

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Nuñez offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 628.901, Florida Statutes, is amended
8 to read:

9 628.901 Definitions ~~"Captive insurer" defined.—As used in~~
10 ~~For the purposes of this part, unless the context requires~~
11 ~~otherwise, the term: except as provided in s. 628.903, a~~
12 ~~"captive insurer" is a domestic insurer established under part 1~~
13 ~~to insure the risks of a specific corporation or group of~~
14 ~~corporations under common ownership owned by the corporation or~~
15 ~~corporations from which it accepts risk under a contract of~~
16 ~~insurance.~~

17 (1) "Affiliated company" means a company in the same
18 corporate system as a parent, an industrial insured, or a member

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19 organization by virtue of common ownership, control, operation,
20 or management.

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

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

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

31 (3) "Association captive insurance company" means a
32 company that insures risks of the member organizations of the
33 association and their affiliated companies.

34 (4) "Captive insurance company" means a domestic insurer
35 established under this part. A captive insurance company
36 includes a pure captive insurance company, association captive
37 insurance company, special purpose captive insurance company, or
38 industrial insured captive insurance company formed and licensed
39 under this part.

40 (5) "Captive reinsurance company" means a reinsurance
41 company that is formed and licensed under this part and is
42 wholly owned by a qualifying reinsurance parent company. A
43 captive reinsurance company is a stock corporation and cannot
44 directly insure risks. A captive reinsurance company can only
45 reinsure risks.

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46 (6) "Consolidated debt to total capital ratio" means the
47 ratio of the sum of all debts and hybrid capital instruments as
48 described in paragraph (a) to total capital as described in
49 paragraph (b).

50 (a) Debts and hybrid capital instruments include, but are
51 not limited to, all borrowings from banks, all senior debt, all
52 subordinated debts, all trust preferred shares, and all other
53 hybrid capital instruments that are not included in the
54 determination of consolidated GAAP net worth issued and
55 outstanding.

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

60 (7) "Consolidated GAAP net worth" means the consolidated
61 owners' equity determined in accordance with generally accepted
62 accounting principles for reporting to the United States
63 Securities and Exchange Commission.

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

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

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

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

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

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

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

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74 (b) Procures insurance through the use of a full-time
75 employee of the insured who acts as an insurance manager or
76 buyer or through the services of a person licensed as a property
77 and casualty insurance agent, broker, or consultant in such
78 person's state of domicile;

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

80 (d) Pays annual premiums of at least \$200,000 for each
81 line of insurance purchased from the industrial insured captive
82 insurer or at least \$75,000 for any line of coverage in excess
83 of at least \$25 million in the annual aggregate. The purchase of
84 umbrella or general liability coverage in excess of \$25 million
85 in the annual aggregate shall be deemed to be the purchase of a
86 single line of insurance.

87 (11) "Industrial insured captive insurance company" means a
88 captive insurance company that provides insurance only to the
89 industrial insureds that are its stockholders or members, and
90 affiliates thereof, or to the stockholders, and affiliates
91 thereof, of its parent corporation. An industrial insured
92 captive insurance company can also provide reinsurance to
93 insurers only on risks written by such insurers for the
94 industrial insureds who are the stockholders or members, and
95 affiliates thereof, of the industrial insured captive insurer,
96 or the stockholders, and affiliates thereof, of the parent
97 corporation of the industrial insured captive insurer.

98 (12) "Member organization" means any individual,
99 corporation, limited liability company, partnership, or
100 association that belongs to an association.

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

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102 (14) "Parent" means any corporation, limited liability
103 company, partnership, or individual that directly or indirectly
104 owns, controls, or holds with power to vote more than 50 percent
105 of the outstanding voting interests of a captive insurance
106 company.

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

110 (16) "Qualifying reinsurer parent company" means a
111 reinsurer which currently holds a certificate of authority,
112 letter of eligibility or is an accredited or a satisfactory non-
113 approved reinsurer in this state possessing a consolidated GAAP
114 net worth of not less than \$500 million and a consolidated debt
115 to total capital ratio of not greater than 0.50.

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

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

123 Section 2. Section 628.905, Florida Statutes, is amended
124 to read:

125 628.905 Licensing; authority.—

126 (1) Any captive insurer, when permitted by its charter or
127 articles of incorporation, may apply to the office for a license
128 to do any and all insurance authorized under the insurance code,
129 ~~provide commercial property, commercial casualty, and commercial~~

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130 ~~marine insurance coverage other than workers' compensation, and~~
131 ~~health, personal motor vehicle, and personal residential~~
132 ~~property employer's liability insurance coverage, except that:~~
133 ~~an industrial insured captive insurer may apply for a license to~~
134 ~~provide workers' compensation and employer's liability insurance~~
135 ~~as set forth in subsection (6).~~

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

139 (b) An association captive insurance company may not
140 insure any risks other than those of the member organizations of
141 its association and their affiliated companies. An association
142 captive insurance company shall have stamped or written upon the
143 first page of the policy or the certificate, cover note, or
144 confirmation of insurance the words: THIS INSURANCE IS ISSUED
145 PURSUANT TO THE FLORIDA CAPTIVE INSURERS LAW. PERSONS INSURED BY
146 CAPTIVE INSURANCE COMPANIES DO NOT HAVE THE PROTECTION OF THE
147 FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF
148 RECOVERY FOR THE OBLIGATION OF AN INSOLVENT INSURER. An
149 association captive insurance company also shall have stamped or
150 printed on the face of the policy in at least 14-point, boldface
151 type, the following statement: CAPTIVE INSURANCE COMPANIES'
152 POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA
153 REGULATORY AGENCY.

154 (c) An industrial insured captive insurance company may
155 not insure any risks other than those of the industrial insureds
156 that comprise the industrial insured group and their affiliated
157 companies.

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

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

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

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

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

170 (c) Maintain its principal place of business in this
171 state; and

172 (d) Appoint a resident registered agent to accept service
173 of process and to otherwise act on its behalf in this state. In
174 the case of a captive insurance company formed as a corporation
175 or a nonprofit corporation, whenever the registered agent cannot
176 with reasonable diligence be found at the registered office of
177 the captive insurance company, the Chief Financial Officer of
178 this state must be an agent of the captive insurance company
179 upon whom any process, notice, or demand may be served.

180 (3) (a) Before receiving a license, a captive insurance
181 company formed as a corporation or a nonprofit corporation must
182 file with the office a certified copy of its articles of
183 incorporation and bylaws, a statement under oath of its
184 president and secretary showing its financial condition, and any
185 other statements or documents required by the office.

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

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

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

193 3. The overall soundness of the company's plan of
194 operation;

195 4. The adequacy of the loss prevention programs of the
196 company's parent, member organizations, or industrial insureds,
197 as applicable; and

198 5. Any other factors considered relevant by the office in
199 ascertaining whether the company will be able to meet its policy
200 obligations ~~In addition to information otherwise required by~~
201 ~~this code, each applicant captive insurer shall file with the~~
202 ~~office evidence of the adequacy of the loss prevention program~~
203 ~~of its insureds.~~

204 (4) (a) A captive insurance company must pay to the office
205 a nonrefundable fee of \$1500 for processing its application for
206 license.

207 (b) In addition, a captive insurance company must pay an
208 annual renewal fee of \$1000.

209 (c) The office may charge a fee of \$5 for any document
210 requiring certification of authenticity or the signature of the
211 commissioner or his or her designee. An industrial insured
212 captive insurer need not be incorporated in this state if it has
213 been validly incorporated under the laws of another jurisdiction

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214 ~~An industrial insured captive insurer need not be incorporated~~
215 ~~in this state if it has been validly incorporated under the laws~~
216 ~~of another jurisdiction.~~

217 (5) If the commissioner is satisfied that the documents and
218 statements filed by the captive insurance company comply with the
219 provisions of this chapter, the commissioner may grant a license
220 authorizing the company to conduct insurance business in this state
221 until the next succeeding March 1, at which time the license may be
222 renewed ~~An industrial insured captive insurer is subject to all~~
223 ~~provisions of this part except as otherwise indicated.~~

224 (6) Upon approval of the office, a foreign or alien
225 captive insurance company may become a domestic captive
226 insurance company by complying with all of the requirements of
227 law relative to the organization and licensing of a domestic
228 captive insurance company of the same or equivalent type in this
229 state and by filing with the Secretary of State its articles of
230 association, charter, or other organizational documents,
231 together with any appropriate amendments that have been adopted
232 in accordance with the laws of this state to bring the articles
233 of association, charter, or other organizational documents into
234 compliance with the laws of this state, along with a certificate
235 of good standing issued by the office. After this is
236 accomplished, the captive insurance company is entitled to the
237 necessary or appropriate certificates and licenses to continue
238 transacting business in this state and is subject to the
239 authority and jurisdiction of this state. In connection with
240 this redomestication, the office may waive any requirements for
241 public hearings. It is not necessary for a captive insurance

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242 company redomesticating into this state to merge, consolidate,
243 transfer assets, or otherwise engage in any other
244 reorganization, other than as specified in this section—An
245 industrial insured captive insurer may not provide workers'
246 compensation and employer's liability insurance except in excess
247 of at least \$25 million in the annual aggregate.

248 Section 3. Section 628.907, Florida Statutes, is amended
249 to read:

250 628.907 Minimum capital and net assets requirements;
251 restriction on payment of dividends surplus.—

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

255 (a) ~~(1)~~ In the case of a pure captive insurance company,
256 not less than \$100,000. ~~Unimpaired paid-in capital of at least~~
257 \$500,000; and

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

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

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

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

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

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

278 (3) Contributions to a captive insurance company
279 incorporated as a nonprofit corporation must be in the form of
280 cash, cash equivalent, or an irrevocable letter of credit issued
281 by a bank chartered by this state or a member bank of the
282 Federal Reserve System with a branch office in this state, or as
283 approved by the office.

284 (4) For purposes of this section, the office may issue a
285 license expressly conditioned upon the captive insurance company
286 providing to the office satisfactory evidence of possession of
287 the minimum required unimpaired paid-in capital. Until this
288 evidence is provided, the captive insurance company may not
289 issue any policy, assume any liability, or otherwise provide
290 coverage. The office may revoke the conditional license if
291 satisfactory evidence of the required capital is not provided
292 within a maximum period of time, not to exceed 1 year, to be
293 established by the office at the time the conditional license is
294 issued.

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295 (5) The office may prescribe additional capital or net
296 assets based upon the type, volume, and nature of insurance
297 business transacted. Contributions in connection with these
298 prescribed additional net assets or capital must be in the form
299 of:

300 (a) Cash;

301 (b) Cash equivalent;

302 (c) An irrevocable letter of credit issued by a bank
303 chartered by this state or a member bank of the Federal Reserve
304 System with a branch office in this state, or as approved by the
305 office; or

306 (d) Securities invested as provided in part II of chapter
307 625.

308 (6) A captive insurance company may not pay a dividend out
309 of, or other distribution with respect to, capital or surplus in
310 excess of the limitations set forth in this chapter without the
311 prior approval of the office. Approval of an ongoing plan for
312 the payment of dividends or other distributions must be
313 conditioned upon the retention, at the time of each payment, of
314 capital or surplus in excess of amounts specified by, or
315 determined in accordance with formulas approved by, the office.

316 (7) An irrevocable letter of credit that is issued by a
317 financial institution other than a bank chartered by this state
318 or a member bank of the Federal Reserve System must meet the
319 same standards as an irrevocable letter of credit that has been
320 issued by a bank chartered by this state or a member bank of the
321 Federal Reserve System.

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322 Section 4. Section 628.908, Florida Statutes, is created
323 to read:

324 628.908 Surplus requirements; restriction on payment of
325 dividends.-

326 (1) The office may not issue a license to a captive
327 insurance company unless the company possesses and maintains
328 unimpaired surplus of:

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

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

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

335 (d) In the case of an association captive insurance
336 company incorporated as a mutual insurer, not less than
337 \$750,000.

338 (e) In the case of an industrial insured captive insurance
339 company incorporated as a mutual insurer, not less than
340 \$500,000.

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

346 (2) For purposes of this section, the office may issue a
347 license expressly conditioned upon the captive insurance company
348 providing to the office satisfactory evidence of possession of
349 the minimum required unimpaired surplus. Until this evidence is

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350 provided, the captive insurance company may not issue any
351 policy, assume any liability, or otherwise provide coverage. The
352 office may revoke the conditional license if satisfactory
353 evidence of the required surplus is not provided within a
354 maximum period of time, not to exceed 1 year, to be established
355 by the office at the time the conditional license is issued.

356 (3) A captive insurance company may not pay a dividend out
357 of, or other distribution with respect to, capital or surplus in
358 excess of the limitations set forth in this chapter without the
359 prior approval of the office. Approval of an ongoing plan for
360 the payment of dividends or other distribution must be
361 conditioned upon the retention, at the time of each payment, of
362 capital or surplus in excess of amounts specified by, or
363 determined in accordance with formulas approved by, the office.

364 (4) An irrevocable letter of credit that is issued by a
365 financial institution other than a bank chartered by this state
366 or a member bank of the Federal Reserve System must meet the
367 same standards as an irrevocable letter of credit that has been
368 issued by a bank chartered by this state or a member bank of the
369 Federal Reserve System.

370 Section 5. Section 628.909, Florida Statutes, is amended
371 to read:

372 628.909 Applicability of other laws.-

373 (1) The Florida Insurance Code does ~~shall~~ not apply to
374 captive insurers or industrial insured captive insurers except
375 as provided in this part and subsections (2) and (3).

376 (2) The following provisions of the Florida Insurance Code
377 ~~shall~~ apply to captive insurers who are not industrial insured

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378 captive insurers to the extent that such provisions are not
379 inconsistent with this part:

380 (a) Chapter 624, except for ss. 624.407, 624.408,
381 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

382 (b) Chapter 625, part II.

383 (c) Chapter 626, part IX.

384 (d) Sections 627.730-627.7405, when no-fault coverage is
385 provided.

386 (e) Chapter 628.

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

390 (a) Chapter 624, except for ss. 624.407, 624.408,
391 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

394 (c) Chapter 626, part IX.

395 (d) Sections 627.730-627.7405 when no-fault coverage is
396 provided.

397 (e) Chapter 628, except for ss. 628.341, 628.351, and
398 628.6018.

399 Section 6. Section 628.910, Florida Statutes, is created
400 to read:

401 628.910 Incorporation options and requirements.—

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

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

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

408 (2) An association captive insurance company or an
409 industrial insured captive insurance company may be:

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

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

415 (3) A captive insurance company may not have fewer than
416 three incorporators of whom not fewer than two must be residents
417 of this state.

418 (4) In the case of a captive insurance company formed as a
419 corporation or a nonprofit corporation, before the articles of
420 incorporation are transmitted to the Secretary of State, the
421 incorporators shall file the articles of incorporation in
422 triplicate with the office. The office shall promptly examine
423 the articles of incorporation. If it finds that the articles of
424 incorporation conform to law, it shall endorse its approval on
425 each of the triplicate originals of the articles of
426 incorporation, retain one copy for its files, and return the
427 remaining copies to the incorporators for filing with the
428 Department of State.

429 (5) The articles of incorporation, the certificate issued
430 pursuant to this section, and the organization fees required by
431 the Florida Business Corporation Act or the Florida Not For
432 Profit Corporation Act, as applicable, must be transmitted to

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433 the Secretary of State, who must record the articles of
434 incorporation and the certificate.

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

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

442 (8) A captive insurance company formed as a corporation or
443 a nonprofit corporation, pursuant to the provisions of this
444 chapter, has the privileges and is subject to the provisions of
445 the general corporation law, including the Florida Not For
446 Profit Corporation Act for nonprofit corporations, as
447 applicable, as well as the applicable provisions contained in
448 this chapter. If a conflict occurs between a provision of the
449 general corporation law, including the Florida Not For Profit
450 Corporation Act for nonprofit corporations, as applicable, and a
451 provision of this chapter, the latter controls. The provisions
452 of this title pertaining to mergers, consolidations,
453 conversions, mutualizations, and redomestications apply in
454 determining the procedures to be followed by a captive insurance
455 company in carrying out any of the transactions described in
456 such provisions, except that the office may waive or modify the
457 requirements for public notice and hearing in accordance with
458 rules the office may adopt addressing categories of
459 transactions. If a notice of public hearing is required, but no
460 one requests a hearing, the office may cancel the hearing.

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

466 Section 7. Section 628.911, Florida Statutes, is amended
467 to read:

468 628.911 Reports and statements.—

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

472 (2) Annually no later than March 1, a captive insurance
473 company or a captive reinsurance company ~~insurer shall, within~~
474 ~~60 days after the end of its fiscal year and as often as the~~
475 ~~office may deem necessary,~~ submit to the office a report of its
476 financial condition verified by oath of two of its executive
477 officers. Except as provided in this part, a captive insurance
478 company or a captive reinsurance company must report using
479 generally accepted accounting principles, unless the office
480 approves the use of statutory accounting principles, with useful
481 or necessary modifications or adaptations required or approved
482 or accepted by the office for the type of insurance and kinds of
483 insurers to be reported upon, and as supplemented by additional
484 information required by the office. The Financial Services
485 Commission may adopt by rule the form in which captive insurance
486 companies ~~insurers~~ shall report.

487 (3) A captive insurance company may make written
488 application for filing the required report on a fiscal year end

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489 that is consistent with the parent company's fiscal year. If an
490 alternative reporting date is granted, the annual report is due
491 60 days after the fiscal year end.

492 Section 8. Section 628.912, Florida Statutes, is created
493 to read:

494 628.912 Discounting of loss and loss adjustment expense
495 reserves.—

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

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

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

506 Section 9. Section 628.913, Florida Statutes, is amended
507 to read:

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

510 628.913 Captive reinsurance companies.—

511 (1) A captive reinsurance company, if permitted by its
512 articles of incorporation or charter, may apply to the office
513 for a license to write reinsurance covering property and
514 casualty insurance or reinsurance contracts. A captive
515 reinsurance company authorized by the office may write
516 reinsurance contracts covering risks in any state; however, a

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517 captive reinsurance company authorized by the office may not
518 directly insure risks.

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

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

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

525 (c) Maintain its principal place of business in this
526 state; and

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

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

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

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

534 (c) Other documents required by the office.

535 (4) In addition to the information required by this
536 section, the captive reinsurance company must file with the
537 office evidence of:

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

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

542 (c) The overall soundness of the company's plan of
543 operation; and

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

547 Section 10. Section 628.914, Florida Statutes, is created
548 to read:

549 628.914 Minimum capitalization or reserves for captive
550 reinsurance companies.-

551 (1) The office may not issue a license to a captive
552 reinsurance company unless the company possesses and maintains
553 capital or unimpaired surplus of not less than the greater of
554 \$300 million or 10 percent of reserves. The surplus may be in
555 the form of cash or securities as permitted by part II of
556 chapter 625.

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

560 (3) A captive reinsurance company may not pay a dividend
561 out of, or other distribution with respect to, capital or
562 surplus in excess of the limitations without the prior approval
563 of the office. Approval of an ongoing plan for the payment of
564 dividends or other distributions must be conditioned upon the
565 retention, at the time of each payment, of capital or surplus in
566 excess of amounts specified by, or determined in accordance with
567 formulas approved by, the office.

568 Section 11. Section 628.9141, Florida Statutes, is created
569 to read:

570 628.9141 Incorporation of a captive reinsurance company.-

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

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

577 (3) Before the articles of incorporation are transmitted
578 to the Secretary of State, the incorporators shall comply with
579 all the requirements of s. 628.091.

580 (4) The capital stock of a captive reinsurance company
581 must be issued at par value of not less than \$1 or more than
582 \$100 per share.

583 (5) At least one of the members of the board of directors
584 of a captive reinsurance company incorporated in this state must
585 be a resident of this state.

586 Section 12. Section 628.9142, Florida Statutes, is created
587 to read:

588 628.9142 Reinsurance; effect on reserves.-

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

591 (2) A captive insurance company may take credit for
592 reserves on risks or portions of risks ceded to authorized
593 insurers or reinsurers and unauthorized insurers or reinsurers
594 complying with the provisions of s. 624.610. A captive insurer
595 may not take credit for reserves on risks or portions of risks
596 ceded to an unauthorized insurer or reinsurer if the insurer or
597 reinsurer is not in compliance with s. 624.610.

Amendment No. 1

598 Section 13. Section 628.918, Florida Statutes, is created
599 to read:

600 628.918 Management of assets of captive reinsurance
601 company.—At least 35 percent of the assets of a captive
602 reinsurance company must be managed by an asset manager
603 domiciled in this state.

604 Section 14. Section 628.919, Florida Statutes, is created
605 to read:

606 628.919 Standards to ensure risk management control by
607 parent company.—The Financial Services Commission shall adopt
608 rules establishing standards to ensure that a parent or
609 affiliated company is able to exercise control of the risk
610 management function of any controlled unaffiliated business to
611 be insured by the pure captive insurance company.

612 Section 15. Section 628.920, Florida Statutes, is created
613 to read:

614 628.920 Eligibility of licensed captive insurance company
615 for certificate of authority to act as insurer.—A licensed
616 captive insurance company that meets the necessary requirements
617 of this part imposed upon an insurer must be considered for
618 issuance of a certificate of authority to act as an insurer in
619 this state.

620 Section 16. Paragraph (e) of subsection (2) of section
621 626.7491, Florida Statutes, is amended to read:

622 626.7491 Business transacted with producer controlled
623 property and casualty insurer.—

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

Amendment No. 1

625 (e) "Licensed insurer" or "insurer" means any person,
626 firm, association, or corporation licensed to transact a
627 property or casualty insurance business in this state. The
628 following are not licensed insurers for the purposes of this
629 section:

- 630 1. Any risk retention group as defined in:
631 a. The Superfund Amendments Reauthorization Act of 1986,
632 Pub. L. No. 99-499, 100 Stat. 1613 (1986);
633 b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq.
634 (1982 and Supp. 1986); or
635 c. Section 627.942(9).

636 2. Any residual market pool or joint underwriting
637 authority or association; and

638 3. Any captive insurance company ~~insurer~~ as defined in s.
639 628.901.

640 Section 17. Section 628.903, Florida Statutes, is
641 repealed.

642 Section 18. This act shall take effect upon becoming a
643 law.

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647 **T I T L E A M E N D M E N T**

648 Remove the entire title and insert:

649 A bill to be entitled

650 An act relating to captive insurance; amending s. 628.901,

651 F.S.; providing definitions; amending s. 628.905, F.S.;

652 expanding the kinds of insurance for which a captive insurer may

Amendment No. 1

653 seek licensure; limiting the risks that certain captive insurers
654 may insure; specifying requirements and conditions relating to a
655 captive insurer's authority to conduct business; requiring that
656 before licensure certain captive insurers must file or submit to
657 the Office of Insurance Regulation specified information,
658 documents, and statements; requiring a captive insurance company
659 to file specific evidence with the office relating to the
660 financial condition and quality of management and operations of
661 the company; specifying certain fees to be paid by captive
662 insurance companies; authorizing a foreign or alien captive
663 insurance company to become a domestic captive insurance company
664 by complying with specified requirements; authorizing the office
665 to waive any requirements for public hearings relating to the
666 redomestication of an alien captive insurance company; amending
667 s. 628.907, F.S.; revising capitalization requirements for
668 specified captive insurance companies; requiring capital of
669 specified captive insurance companies to be held in certain
670 forms; requiring contributions to captive insurance companies
671 that are stock insurer corporations to be in a certain form;
672 authorizing the office to issue a captive insurance company
673 license conditioned upon certain evidence relating to possession
674 of specified capital; authorizing revocation of a conditional
675 license under certain circumstances; authorizing the office to
676 prescribe certain additional capital and net asset requirements;
677 requiring such additional requirements relating to capital and
678 net assets to be held in specified forms; requiring dividends or
679 distributions of capital or surplus to meet certain conditions
680 and be approved by the office; requiring certain irrevocable

Amendment No. 1

681 letters of credit to meet certain standards; creating s.
682 628.908, F.S.; prohibiting the issuance of a license to
683 specified captive insurance companies unless such companies
684 possess and maintain certain levels of unimpaired surplus;
685 authorizing the office to condition issuance of a captive
686 insurance company license upon the provision of certain evidence
687 relating to the possession of a minimum amount of unimpaired
688 surplus; authorizing revocation of a conditional license under
689 certain circumstances; requiring dividends or distributions of
690 capital or surplus to meet certain conditions and be approved by
691 the office; requiring certain irrevocable letters of credit to
692 meet certain standards; amending s. 628.909, F.S.; providing for
693 applicability of certain statutory provisions to specified
694 captive insurers; creating s. 628.910, F.S.; providing
695 requirements, options, and conditions relating to how a captive
696 insurance company may be incorporated or organized as a
697 business; amending s. 628.911, F.S.; providing reporting
698 requirements for specified captive insurance companies and
699 captive reinsurance companies; creating s. 628.912, F.S.;
700 authorizing a captive reinsurance company to discount specified
701 losses subject to certain conditions; amending s. 628.913, F.S.;
702 authorizing a captive reinsurance company to apply to the office
703 for licensure to write reinsurance covering property and
704 casualty insurance or reinsurance contracts; authorizing the
705 office to allow a captive reinsurance company to write
706 reinsurance contracts covering risks in any state; specifying
707 that a captive reinsurance company is subject to specified
708 requirements and must meet specified conditions to conduct

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 379 (2012)

Amendment No. 1

709 business in this state; creating s. 628.914, F.S.; specifying
710 requirements and conditions relating to the capitalization or
711 maintenance of reserves by a captive reinsurance company;
712 creating s. 628.9141, F.S.; specifying requirements and
713 conditions relating to the incorporation of a captive
714 reinsurance company; creating s. 628.9142, F.S.; providing for
715 the effect on reserves of certain actions taken by a captive
716 insurance company relating to providing reinsurance for
717 specified risks; creating s. 628.918, F.S.; requiring a
718 specified percentage of a captive reinsurance company's assets
719 to be managed by an asset manager domiciled in this state;
720 creating s. 628.919, F.S.; authorizing the Financial Services
721 Commission to adopt rules establishing certain standards for
722 control of an unaffiliated business by a parent or affiliated
723 company relating to coverage by a pure captive insurance
724 company; creating s. 628.920, F.S.; requiring that a licensed
725 captive insurance company must be considered for issuance of a
726 certificate of authority as an insurer under certain
727 circumstances; amending s. 626.7491, F.S.; conforming a cross-
728 reference; repealing s. 628.903, F.S., relating to "industrial
729 insured captive insurer" defined, to conform to changes made by
730 this act; providing an effective date.