponsored captive insurance company means a captive insurance company in which the minimum capital and surplus is provided by one or more sponsors, that insures the risks of separate participants, and that segregates each participant's liability through one or more protected cells.

Section 2—Amends s. 628.905, F.S., to require captives to apply for their license through the commissioner of insurance at the OIR. The bill allows captives to do any and all insurance authorized by the insurance code except workers compensation. This provision will allow captives to write additional lines currently not allowed in ch. 628, F.S., such as employer's liability insurance.

The bill specifies restrictions for the various captives: \

- A pure captive insurance may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.
- An association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies.
- An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies.

- A special purpose captive insurance company may only insure the risks of its parent. Notwithstanding any other provisions of this chapter, a special purpose captive insurance company may provide insurance or reinsurance, or both, for risks as approved by the commissioner”.
- A captive insurance company may not provide personal motor vehicle or homeowners’ insurance coverage or any component of such coverage.
- A captive insurance company may not accept or cede reinsurance except an industrial insured captive which may insure or accept reinsurance on any risks other than those of its parent and affiliated companies.

The bill requires before receiving a license, a captive insurance company formed as a corporation or a nonprofit corporation must file with the commissioner a copy of its articles of incorporation and bylaws or if a limited liability company, a copy of its articles of organization and operating agreement. Also file with the commissioner a statement under oath by its managers showing its financial condition, and any other statements or documents required by the commissioner.

The bill requires when formed as a reciprocal the company must file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers’ agreement, a statement under oath of its attorney-in-fact showing its financial condition. Submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates and any other information the commissioner may reasonable require.

The bill requires when applying for approval a captive insurance company must additionally file with the commissioner evidence of:

- The amount and liquidity of the proposed captive insurance company’s assets relative to the risks to be assumed.
- The adequacy of the expertise, experience, and character of the person or persons who will manage the company.
- The overall soundness of the company’s plan of operation.
- The adequacy of the loss prevention programs of the company’s parent, member organizations, or industrial insureds.
- Any other factors considered relevant by the commissioner in ascertaining whether the company will be able to meet its policy obligations.

The bill requires when applying for approval a sponsored captive insurance company must file with the commissioner:

- A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how the applicant will report the experience to the commissioner.
- A statement acknowledging that all financial records of sponsored captive insurance company must be made available for inspection or examination by the commissioner.
- All contracts or sample contracts between the sponsored captive insurance company and any participants.
- Evidence that expenses will be allocated to each protected cell in an equitable manner.

The bill requires a captive insurance company must pay to the office a nonrefundable fee of \$200 for processing its application of license.

The bill requires a captive insurance company must pay a license fee of \$300 for 1 year of registration and an annual renewal fee of \$200.

The bill allows the office to charge a fee of \$15 for any document requiring certification of authenticity or the signature of the commissioner or his or her designee.

Upon approval of the commissioner or his designee, a foreign or alien captive insurance company may become a domestic captive insurance by complying with the requirements and licensing of a domestic captive insurance company along with a certificate of good standing issued by the commissioner.

Section 3 –Amends s. 628.907, F.S., establishing the following amounts of unimpaired paid-in capital:

- Pure captive not less than \$500,000.
- Association captive not less than \$400,000.
- Industrial insured captive not less than \$200,000.
- Sponsored captive not less than \$500,000. However, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous, and there are no more than 10 cells, the commissioner may reduce this amount to an amount not less than \$150,000.
- Purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

The bill states the commissioner may not issue a license to a captive insurance company incorporated as a nonprofit corporation unless the company possesses and maintains unrestricted net assets:

- In the case of a pure captive insurance company, not less than \$250,000.
- In the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.
- In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the commissioner must require that a trust fund, funded by an irrevocable letter of credit of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers.

The bill states captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in this chapter without the prior approval of the commissioner.

Section 4 – Creates s. 628.908, F.S. relating to surplus requirements and restrictions on payment of dividends. The bill states the commissioner may issue a license expressly conditioned upon the captive insurance company providing to the commissioner satisfactory evidence of possession of the minimum required unimpaired surplus. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage.

The bill states the commissioner may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired surplus of:

- In the case of a pure captive insurance company, not less than \$150,000.
- In the case of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than \$350,000.
- In the case of an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than \$300,000.
- In the case of an association captive insurance company incorporated as a mutual insurer, not less than \$750,000.
- In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than \$500,000.
- In the case of a sponsored captive insurance company, not less than \$500,000; however, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous, and there are no more than 10 cells, the commissioner may reduce this amount to an amount not less than \$150,000.
- In the case of a special purpose captive insurance company, an amount determined by the commissioner; after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured;
- For a sponsored captive insurance company that does not assume any risk, the surplus may also be in the form of other high-quality securities, as approved the commissioner. Except for a sponsored captive insurance company that does assume any risk, the surplus must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered in this state or a member bank of the Federal Reserve System with branch offices in this state and approved by the commissioner.
- A captive insurance company organized as a reciprocal insurer under this section may not be issued a license unless it possesses and thereafter maintains unimpaired surplus of \$1 million.

The bill allows the commissioner to revoke the conditional license without recourse by the company if satisfactory evidence of the required capital is not provided within a maximum period of time, not to exceed 1 year, to be established by the commissioner at the time the conditional license is issued.

The bill states a captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in this chapter without the prior approval of the commissioner.

Approval of an ongoing plan for the payment of dividends or other distribution must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner.

Section 5 – Amends s. 628.909, F.S., relating to the applicability of other statutory provisions to captive insurers. Among other changes, the bill exempts captives from the requirements of s. 624.407, F.S., and s. 624.408, F.S., which, under current law require that that captives maintain the same level of capital and reserves that are specified for various lines of insurance in this state.

Section 6 – Creates s. 628.910, F.S., relating to incorporation options and requirements. The bill provides that a pure captive insurance company or a sponsored captive insurance company may be:

- Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;
- Incorporated as a public benefit, mutual benefit, or religious nonprofit corporation with members in accordance with the Florida Not For Profit Corporation Act.;
- Organized as a limited liability company with its capital divided into capital accounts and held by its members.

The bill provides that an association captive insurance company or an industrial insured captive insurance company may be:

- Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;
- Organized as a limited liability company with its capital divided into capital accounts and held by its members;
- Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association; or
- Organized as a reciprocal insurer in accordance with chapter 629;

The bill provides that a captive insurance company may not have fewer than three incorporations or organizers of whom not fewer than two must be residents of this state.

The bill provides that in the case of a captive insurance company formed as a corporation, a nonprofit corporation, or a limited liability company, before the articles of incorporation or organization are transmitted to the Secretary of State, the incorporators must petition the commissioner to issue a certificate setting forth a finding that the establishment and maintenance of the proposed entity will promote the general good of the state. The commissioner must consider:

- a) The character, reputation, financial standing, and purposes of the incorporators or organizers;
- b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers; and

c) Other aspects as the commissioner considers advisable.

In the case of a captive insurance company formed as a reciprocal insurer, the bill requires that the organizers must petition the commissioner to issue a certificate with the finding that the establishment and maintenance of the proposed association will promote the general good of the state.

In the case of a captive insurance company licensed as a branch captive insurance company, the bill requires that the alien captive insurance company must petition the commissioner to issue a certificate finding that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers of the alien companies, the establishment and maintenance of the proposed association will promote the general good of the state.

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

In the case of a captive insurance company formed as a limited liability company, at least one of the managers of the captive insurance company must be a resident of this state.

In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee must be a resident of this state.

Section 7 – Amends s. 628.911, F.S., relating to reports and statements. The bill requires captive insurance companies and captive reinsurance companies to submit an annual report on financial condition to the commissioner before March 1st. The report must be verified by oath from two executive officers and the report must be compiled using generally accepted accounting principles unless the commissioner approves alternative accounting measures. The Financial Services Commission may adopt by rule any additional accounting requirements.

The bill allows a pure captive insurer may make written application for filing the required report on a fiscal year-end that is consistent with the parent company's fiscal year-end. If an alternative reporting date is granted the report is due 60 days after the parent company's fiscal year end. Additionally, for verification of premium tax return a pure captive must file before March 1st of each year pages 1-7 of the NAIC Annual Statement verified by oath of two of its executive officers.

The bill also states 60 days after the fiscal year end, a branch captive insurance company must file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two of its executive officers. If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction. Such waiver must be in writing and subject to public inspection.

Section 8 – Creates s. 628.912, F.S, relating to discounting of loss and loss adjustment expense reserves. The bill allows a sponsored captive insurance company and a captive reinsurance company may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with reserves. Additionally, a sponsored captive insurance company and a captive reinsurance company must file annually an actuarial opinion on the loss and loss adjustment expense reserves provided by an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive company or its affiliates.

The bill allows the commissioner may disallow the discounting of reserves if a sponsored captive insurance company or a captive reinsurance company violates a provision of this part.

Section 9 – Amends s. 628.913, F.S., relating to captive reinsurance companies. The bill states a captive reinsurance company, if permitted by its articles of incorporation or charter, may apply to the commissioner for a license to write reinsurance covering property and casualty insurance or reinsurance contracts. A captive reinsurance company authorized by the commissioner may write reinsurance contracts covering risks in any state.

The bill requires that to conduct business in this state, a captive reinsurance company must:

- Obtain from the commissioner a license authorizing it to conduct business as a captive reinsurance company in this state.
- Hold at least one board of directors' meeting each year in this state.
- Maintain its principal place of business in this state.
- Appoint a registered agent to accept service of process and act otherwise on its behalf in this state.

Additionally, before receiving a license, a captive reinsurance company must file with the commissioner:

- A certified copy of its charter and bylaws.
- A statement under oath of its president and secretary showing its financial condition.
- Other documents required by the commissioner.

The bill states, in addition to the information required by this section, the captive reinsurance company must file with the commissioner evidence of:

- The amount of liquidity of the captive reinsurance company's assets relative to the risks to be assumed.
- The adequacy of the expertise, experience, and character of the person who manages the company.
- The overall soundness of the company's plan of operation.
- Other overall factors considered relevant by the commissioner in ascertaining if the company would be able to meet its policy obligations.

Section 10 – Creates s. 628.914, F.S., relating to minimum capitalization and reserves for captive reinsurance companies. The bill states the commissioner may not issue a license to a captive reinsurance company unless the company possesses and maintains capital or unimpaired surplus of not less than the greater of \$300 million or 10% of reserves. The surplus may be in the form of cash or securities. The commissioner may prescribe additional capital or surplus based upon the type, volume, and nature of the insurance business transacted. Further, a captive reinsurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations without the prior approval of the commissioner.

Section 11 – Creates s. 628.9141, F.S., relating to incorporation of a captive reinsurance company. The bill requires a captive reinsurance company must be incorporated as a stock insurer with its capital divided into shares and held by its shareholders. A captive reinsurance company may not have fewer than three incorporators of whom at least must be residents of this state. Before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall petition the commissioner to issue a certificate finding that the establishment and maintenance of the proposed corporation promotes the general good of this state.

The bill states before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall petition the commissioner to issue a certificate finding that the establishment and maintenance of the proposed corporation promotes the general good of this state. In arriving at this finding, the commissioner must consider:

- The character, reputation, financial standing, and purposes of the incorporators.
- The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors.
- Other factors the commissioner considers advisable.
- The capital stock of a captive reinsurance company must be issued at par value or greater.
- At least one of the members of the board of directors of a captive reinsurance company incorporated in this state must be a resident of this state.

Section 12 – Creates s. 628.9142, F.S., relating to provisions on the effect of reinsurance on required reserves. The bill allows a captive insurance company may provide reinsurance, as authorized in this part, on risks ceded by any other insurer. Additionally a captive insurance company may take credit for reserves on risks or portions of risks ceded to authorized insurers or reinsurers and unauthorized insurers or reinsurers complying with the provisions of s. 624.610, F.S. The bill restricts a captive insurer from taking credit for reserves on risks or portions of risks ceded to an unauthorized insurer or reinsurer if the insurer or reinsurer is not in compliance with s. 624.610, F.S.

Section 13 – Creates s. 628.9143, F.S., relating to annual captive reinsurance tax. The bill requires a captive reinsurance company must pay to the office by March 1 of each year a captive reinsurance tax of \$5,000. The tax provided in this section is the only tax collectible under the laws of this state from a captive reinsurance company, and no tax on reinsurance premiums, other than occupation tax, nor any other taxes, except ad valorem taxes on real and personal property used in the production of income, may be levied or collected from a captive reinsurance company by the state or a county, city, or municipality within this state. The bill allows a captive

reinsurance company to be subject to sanctions for failing to make returns or to pay all taxes required by this section.

Section 14 – Creates s. 628.3918, F.S., relating to management of assets of a captive reinsurance company. The bill requires at least 35 percent of the assets of a captive reinsurance company must be managed by an asset manager domiciled in this state.

Section 15 – Creates s. 628.919, F.S., establishing regulations and standards to ensure risk management control by a parent company. The bill states the Financial Services Commission shall adopt rules establishing standards to ensure that a parent company or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company.

Section 16 – Creates s. 628.920, F.S., relating to the conversion of certain stock, mutual corporations or limited liability companies into reciprocal insurers. The bill states an association captive insurance company or industrial insured group formed as a stock or mutual corporation or a limited liability company may be converted to or merged with and into a reciprocal insurer in accordance with a plan and the provisions of this section.

The bill requires that a plan for conversion or merger must be fair and equitable to the:

- Shareholders in the case of a stock insurer.
- Members in the case of a limited liability company.
- Policyholders in the case of a mutual insurer.

Additionally the bill requires the plan must provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer, of the member interest of any nonconsenting member of a limited liability company, of the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are accorded a dissenting shareholder, dissenting member, or a dissenting policyholder pursuant to the provisions of this chapter, provided the merger of a limited liability company requires the consent of all members unless waived in an operating agreement signed by all of the members of the limited liability company.

The bill states in the case of a conversion authorized under this section, the conversion must be accomplished under a reasonable plan and procedure as may be approved by the commissioner; however, the commissioner may not approve the plan of conversion unless the plan:

- Satisfies the provisions of this section.
- Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, members and managers in the case of a limited liability company.; or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing, except that the director may waive or modify the requirements for the hearing. However, if a notice of hearing is required, but no hearing is requested, the commissioner may cancel the hearing.

- Provides for the conversion of existing stockholder, member, or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder, member, or policyholder interests in the stock or mutual insurer or limited liability company.

The bill states how a conversion plan is approved:

- In the case of a stock insurer or limited liability company, by a majority of the shares or interests entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present.
- In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present.

The bill states the commissioner shall approve the plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards provided in this part. If the commissioner approves the plan, the commissioner must amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact.

The bill states upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective. Upon the effectiveness of the conversion, the corporate existence of the converting insurer must cease and the resulting reciprocal insurer must notify the Secretary of State of the conversion.

The bill states a merger authorized pursuant to the provisions of this section must be accomplished substantially in accordance with the procedures provided in this part, except that, only for purposes of the merger:

- The plan or merger must satisfy the requirements The plan must be fair and equitable to the:
 - Shareholders in the case of a stock insurer.
 - Members in the case of a limited liability company.
 - Policyholders in the case of a mutual insurer.
- The subscribers' advisory committee of a reciprocal insurer must be equivalent to the board of directors of a stock or mutual insurance company or the managers of a limited liability company.
- The subscribers of a reciprocal insurer must be the equivalent of the policyholders of a mutual insurance company.
- If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are considered the president and secretary of the committee.
- The commissioner must approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards provided in this part. If the commissioner approves the articles of merger, the commissioner must endorse his or her approval on the articles and the surviving insurer must present the endorsement of the commissioner to the Secretary of State at the Secretary of State's office.

- Notwithstanding the provisions of this part, the commissioner may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged for the purpose of facilitating a transaction provided for in this section. However, there may be no more than one authorized insurance company surviving the merger.
- An alien insurer may be a party to a merger if the requirements for the merger between a domestic and a foreign insurer pursuant to the provisions of this chapter apply to a merger between a domestic and an alien insurer provided by this subsection. The alien insurer must be treated as a foreign insurer pursuant to the provisions of this chapter and other jurisdictions must be the equivalent of a state.

Section 17 – Creates s. 628.921, F.S., relating to the formation of a sponsored captive insurance company and the establishment of protected cells. The bill allows one or more sponsors may form a sponsored captive insurance company under this part.

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

- The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors.
- Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants.
- The assets of the protected cell must not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct.
- Sale, exchange, or other transfer of assets may not be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells.
- A sponsored captive insurance company must annually file with the commissioner financial reports the commissioner requires, which must include, but are not limited to, accounting statements detailing the financial experience of each protected cell.
- A sponsored captive insurance company must notify the commissioner in writing within business days after a protected cell becomes insolvent or otherwise unable to meet its claim or expense obligations.
- A participant contract may not take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell constitutes a change in the business plan, which requires the commissioner's prior written approval.

Section 18 – Creates s. 628.922, F.S., which provides that a sponsor of a sponsored captive insurance company must be:

- an insurer licensed pursuant to the laws of a state;
- an insurance holding company that controls an insurer licensed under the laws of any state;

- a reinsurer authorized or approved under the laws of a state; or
- a captive insurance company formed or licensed in Florida.

The bill provides that a risk retention group may not be a sponsor or a participant of a sponsored captive insurance company. The bill provides that the business written by a sponsored captive insurance company with respect to each protected cell must be:

- Fronted by an insurance company licensed under the laws of any state or any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company licensed under the laws of any state;
- Reinsured by a reinsurer authorized or approved by this state; or
- Secured by a trust fund in the United States for the benefit of policyholders and claimants funded by an irrevocable letter of credit or other asset acceptable to the OIR. Under this option, the amount of security provided by the trust fund may not be less than the reserves associated with those liabilities.

Section 19 –Creates s, 628.923, F.S., which allows an association, a corporation, a limited liability company, a partnership, a trust, or another business entity to be a participant in a sponsored captive insurance company. The bill provides that a sponsor may be a participant in a sponsored captive insurance company. The bill provides that a participant need not be a shareholder or an affiliate of the sponsored captive insurance company. The bill provides that a participant may insure only its own risks through a sponsored captive insurance company, unless otherwise approved by the OIR.

Section 20 – creates s. 628.924, F.S., which provides that a licensed captive insurance company that meets the necessary requirements of the bill is authorized to act as an insurer in Florida.

Section 21 – provides an effective date of July 1, 2011.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill substantially changes the capital and surplus requirements for captive insurers. This may have an impact on the level of assurance that captive insurers are able to meet their claims obligations.

C. Government Sector Impact:

Current law requires captive insurers to submit annual reports. The bill mandates elements that must be included in the annual report, and authorizes the Financial Services Commission to engage in rulemaking to adopt the form required for the annual report.

The bill requires the Financial Services Commission to engage in rulemaking to establish the standards necessary to ensure that a parent company is able to exercise control of the risk management function of a controlled unaffiliated business insured by a pure captive insurance company.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.