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# **Insurance & Banking Subcommittee**

**Wednesday, November 16, 2011**

**8:00 AM**

**404 HOB**

**Dean Cannon  
Speaker**

**Bryan Nelson  
Chair**



# The Florida House of Representatives

Economic Affairs Committee

Insurance & Banking Subcommittee

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## AGENDA

November 16, 2011  
404 House Office Building  
8:00 a.m. - 10:30 a.m.

- I. Introductory Remarks
- II. **HB 275 Consumer Finance Charges** by *Rep. Burgin*
- III. **HB 307 Workers' Compensation Certificate-of-exemption Process** by *Rep. Bernard*
- IV. **HB 379 Captive Insurance** by *Rep. Nuñez*
- V. **HB 4085 Workers' Compensation** by *Rep. Caldwell*
- VI. **HB 4087 Repeal of a Workers' Compensation Independent Actuarial Peer Review Requirement** by *Rep. Albritton*
- VII. Workshop on the following:  
  
**Draft PCS for HB 119 Motor Vehicle Personal Injury Protection Insurance**
- VIII. Public testimony
- IX. Adjournment



1                                   A bill to be entitled  
2           An act relating to motor vehicle personal injury  
3           protection insurance; providing a short title;  
4           amending s. 316.066, F.S.; revising provisions  
5           relating to the contents of written reports of motor  
6           vehicle crashes; authorizing the investigating officer  
7           to testify at trial or provide an affidavit concerning  
8           the content of the reports; amending s. 400.9905,  
9           F.S.; eliminating an exemption from certain  
10          regulations for clinics that receive more than a  
11          specified percentage of income from motor vehicle  
12          personal injury protection insurance policy benefits;  
13          authorizing rulemaking; amending s. 627.736, F.S.;  
14          limiting payments for services provided by  
15          chiropractic physicians and massage therapists;  
16          deleting provisions authorizing reimbursement to  
17          certain providers for services; deleting provisions  
18          relating to forms for certain providers; revising  
19          provisions relating to a prohibition on payment of  
20          benefits if the insured, claimant, medical provider,  
21          or attorney has committed certain acts; revising  
22          provisions relating to charges for treatment of  
23          injured persons; providing that refusal or failure to  
24          appear for two medical examinations raises a  
25          rebuttable presumption that such refusal or failure  
26          was unreasonable; providing restrictions on attorney  
27          fees; requiring attorney fees under no-fault  
28          provisions to be calculated without regard to any

29 contingency risk multiplier; eliminating certain  
 30 providers from provisions relating to the  
 31 establishment of preferred providers; providing that  
 32 if an insurer offers a preferred provider option, it  
 33 must also offer a nonpreferred provider policy;  
 34 authorizing an insurer to offer an actuarially  
 35 appropriate premium discount to an insured who selects  
 36 the preferred provider option; authorizing such  
 37 policies to limit payment for nonemergency services in  
 38 certain circumstances; authorizing an insurer to  
 39 contract with another insurer for the right to use an  
 40 existing preferred provider network to implement the  
 41 preferred provider option; conforming cross-  
 42 references; amending s. 627.7407, F.S.; repealing the  
 43 Florida Motor Vehicle No-Fault Law on a date certain  
 44 unless reviewed by the Legislature and reenacted prior  
 45 to that date; requiring the Office of Insurance  
 46 Regulation to perform a personal injury protection  
 47 data call and publish results within a specified  
 48 period; providing requirements for the data call;  
 49 requiring each insurer transacting motor vehicle  
 50 insurance to decrease rates through a "use and file"  
 51 filing or make a full annual base rate filing within a  
 52 specified period; providing for severability;  
 53 providing an effective date.

54  
 55  
 56

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

57 Section 1. This act may be cited as the "Comprehensive  
58 Motor Vehicle Accountability Act."

59 Section 2. Subsection (1) of section 316.066, Florida  
60 Statutes, is amended to read:

61 316.066 Written reports of crashes.—

62 (1)(a) A Florida Traffic Crash Report must, ~~Long Form is~~  
63 ~~required to~~ be completed and submitted to the department within  
64 10 days after ~~completing~~ an investigation is completed by the  
65 ~~every~~ law enforcement officer who in the regular course of duty  
66 investigates a motor vehicle crash ~~that:~~

67 1. ~~Resulted in death or personal injury.~~

68 2. ~~Involved a violation of s. 316.061(1) or s. 316.193.~~

69 (b) ~~In every crash for which a Florida Traffic Crash~~  
70 ~~Report, Long Form is not required by this section, the law~~  
71 ~~enforcement officer may complete a short-form crash report or~~  
72 ~~provide a driver exchange-of-information form to be completed by~~  
73 ~~each party involved in the crash. The short-form report must~~  
74 include:

75 1. The date, time, and location of the crash.

76 2. A description of the vehicles involved.

77 3. The names and addresses of the parties involved,  
78 including all drivers and passengers, each clearly identified as  
79 being either a driver or a passenger and specifying the vehicle  
80 in which each person was a driver or passenger.

81 4. The names and addresses of witnesses.

82 5. The name, badge number, and law enforcement agency of  
83 the officer investigating the crash.

84 6. The names of the insurance companies for the respective

85 parties involved in the crash.

86 (c) Each party to the crash must provide the law  
 87 enforcement officer with proof of insurance, which must be  
 88 documented in the crash report. If a law enforcement officer  
 89 submits a report on the crash, proof of insurance must be  
 90 provided to the officer by each party involved in the crash. Any  
 91 party who fails to provide the required information commits a  
 92 noncriminal traffic infraction, punishable as a nonmoving  
 93 violation as provided in chapter 318, unless the officer  
 94 determines that due to injuries or other special circumstances  
 95 such insurance information cannot be provided immediately. If  
 96 the person provides the law enforcement agency, within 24 hours  
 97 after the crash, proof of insurance that was valid at the time  
 98 of the crash, the law enforcement agency may void the citation.

99 (d) The driver of a vehicle that was in any manner  
 100 involved in a crash resulting in damage to any vehicle or other  
 101 property in an amount of \$500 or more which was not investigated  
 102 by a law enforcement agency, shall, within 10 days after the  
 103 crash, submit a written report of the crash to the department.  
 104 The entity receiving the report may require witnesses of the  
 105 crash to render reports and may require any driver of a vehicle  
 106 involved in a crash of which a written report must be made to  
 107 file supplemental written reports if the original report is  
 108 deemed insufficient by the receiving entity.

109 (e) The investigating law enforcement officer may testify  
 110 at trial or provide a signed affidavit to confirm or supplement  
 111 the information included on the Florida Traffic Crash Report or  
 112 driver exchange-of-information report ~~Short-form crash reports~~

113 ~~prepared by law enforcement shall be maintained by the law~~  
 114 ~~enforcement officer's agency.~~

115 Section 3. Subsection (4) of section 400.9905, Florida  
 116 Statutes, is amended to read:

117 400.9905 Definitions.—

118 (4) "Clinic" means an entity at which health care services  
 119 are provided to individuals and which tenders charges for  
 120 reimbursement for such services, including a mobile clinic and a  
 121 portable equipment provider. For purposes of this part, the term  
 122 does not include and the licensure requirements of this part do  
 123 not apply to:

124 (a) Entities licensed or registered by the state under  
 125 chapter 395; or entities licensed or registered by the state and  
 126 providing only health care services within the scope of services  
 127 authorized under their respective licenses granted under ss.  
 128 383.30-383.335, chapter 390, chapter 394, chapter 397, this  
 129 chapter except part X, chapter 429, chapter 463, chapter 465,  
 130 chapter 466, chapter 478, part I of chapter 483, chapter 484, or  
 131 chapter 651; end-stage renal disease providers authorized under  
 132 42 C.F.R. part 405, subpart U; or providers certified under 42  
 133 C.F.R. part 485, subpart B or subpart H; or any entity that  
 134 provides neonatal or pediatric hospital-based health care  
 135 services or other health care services by licensed practitioners  
 136 solely within a hospital licensed under chapter 395.

137 (b) Entities that own, directly or indirectly, entities  
 138 licensed or registered by the state pursuant to chapter 395; or  
 139 entities that own, directly or indirectly, entities licensed or  
 140 registered by the state and providing only health care services



141 within the scope of services authorized pursuant to their  
 142 respective licenses granted under ss. 383.30-383.335, chapter  
 143 390, chapter 394, chapter 397, this chapter except part X,  
 144 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,  
 145 part I of chapter 483, chapter 484, chapter 651; end-stage renal  
 146 disease providers authorized under 42 C.F.R. part 405, subpart  
 147 U; or providers certified under 42 C.F.R. part 485, subpart B or  
 148 subpart H; or any entity that provides neonatal or pediatric  
 149 hospital-based health care services by licensed practitioners  
 150 solely within a hospital licensed under chapter 395.

151 (c) Entities that are owned, directly or indirectly, by an  
 152 entity licensed or registered by the state pursuant to chapter  
 153 395; or entities that are owned, directly or indirectly, by an  
 154 entity licensed or registered by the state and providing only  
 155 health care services within the scope of services authorized  
 156 pursuant to their respective licenses granted under ss. 383.30-  
 157 383.335, chapter 390, chapter 394, chapter 397, this chapter  
 158 except part X, chapter 429, chapter 463, chapter 465, chapter  
 159 466, chapter 478, part I of chapter 483, chapter 484, or chapter  
 160 651; end-stage renal disease providers authorized under 42  
 161 C.F.R. part 405, subpart U; or providers certified under 42  
 162 C.F.R. part 485, subpart B or subpart H; or any entity that  
 163 provides neonatal or pediatric hospital-based health care  
 164 services by licensed practitioners solely within a hospital  
 165 under chapter 395.

166 (d) Entities that are under common ownership, directly or  
 167 indirectly, with an entity licensed or registered by the state  
 168 pursuant to chapter 395; or entities that are under common

169 ownership, directly or indirectly, with an entity licensed or  
 170 registered by the state and providing only health care services  
 171 within the scope of services authorized pursuant to their  
 172 respective licenses granted under ss. 383.30-383.335, chapter  
 173 390, chapter 394, chapter 397, this chapter except part X,  
 174 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,  
 175 part I of chapter 483, chapter 484, or chapter 651; end-stage  
 176 renal disease providers authorized under 42 C.F.R. part 405,  
 177 subpart U; or providers certified under 42 C.F.R. part 485,  
 178 subpart B or subpart H; or any entity that provides neonatal or  
 179 pediatric hospital-based health care services by licensed  
 180 practitioners solely within a hospital licensed under chapter  
 181 395.

182 (e) An entity that is exempt from federal taxation under  
 183 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan  
 184 under 26 U.S.C. s. 409 that has a board of trustees not less  
 185 than two-thirds of which are Florida-licensed health care  
 186 practitioners and provides only physical therapy services under  
 187 physician orders, any community college or university clinic,  
 188 and any entity owned or operated by the federal or state  
 189 government, including agencies, subdivisions, or municipalities  
 190 thereof.

191 (f) A sole proprietorship, group practice, partnership, or  
 192 corporation that provides health care services by physicians  
 193 covered by s. 627.419, that is directly supervised by one or  
 194 more of such physicians, and that is wholly owned by one or more  
 195 of those physicians or by a physician and the spouse, parent,  
 196 child, or sibling of that physician.

197 (g) A sole proprietorship, group practice, partnership, or  
 198 corporation that provides health care services by licensed  
 199 health care practitioners under chapter 457, chapter 458,  
 200 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,  
 201 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,  
 202 chapter 490, chapter 491, or part I, part III, part X, part  
 203 XIII, or part XIV of chapter 468, or s. 464.012, which are  
 204 wholly owned by one or more licensed health care practitioners,  
 205 or the licensed health care practitioners set forth in this  
 206 paragraph and the spouse, parent, child, or sibling of a  
 207 licensed health care practitioner, so long as one of the owners  
 208 who is a licensed health care practitioner is supervising the  
 209 business activities and is legally responsible for the entity's  
 210 compliance with all federal and state laws. However, a health  
 211 care practitioner may not supervise services beyond the scope of  
 212 the practitioner's license, except that, for the purposes of  
 213 this part, a clinic owned by a licensee in s. 456.053(3)(b) that  
 214 provides only services authorized pursuant to s. 456.053(3)(b)  
 215 may be supervised by a licensee specified in s. 456.053(3)(b).

216 (h) Clinical facilities affiliated with an accredited  
 217 medical school at which training is provided for medical  
 218 students, residents, or fellows.

219 (i) Entities that provide only oncology or radiation  
 220 therapy services by physicians licensed under chapter 458 or  
 221 chapter 459 or entities that provide oncology or radiation  
 222 therapy services by physicians licensed under chapter 458 or  
 223 chapter 459 which are owned by a corporation whose shares are  
 224 publicly traded on a recognized stock exchange.

225 (j) Clinical facilities affiliated with a college of  
 226 chiropractic accredited by the Council on Chiropractic Education  
 227 at which training is provided for chiropractic students.

228 (k) Entities that provide licensed practitioners to staff  
 229 emergency departments or to deliver anesthesia services in  
 230 facilities licensed under chapter 395 and that derive at least  
 231 90 percent of their gross annual revenues from the provision of  
 232 such services. Entities claiming an exemption from licensure  
 233 under this paragraph must provide documentation demonstrating  
 234 compliance.

235 (l) Orthotic or prosthetic clinical facilities that are a  
 236 publicly traded corporation or that are wholly owned, directly  
 237 or indirectly, by a publicly traded corporation. As used in this  
 238 paragraph, a publicly traded corporation is a corporation that  
 239 issues securities traded on an exchange registered with the  
 240 United States Securities and Exchange Commission as a national  
 241 securities exchange.

242  
 243 Notwithstanding these exemptions, any legal entity deriving more  
 244 than 30 percent of its gross income, as measured each calendar  
 245 year, beginning January 1, 2013, from motor vehicle personal  
 246 injury protection insurance policy benefits is a clinic as  
 247 defined by this subsection and does not qualify for an  
 248 exemption. The agency may prescribe rules by which it can  
 249 collect revenue information from such entities and require the  
 250 reporting thereof on an annual basis.

251 Section 4. Subsection (1), paragraph (h) of subsection  
 252 (4), paragraph (a) of subsection (5), paragraph (b) of

253 subsection (7), and subsections (8) and (9) of section 627.736,  
 254 Florida Statutes, are amended to read:

255 627.736 Required personal injury protection benefits;  
 256 exclusions; priority; claims.—

257 (1) REQUIRED BENEFITS.—Every insurance policy complying  
 258 with the security requirements of s. 627.733 must ~~shall~~ provide  
 259 personal injury protection to the named insured, relatives  
 260 residing in the same household, persons operating the insured  
 261 motor vehicle, passengers in such motor vehicle, and other  
 262 persons struck by such motor vehicle and suffering bodily injury  
 263 while not an occupant of a self-propelled vehicle, subject to  
 264 ~~the provisions of~~ subsection (2) and paragraph (4)(e), to a  
 265 limit of \$10,000 for loss sustained by any such person as a  
 266 result of bodily injury, sickness, disease, or death arising out  
 267 of the ownership, maintenance, or use of a motor vehicle as  
 268 follows:

269 (a) 1. Medical benefits.—Eighty percent of ~~all reasonable~~  
 270 expenses for medically necessary medical, surgical, X-ray,  
 271 dental, and rehabilitative services, including prosthetic  
 272 devices, and for medically necessary ambulance, hospital, and  
 273 nursing services. However, the medical benefits shall provide  
 274 reimbursement only for such services and care that are lawfully  
 275 provided, supervised, ordered, or prescribed by a physician  
 276 licensed under chapter 458 or chapter 459, a dentist licensed  
 277 under chapter 466, or a chiropractic physician licensed under  
 278 chapter 460.

279 2. Chiropractic and massage.—Reimbursement for services  
 280 provided by chiropractic physicians licensed under chapter 460

281 and massage therapists licensed under chapter 480, limited to  
 282 the lesser of 24 treatments or to services rendered within 12  
 283 weeks after the date of the initial chiropractic or massage  
 284 therapy treatment, whichever comes first. However, an insurer  
 285 may authorize additional chiropractic or massage therapy  
 286 services. ~~or that are provided by any of the following persons~~  
 287 ~~or entities:~~

288 ~~1. A hospital or ambulatory surgical center licensed under~~  
 289 ~~chapter 395.~~

290 ~~2. A person or entity licensed under ss. 401.2101-401.45~~  
 291 ~~that provides emergency transportation and treatment.~~

292 ~~3. An entity wholly owned by one or more physicians~~  
 293 ~~licensed under chapter 458 or chapter 459, chiropractic~~  
 294 ~~physicians licensed under chapter 460, or dentists licensed~~  
 295 ~~under chapter 466 or by such practitioner or practitioners and~~  
 296 ~~the spouse, parent, child, or sibling of that practitioner or~~  
 297 ~~those practitioners.~~

298 ~~4. An entity wholly owned, directly or indirectly, by a~~  
 299 ~~hospital or hospitals.~~

300 ~~5. A health care clinic licensed under ss. 400.990-400.995~~  
 301 ~~that is:~~

302 ~~a. Accredited by the Joint Commission on Accreditation of~~  
 303 ~~Healthcare Organizations, the American Osteopathic Association,~~  
 304 ~~the Commission on Accreditation of Rehabilitation Facilities, or~~  
 305 ~~the Accreditation Association for Ambulatory Health Care, Inc.;~~

306 ~~or~~

307 ~~b. A health care clinic that:~~

308 ~~(I) Has a medical director licensed under chapter 458,~~

309 ~~chapter 459, or chapter 460;~~  
 310 ~~(II) Has been continuously licensed for more than 3 years~~  
 311 ~~or is a publicly traded corporation that issues securities~~  
 312 ~~traded on an exchange registered with the United States~~  
 313 ~~Securities and Exchange Commission as a national securities~~  
 314 ~~exchange; and~~  
 315 ~~(III) Provides at least four of the following medical~~  
 316 ~~specialties:~~  
 317 ~~(A) General medicine.~~  
 318 ~~(B) Radiography.~~  
 319 ~~(C) Orthopedic medicine.~~  
 320 ~~(D) Physical medicine.~~  
 321 ~~(E) Physical therapy.~~  
 322 ~~(F) Physical rehabilitation.~~  
 323 ~~(G) Prescribing or dispensing outpatient prescription~~  
 324 ~~medication.~~  
 325 ~~(H) Laboratory services.~~  
 326  
 327 ~~The Financial Services Commission shall adopt by rule the form~~  
 328 ~~that must be used by an insurer and a health care provider~~  
 329 ~~specified in subparagraph 3., subparagraph 4., or subparagraph~~  
 330 ~~5. to document that the health care provider meets the criteria~~  
 331 ~~of this paragraph, which rule must include a requirement for a~~  
 332 ~~sworn statement or affidavit.~~  
 333 (b) Disability benefits.—Sixty percent of any loss of  
 334 gross income and loss of earning capacity per individual from  
 335 inability to work proximately caused by the injury sustained by  
 336 the injured person, plus all expenses reasonably incurred in

337 obtaining from others ordinary and necessary services in lieu of  
 338 those that, but for the injury, the injured person would have  
 339 performed without income for the benefit of his or her  
 340 household. All disability benefits payable under this paragraph  
 341 ~~provision~~ shall be paid not less than every 2 weeks.

342 (c) Death benefits.—Death benefits equal to the lesser of  
 343 \$5,000 or the remainder of unused personal injury protection  
 344 benefits per individual. The insurer may pay such benefits to  
 345 the executor or administrator of the deceased, to any of the  
 346 deceased's relatives by blood or legal adoption or connection by  
 347 marriage, or to any person appearing to the insurer to be  
 348 equitably entitled thereto.

349  
 350 Only insurers writing motor vehicle liability insurance in this  
 351 state may provide the required benefits of this section, and ~~no~~  
 352 such an insurer may not ~~shall~~ require the purchase of any other  
 353 motor vehicle coverage other than the purchase of property  
 354 damage liability coverage as required by s. 627.7275 as a  
 355 condition for providing such required benefits. Insurers may not  
 356 require that property damage liability insurance in an amount  
 357 greater than \$10,000 be purchased in conjunction with personal  
 358 injury protection. Such insurers shall make benefits and  
 359 required property damage liability insurance coverage available  
 360 through normal marketing channels. Any insurer writing motor  
 361 vehicle liability insurance in this state who fails to comply  
 362 with such availability requirement as a general business  
 363 practice violates ~~shall be deemed to have violated~~ part IX of  
 364 chapter 626, which constitutes ~~and such violation shall~~



365 ~~constitute~~ an unfair method of competition or an unfair or  
 366 deceptive act or practice involving the business of insurance;  
 367 and any such insurer committing such violation ~~is shall be~~  
 368 subject to the penalties authorized ~~afforded~~ in such part, as  
 369 well as those authorized ~~which may be afforded~~ elsewhere in the  
 370 insurance code.

371 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under  
 372 ss. 627.730-627.7405 shall be primary, except that benefits  
 373 received under any workers' compensation law shall be credited  
 374 against the benefits provided by subsection (1) and shall be due  
 375 and payable as loss accrues, upon receipt of reasonable proof of  
 376 such loss and the amount of expenses and loss incurred which are  
 377 covered by the policy issued under ss. 627.730-627.7405. When  
 378 the Agency for Health Care Administration provides, pays, or  
 379 becomes liable for medical assistance under the Medicaid program  
 380 related to injury, sickness, disease, or death arising out of  
 381 the ownership, maintenance, or use of a motor vehicle, benefits  
 382 under ss. 627.730-627.7405 shall be subject to the provisions of  
 383 the Medicaid program.

384 (h) Benefits shall not be due or payable to or on the  
 385 behalf of an insured, claimant, medical provider, or attorney  
 386 ~~person~~ if the insured, claimant, medical provider, or attorney  
 387 has:

- 388 1. Submitted a false or misleading statement, document,
- 389 record, or bill;
- 390 2. Submitted false or misleading information; or
- 391 3. Otherwise committed or attempted to commit a fraudulent
- 392 insurance act as defined in s. 626.989.

393  
 394 A claimant who violates this paragraph is not entitled to any  
 395 personal injury protection benefits or payment for any bills and  
 396 services, regardless of whether a portion of the claim may be  
 397 legitimate. However, a medical provider who does not violate  
 398 this paragraph may not be denied benefits solely due to a  
 399 violation by another claimant ~~that person has committed, by a~~  
 400 ~~material act or omission, any insurance fraud relating to~~  
 401 ~~personal injury protection coverage under his or her policy, if~~  
 402 ~~the fraud is admitted to in a sworn statement by the insured or~~  
 403 ~~if it is established in a court of competent jurisdiction. Any~~  
 404 ~~insurance fraud shall void all coverage arising from the claim~~  
 405 ~~related to such fraud under the personal injury protection~~  
 406 ~~coverage of the insured person who committed the fraud,~~  
 407 ~~irrespective of whether a portion of the insured person's claim~~  
 408 ~~may be legitimate, and any benefits paid prior to the discovery~~  
 409 ~~of the insured person's insurance fraud shall be recoverable by~~  
 410 ~~the insurer from the person who committed insurance fraud in~~  
 411 ~~their entirety. The prevailing party is entitled to its costs~~  
 412 ~~and attorney's fees in any action in which it prevails in an~~  
 413 ~~insurer's action to enforce its right of recovery under this~~  
 414 ~~paragraph.~~

415 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

416 (a) ~~1.~~ Any physician, hospital, clinic, or other person or  
 417 institution lawfully rendering treatment to an injured person  
 418 for a bodily injury covered by personal injury protection  
 419 insurance may charge the insurer and injured party only an a  
 420 ~~reasonable~~ amount pursuant to this section for the services and

421 supplies rendered, and the insurer providing such coverage may  
 422 pay for such charges directly to such person or institution  
 423 lawfully rendering such treatment, if the insured receiving such  
 424 treatment or his or her guardian has countersigned the properly  
 425 completed invoice, bill, or claim form approved by the office  
 426 upon which such charges are to be paid for as having actually  
 427 been rendered, to the best knowledge of the insured or his or  
 428 her guardian. ~~In no event,~~ However, ~~may~~ such a charge may not  
 429 exceed ~~be in excess of~~ the amount the person or institution  
 430 customarily charges for like services or supplies. When  
 431 determining ~~With respect to a determination of~~ whether a charge  
 432 for a particular service, treatment, or otherwise is reasonable,  
 433 consideration may be given to evidence of usual and customary  
 434 charges and payments accepted by the provider involved in the  
 435 dispute, ~~and~~ reimbursement levels in the community and various  
 436 federal and state medical fee schedules applicable to motor  
 437 vehicle ~~automobile~~ and other insurance coverages, and other  
 438 information relevant to the reasonableness of the reimbursement  
 439 for the service, treatment, or supply.

440 1.2. The insurer may limit reimbursement to 80 percent of  
 441 the following schedule of maximum charges:

442 a. For emergency transport and treatment by providers  
 443 licensed under chapter 401, 200 percent of Medicare.

444 b. For emergency services and care provided by a hospital  
 445 licensed under chapter 395, 75 percent of the hospital's usual  
 446 and customary charges.

447 c. For emergency services and care as defined by s.  
 448 395.002 ~~395.002(9)~~ provided in a facility licensed under chapter

449 395 rendered by a physician or dentist, and related hospital  
 450 inpatient services rendered by a physician or dentist, the usual  
 451 and customary charges in the community.

452 d. For hospital inpatient services, other than emergency  
 453 services and care, 200 percent of the Medicare Part A  
 454 prospective payment applicable to the specific hospital  
 455 providing the inpatient services.

456 e. For hospital outpatient services, other than emergency  
 457 services and care, 200 percent of the Medicare Part A Ambulatory  
 458 Payment Classification for the specific hospital providing the  
 459 outpatient services.

460 f. For all other medical services, supplies, and care,  
 461 including durable medical equipment, care, and services rendered  
 462 by a clinical laboratory, 200 percent of the allowable amount  
 463 under the participating physicians schedule of Medicare Part B.  
 464 However, if such services, supplies, or care is not reimbursable  
 465 under Medicare Part B, or if the care and services are rendered  
 466 in an ambulatory surgical center, the insurer may limit  
 467 reimbursement to 80 percent of the maximum reimbursable  
 468 allowance under workers' compensation, as determined under s.  
 469 440.13 and rules adopted thereunder which are in effect at the  
 470 time such services, supplies, or care is provided. Services,  
 471 supplies, or care that is not reimbursable under Medicare or  
 472 workers' compensation is not required to be reimbursed by the  
 473 insurer.

474 ~~2.3.~~ For purposes of subparagraph 1. 2., the applicable  
 475 fee schedule or payment limitation under Medicare is the fee  
 476 schedule or payment limitation in effect on January 1 of the

477 year in which ~~at the time~~ the services, supplies, or care was  
 478 rendered and for the area in which such services were rendered,  
 479 notwithstanding any subsequent changes made to such fee schedule  
 480 or payment limitation, except that it may not be less than the  
 481 allowable amount under the participating physicians schedule of  
 482 Medicare Part B for 2007 for medical services, supplies, and  
 483 care subject to Medicare Part B.

484 ~~3.4.~~ Subparagraph 1. 2. does not allow the insurer to  
 485 apply any limitation on the number of treatments or other  
 486 utilization limits that apply under Medicare or workers'  
 487 compensation. An insurer that applies the allowable payment  
 488 limitations of subparagraph 1. 2. must reimburse a provider who  
 489 lawfully provided care or treatment under the scope of his or  
 490 her license, regardless of whether such provider would be  
 491 entitled to reimbursement under Medicare due to restrictions or  
 492 limitations on the types or discipline of health care providers  
 493 who may be reimbursed for particular procedures or procedure  
 494 codes.

495 ~~4.5.~~ If an insurer limits payment as authorized by  
 496 subparagraph 1. 2., the person providing such services,  
 497 supplies, or care may not bill or attempt to collect from the  
 498 insured any amount in excess of such limits, except for amounts  
 499 that are not covered by the insured's personal injury protection  
 500 coverage due to the coinsurance amount or maximum policy limits.

501 (7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON;  
 502 REPORTS.—

503 (b) If requested by the person examined, a party causing  
 504 an examination to be made shall deliver to him or her a copy of

505 every written report concerning the examination rendered by an  
 506 examining physician, at least one of which reports must set out  
 507 the examining physician's findings and conclusions in detail.  
 508 After such request and delivery, the party causing the  
 509 examination to be made is entitled, upon request, to receive  
 510 from the person examined every written report available to him  
 511 or her or his or her representative concerning any examination,  
 512 previously or thereafter made, of the same mental or physical  
 513 condition. By requesting and obtaining a report of the  
 514 examination so ordered, or by taking the deposition of the  
 515 examiner, the person examined waives any privilege he or she may  
 516 have, in relation to the claim for benefits, regarding the  
 517 testimony of every other person who has examined, or may  
 518 thereafter examine, him or her in respect to the same mental or  
 519 physical condition. If a person unreasonably refuses to submit  
 520 to or fails to appear at an examination, the personal injury  
 521 protection carrier is no longer liable for subsequent personal  
 522 injury protection benefits. Refusal or failure to appear for two  
 523 examinations raises a rebuttable presumption that such refusal  
 524 or failure was unreasonable.

525 (8) APPLICABILITY OF PROVISION REGULATING ATTORNEY  
 526 ATTORNEY'S FEES.-

527 (a) With respect to any dispute under ~~the provisions of~~  
 528 ss. 627.730-627.7405 between the insured and the insurer, or  
 529 between an assignee of an insured's rights and the insurer, ~~the~~  
 530 ~~provisions of~~ s. 627.428 applies shall apply, except as provided  
 531 in paragraphs (b) and (c) and subsections (10) and (15) and  
 532 except that any attorney fees recovered are limited to the

533 lesser of \$200 per billable hour or:

534 1. For any disputed amount of less than \$500, 15 times any  
 535 disputed amount recovered by the attorney under ss. 627.730-  
 536 627.7405, limited to a total of \$5,000.

537 2. For any disputed amount of \$500 or more and less than  
 538 \$5,000, 10 times any disputed amount recovered by the attorney  
 539 under ss. 627.730-627.7405, limited to a total of \$10,000.

540 3. For any disputed amount of \$5,000 or more and up to  
 541 \$10,000, 5 times any disputed amount recovered by the attorney  
 542 under ss. 627.730-627.7405, limited to a total of \$15,000.

543  
 544 Fees incurred in litigating or quantifying the amount of fees  
 545 due to the prevailing party under ss. 627.730-627.7405 are not  
 546 recoverable.

547 (b) Notwithstanding s. 627.428, the attorney fees  
 548 recovered under ss. 627.730-627.7405 shall be calculated without  
 549 regard to any contingency risk multiplier.

550 (c) Attorney fees in a class action under ss. 627.730-  
 551 627.7405 are limited to the lesser of \$50,000 or 3 times the  
 552 total of any disputed amount recovered in the class action  
 553 proceeding.

554 (9) PREFERRED PROVIDERS.-An insurer may negotiate and  
 555 enter into contracts with preferred ~~licensed health care~~  
 556 providers for the benefits described in this section, referred  
 557 to in this section as "preferred providers," which shall include  
 558 health care providers licensed under chapters 458, 459, 460,  
 559 461, and 466 463.

560 (a) The insurer may provide an option to an insured to use

561 a preferred provider at the time of purchase of the policy for  
 562 personal injury protection benefits, ~~if the requirements of this~~  
 563 subsection are met. However, if the insurer offers a preferred  
 564 provider option, it must also offer a nonpreferred provider  
 565 policy ~~If the insured elects to use a provider who is not a~~  
 566 ~~preferred provider, whether the insured purchased a preferred~~  
 567 ~~provider policy or a nonpreferred provider policy, the medical~~  
 568 ~~benefits provided by the insurer shall be as required by this~~  
 569 ~~section.~~

570 (b) If the insured elects the ~~to use a provider who is a~~  
 571 ~~preferred provider option,~~ the insurer may pay medical benefits  
 572 in excess of the benefits required by this section and may waive  
 573 or lower the amount of any deductible that applies to such  
 574 medical benefits. As an alternative, or in addition to such  
 575 benefits, waiver, or reduction, the insurer may provide an  
 576 actuarially appropriate premium discount as specified in an  
 577 approved rate filing to an insured who selects the preferred  
 578 provider option. If the preferred provider option provides a  
 579 premium discount, the policy may provide that charges for  
 580 nonemergency services provided within this state are payable  
 581 only if performed by members of the preferred provider network  
 582 unless there is no member of the preferred provider network  
 583 located within 15 miles of the insured's place of residence  
 584 whose scope of practice includes the required services ~~If the~~  
 585 ~~insurer offers a preferred provider policy to a policyholder or~~  
 586 ~~applicant, it must also offer a nonpreferred provider policy.~~

587 (c) The insurer shall provide each insured ~~policyholder~~  
 588 with a current roster of preferred providers in the county in



589 which the insured resides at the time of purchasing ~~purchase~~ of  
 590 such policy, ~~and shall~~ make such list available for public  
 591 inspection during regular business hours at the principal office  
 592 ~~of the insurer~~ within the state. The insurer may contract with  
 593 another insurer for the right to use an existing preferred  
 594 provider network to implement the preferred provider option. Any  
 595 other arrangement is subject to the approval of the Office of  
 596 Insurance Regulation.

597 Section 5. Subsection (9) is added to section 627.7407,  
 598 Florida Statutes, to read:

599 627.7407 Application of the Florida Motor Vehicle No-Fault  
 600 Law.—

601 (9) Sections 627.730-627.7405, the Florida Motor Vehicle  
 602 No-Fault Law, and this section are repealed effective July 1,  
 603 2015, unless reviewed by the Legislature and reenacted prior to  
 604 that date.

605 Section 6. The Office of Insurance Regulation shall  
 606 perform a personal injury protection data call, with results  
 607 published not later than 24 months after the effective date of  
 608 this act. Elements of the data call shall include, but are not  
 609 limited to, the number of personal injury protection claims  
 610 filed, the number of independent medical examinations requested  
 611 and completed, the number of examinations under oath requested  
 612 and completed, and the number of denied claims.

613 Section 7. Notwithstanding section 627.0645, Florida  
 614 Statutes, each insurer transacting motor vehicle insurance must,  
 615 within 18 months after the effective date of this act, decrease  
 616 rates through a "use and file" filing or make a full annual base

617 rate filing with the Office of Insurance Regulation. An insurer  
618 may not be exempted from this requirement by certification of an  
619 existing rate level that is actuarially sound and not inadequate  
620 pursuant to s. 627.0645(3)(b), Florida Statutes.

621       Section 8. If any provision of this act or its application  
622 to any person or circumstance is held invalid, the invalidity  
623 does not affect other provisions or applications of the act  
624 which can be given effect without the invalid provision or  
625 application, and to this end the provisions of this act are  
626 severable.

627       Section 9. This act shall take effect July 1, 2012.

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Between lines 500 and 501, insert:

(6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.—

(a) An insurer may require a claimant to submit to an examination under oath or sworn statement. The insurer is not liable for benefits under the no-fault law if the claimant fails to fully and truthfully answer all questions relating to the claim for benefits or violates any provision of paragraph (4) (h).

1. The insurer may conduct the examination outside the presence of any other person seeking benefits or reimbursement.

2. If an insurer requests an examination of a claimant that is in a hospital, clinic, or other medical institution, such claimant shall produce the persons with the most knowledge relating to the issues set forth by the insurer in the notice of examination.

3. The claimant must provide the insurer at the examination with all documents, papers, receipts, invoices, bills, records, or other tangible items requested by the insurer that are related to the claim.

4. The examination may be recorded by audio, video, or court reporter or any combination thereof. The claimant may record the examination at the claimant's expense.

5. The claimant may have an attorney present at the examination at the claimant's expense.

6. An insurer must coordinate with the claimant to ensure an appropriate time and location for the examination. A claimant's failure to agree to attend an examination after an insurer presents two documented offers of a reasonable time and location allows the insurer to suspend benefits, until such time that the claimant agrees to submit to, and does actually submit to, an examination.

7. If the claimant is a medical provider that is not the insured, the insurer must pay the claimant reasonable compensation for attending the examination under oath. Such compensation shall be based upon a good faith estimate of the time required to conduct the examinations under oath. If additional time is necessary for completion of the examination under oath, the insurer must provide compensation to the medical provider for the time that exceeds the good faith estimate within 15 days after the examination under oath so long as the medical provider completes the examination. The medical provider may have an attorney present at the examination under oath at his or her own expense.

(b)~~(a)~~ Every employer shall, if a request is made by an insurer providing personal injury protection benefits under ss. 627.730-627.7405 against whom a claim has been made, furnish forthwith, in a form approved by the office, a sworn statement of the earnings, since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(c)~~(b)~~ Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates, and costs of such treatment of the injured person and why the items identified by the insurer were reasonable in amount and medically necessary, together with a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury

sustained and identifying which portion of the expenses for such treatment or services was incurred as a result of such bodily injury, and produce forthwith, and permit the inspection and copying of, his or her or its records regarding such history, condition, treatment, dates, and costs of treatment; provided that this shall not limit the introduction of evidence at trial. Such sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief." No cause of action for violation of the physician-patient privilege or invasion of the right of privacy shall be permitted against any physician, hospital, clinic, or other medical institution complying with the provisions of this section. The person requesting such records and such sworn statement shall pay all reasonable costs connected therewith. If an insurer makes a written request for documentation or information under this paragraph within 30 days after having received notice of the amount of a covered loss under paragraph (4) (a), the amount or the partial amount which is the subject of the insurer's inquiry shall become overdue if the insurer does not pay in accordance with paragraph (4) (b) or within 10 days after the insurer's receipt of the requested documentation or information, whichever occurs later. For purposes of this paragraph, the term "receipt" includes, but is not limited to, inspection and copying pursuant to this paragraph. Any insurer that requests documentation or information pertaining to reasonableness of charges or medical necessity under this paragraph without a reasonable basis for such requests as a general business practice is engaging in an unfair trade practice under the insurance code.

~~(d)-(e)~~ In the event of any dispute regarding an insurer's right to discovery of facts under this section, the insurer may petition a court of competent jurisdiction to enter an order

6  
permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(e)~~(d)~~ The injured person shall be furnished, upon request, a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(f)~~(e)~~ Notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured.







## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 275 Consumer Finance Charges

**SPONSOR(S):** Burgin

**TIED BILLS:** IDEN./SIM. BILLS: SB 438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Barnum 	Cooper 
2) Economic Affairs Committee			

### SUMMARY ANALYSIS

Consumer finance loans involve loans or lines of credit in an amount up to \$25,000, and are provided by entities licensed by the Office of Financial Regulation. At the present time there are approximately 301 licensed locations in Florida.

Under ch. 516, F.S., the Florida Consumer Finance Act, a consumer can borrow up to \$25,000 for which a lender may charge an interest rate greater than 18 percent per year. The rates vary based upon the principal amount or parts thereof. The principal amounts upon which interest rates are computed were last adjusted in 1997. The law provides the lender the ability to charge a delinquency fee of up to \$10 for each payment in default. That fee has been unchanged since 2000. Lenders are permitted to collect a bad check charge of no more than the greater of \$20, or an amount equal to the actual charge made to the lender by the depository institution for the return of the unpaid or dishonored instrument. The last time the bad check charge was increased was in 1994.

HB 275 increases from \$2,000 to \$3,000 the principal amount upon which the maximum interest rate of 30 percent per year may be charged. In like manner, there is a \$1,000 upward adjustment to the segments of remaining principal to which lower interest rates apply. The 24 percent per annum rate will apply to that part of the principal amount exceeding \$3,000 but not exceeding \$4,000. A maximum interest rate of 18 percent per year will apply to that part of the principal amount exceeding \$4,000.

The bill increases the authorized delinquency fee from \$10 to \$15.

The bill increases the maximum permissible bad check charge and places it on a sliding scale consistent with existing maximum worthless check service charges applicable in civil actions and in the state attorney bad check diversion program. The new bad check charge will be: \$25, if the face value does not exceed \$50; \$30, if the face value exceeds \$50 but does not exceed \$300; \$40 if the face value exceeds \$300; or, 5 percent of the face amount of the check, whichever is greater.

The bill has no fiscal impact on state or local government.

Borrowers will be subject to increased interest charges and bad check charges, depending upon the principal amount of the loan and face amount of any bad check tendered as payment.

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background:**

The federal Truth in Lending Act (TILA) contains provisions regarding standardized disclosure of credit terms. It is intended to assure a meaningful disclosure of credit terms so that the consumer will be able to compare the various credit terms available, avoid the uninformed use of credit, and protect the consumer against inaccurate and unfair credit billing and credit card practices.<sup>1</sup> Regulation Z, adopted by the Board of Governors of the Federal Reserve System, implements TILA which requires creditors to disclose the cost of credit as a dollar amount (finance charge) and as an annual percentage rate. Finance charges include any charges or fees payable by the consumer and imposed by the creditor incident to or as a condition of an extension of consumer credit.

The Office of Financial Regulation (OFR) has regulatory authority over entities providing small consumer loans authorized under Chapter 516 (consumer finance), Chapter 520 (retail installment sellers), Chapter 537 (title loans), and Part IV of Chapter 560, (deferred presentment transactions or payday loans). Each of these loans provides for an exception from the 18 percent per year simple interest cap that is set forth in s. 687.02, F.S.

Under ch. 516, F.S., the Florida Consumer Finance Act, a consumer can borrow up to \$25,000. Licensees charge an interest rate which can vary based upon the principal amount or parts thereof. The annual percentage rate must be computed and disclosed as required by the Truth in Lending Act and Regulation Z. The act allows a licensee to charge a borrower up to \$25 for the costs of a credit check and an annual fee of \$25 on the anniversary date of the line-of-credit account. In addition, other charges are permissible under specific circumstances. Each place of business must be licensed. The license fees under the act are \$625 for the initial application, plus a \$200 investigation fee, and \$625 for a renewal. A license is valid for not more than two (2) years. The licensee must maintain evidence of liquid assets of at least \$25,000. The OFR is authorized to examine and investigate any licensee, and take disciplinary actions against licensees violating the act.

Information provided by the Florida Financial Services Association<sup>2</sup> reflects that, for members doing business in Florida, the average loan amount for a large regional member is approximately \$2,100 and a national company reports an average loan amount of \$3,400. The average monthly payment made on these loans is approximately \$140 and \$156, respectively. The face value of the average returned check experienced by the regional member is approximately \$137.

The principal amounts upon which interest rates are computed were last adjusted in 1997.<sup>3</sup> The ability to charge a delinquency fee of up to \$10 for each payment in default was added to the act in 2000,<sup>4</sup> and there have been no changes to that fee since it was authorized. Lenders are permitted to collect a bad check charge for the return of an unpaid or dishonored check. The last time the bad check charge was increased was in 1994.<sup>5</sup>

#### **Current Situation:**

Chapter 516, F.S. is the governing statute for consumer finance loans.<sup>6</sup> It provides for a maximum interest rate of 30 percent per year, computed on the first \$2,000 of the principal amount; 24 percent per year on that part of the principal amount exceeding \$2,000 but not exceeding \$3,000; and 18

<sup>1</sup> Section 102 of title I of the Act of May 29, 1968 (Pub. L. No. 90--321; 82 Stat. 146), effective May 29, 1968, as amended.

<sup>2</sup> A trade association with membership consisting of consumer finance companies providing consumer loans in Florida.

<sup>3</sup> s. 1, ch. 97-181, L.O.F.

<sup>4</sup> s. 1, ch. 2000-127, L.O.F.

<sup>5</sup> s. 1, ch. 94-108, L.O.F.

<sup>6</sup> s. 516.01(2) defines "consumer finance loan" as a loan of money, credit, goods, or provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum.

percent per year on that part of the principal amount exceeding \$3,000. In addition to interest, current law allows for specified other charges, such as delinquency, insurance premiums, and costs associated with property pledged as security. The authorized delinquency fee, not to exceed \$10 for each payment in default, must be agreed, in writing, before the fee can be imposed. Lenders are authorized to collect a bad check charge if a check, draft, or like instrument drawn on a depository institution is not paid or dishonored. That charge can be no more than the greater of \$20, or an amount equal to the actual charge made to the lender by the depository institution for the return of the unpaid or dishonored instrument.

“Administrative fees” are neither defined nor permitted. Rather, aside from clearly defined exceptions, no other charges or amount for any examination, service, commission, or other thing shall be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan.<sup>7</sup> At the present time there are approximately 301 licensed locations in Florida.<sup>8</sup>

**Effect of Proposed Changes:**

The bill increases from \$2,000 to \$3,000 the principal amount upon which the maximum interest rate of 30 percent per year may be charged. In like manner, there is a \$1,000 upward adjustment to the segments of remaining principal to which lower interest rates apply. The 24 percent per annum rate will apply to that part of the principal amount exceeding \$3,000 but not exceeding \$4,000. A maximum interest rate of 18 percent per year will apply to that part of the principal amount exceeding \$4,000. The following chart depicts these changes.

<u>Interest Rate</u>	<u>Current Law</u>	<u>House Bill 275</u>
30% per annum	Part of Principal \$1 - \$2,000	Part of Principal \$1 - \$3,000
24% per annum	Part of Principal >\$2,000 - \$3,000	Part of Principal >\$3,000 - \$4,000
18% per annum	Part of Principal >\$3,000 - \$25,000	Part of Principal >\$4,000 - \$25,000

Using the average loan amounts reported by the Florida Financial Services Association, the impact of the proposed increases would be as follows:

<u>Principal Amount</u>	<u>Annual Interest Under Current Law</u>	<u>Annual interest Under HB 275</u>	<u>Amount of Annual Interest Increase</u>
\$2,100	\$624	\$630	\$6
\$3,400	\$936	\$996	\$60

In addition, the bill increases the authorized delinquency fee from \$10 to \$15. The requirement remains that an agreement in writing must be executed before the delinquency fee may be imposed.

The bill increases the maximum permissible bad check charge and places it on a sliding scale consistent with existing maximum worthless check service charges applicable in civil actions<sup>9</sup> and in the state attorney bad check diversion program.<sup>10</sup> The new bad check charge will be: \$25, if the face value does not exceed \$50; \$30, if the face value exceeds \$50 but does not exceed \$300; \$40, if the face value exceeds \$300; or, 5 percent of the face amount of the check, whichever is greater.

<sup>7</sup> s. 516.031(3)(a), F.S.

<sup>8</sup> Office of Financial Regulation Analysis of HB 275 dated November 7, 2011, on file with the Insurance & Banking Subcommittee.

<sup>9</sup> s. 68.065(2), F.S.

<sup>10</sup> s. 832.08(5), F.S.

The following chart provides a comparison between current law and the proposed maximum permissible bad check charges.

<u>Bad Check Face Amount</u>	<u>Bad Check Charge Current Law <sup>(1)</sup></u>	<u>Bad Check Charge House Bill 275</u>
\$25	\$20	\$25
\$250	\$20	\$30
\$500	\$20	\$40
\$1,000	\$20	\$50
\$5,000	\$20	\$250
\$25,000	\$20	\$1,250

<sup>(1)</sup> Current law allows for the greater of \$20 or the amount charged the lender depositing the non-sufficient funds check. That amount may vary from depository institution to depository institution, and may be based upon the depositor's relationship with the institution. In some cases, no charge may be levied.

All other provisions of the Florida Consumer Finance Act remain unchanged.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 516.031, F.S., by increasing the dollar amounts upon which the various interest rates are computed, and increasing the "bad check charge".

Section 2. Reenacts and amends s. 516.19, F.S., by incorporating the amendment to s. 516.031, F.S. into provisions for which violations are subject to penalties.

Section 3. Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Borrowers will be subject to increased interest charges and bad check charges, depending upon the principal amount of the loan and face amount of any bad check tendered as payment.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is silent regarding how or if the changes would apply to existing loans or lines of credit. An amendment is anticipated to specify that the changes apply to consumer finance loans entered into on or after July 1, 2012.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                   A bill to be entitled  
 2           An act relating to consumer finance charges; amending  
 3           s. 516.031, F.S.; increasing the proportionate loan  
 4           amounts that are subject to descending maximum rates  
 5           of interest; increasing the maximum delinquency charge  
 6           that may be imposed for each loan payment in default  
 7           for not less than a specified time; revising the  
 8           maximum amount that a lender may impose as a service  
 9           charge on a borrower who gives the lender a bad check  
 10          in full or partial payment of a loan; reenacting and  
 11          amending s. 516.19, F.S., relating to penalties, for  
 12          the purpose of incorporating the amendment made to s.  
 13          516.031, F.S., in a reference thereto; providing  
 14          penalties; providing an effective date.

15

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

17

18           Section 1. Subsections (1) and (3) of section 516.031,  
 19 Florida Statutes, are amended to read:

20           516.031 Finance charge; maximum rates.—

21           (1) INTEREST RATES.—Every licensee may lend any sum of  
 22 money not exceeding \$25,000. A licensee may not take a security  
 23 interest secured by land on any loan less than \$1,000. The  
 24 licensee may charge, contract for, and receive thereon interest  
 25 charges as provided and authorized by this section. The maximum  
 26 interest rate shall be 30 percent per annum, computed on the  
 27 first \$3,000 ~~\$2,000~~ of the principal amount as computed from  
 28 time to time; 24 percent per annum on that part of the principal

29 amount as computed from time to time exceeding \$3,000 ~~\$2,000~~ and  
 30 not exceeding \$4,000 ~~\$3,000~~; and 18 percent per annum on that  
 31 part of the principal amount as computed from time to time  
 32 exceeding \$4,000 ~~\$3,000~~ and not exceeding \$25,000. The original  
 33 principal amount as used in this section shall be the same  
 34 amount as the amount financed as defined by the federal Truth in  
 35 Lending Act and Regulation Z of the Board of Governors of the  
 36 Federal Reserve System. In determining compliance with the  
 37 statutory maximum interest and finance charges set forth herein,  
 38 the computations utilized shall be simple interest and not add-  
 39 on interest or any other computations. When two or more interest  
 40 rates are to be applied to the principal amount of a loan, the  
 41 licensee may charge, contract for, and receive interest at that  
 42 single annual percentage rate which if applied according to the  
 43 actuarial method to each of the scheduled periodic balances of  
 44 principal would produce at maturity the same total amount of  
 45 interest as would result from the application of the two or more  
 46 rates otherwise permitted, based upon the assumption that all  
 47 payments are made as agreed.

48 (3) OTHER CHARGES.—

49 (a) In addition to the interest, delinquency, and  
 50 insurance charges herein provided for, no further or other  
 51 charges or amount whatsoever for any examination, service,  
 52 commission, or other thing or otherwise shall be directly or  
 53 indirectly charged, contracted for, or received as a condition  
 54 to the grant of a loan, except:

55 1. An amount not to exceed \$25 to reimburse a portion of  
 56 the costs for investigating the character and credit of the

57 person applying for the loan;

58 2. An annual fee of \$25 on the anniversary date of each  
59 line-of-credit account;

60 3. Charges paid for brokerage fee on a loan or line of  
61 credit of more than \$10,000, title insurance, and the appraisal  
62 of real property offered as security when paid to a third party  
63 and supported by an actual expenditure;

64 4. Intangible personal property tax on the loan note or  
65 obligation when secured by a lien on real property;

66 5. The documentary excise tax and lawful fees, if any,  
67 actually and necessarily paid out by the licensee to any public  
68 officer for filing, recording, or releasing in any public office  
69 any instrument securing the loan, which fees may be collected  
70 when the loan is made or at any time thereafter;

71 6. The premium payable for any insurance in lieu of  
72 perfecting any security interest otherwise required by the  
73 licensee in connection with the loan, if the premium does not  
74 exceed the fees which would otherwise be payable, which premium  
75 may be collected when the loan is made or at any time  
76 thereafter;

77 7. Actual and reasonable attorney's fees and court costs  
78 as determined by the court in which suit is filed;

79 8. Actual and commercially reasonable expenses of  
80 repossession, storing, repairing and placing in condition for  
81 sale, and selling of any property pledged as security; or

82 9. A delinquency charge not to exceed \$15 ~~\$10~~ for each  
83 payment in default for a period of not less than 10 days, if the  
84 charge is agreed upon, in writing, between the parties before



85 imposing the charge.

86

87 Any charges, including interest, in excess of the combined total  
 88 of all charges authorized and permitted by this chapter  
 89 constitute a violation of chapter 687 governing interest and  
 90 usury, and the penalties of that chapter apply. In the event of  
 91 a bona fide error, the licensee shall refund or credit the  
 92 borrower with the amount of the overcharge immediately but  
 93 within 20 days from the discovery of such error.

94 (b) Notwithstanding the provisions of paragraph (a), any  
 95 lender of money who receives a check, draft, negotiable order of  
 96 withdrawal, or like instrument drawn on a bank or other  
 97 depository institution, which instrument is given by a borrower  
 98 as full or partial repayment of a loan, may, if such instrument  
 99 is not paid or is dishonored by such institution, make and  
 100 collect from the borrower a bad check charge of not greater than  
 101 the maximum worthless check service charge permissible under s.  
 102 68.065 ~~more than the greater of \$20 or an amount equal to the~~  
 103 ~~actual charge made to the lender by the depository institution~~  
 104 ~~for the return of the unpaid or dishonored instrument.~~

105 Section 2. For the purpose of incorporating the amendment  
 106 made by this act to section 516.031, Florida Statutes, in a  
 107 reference thereto, section 516.19, Florida Statutes, is  
 108 reenacted and amended to read:

109 516.19 Penalties.—Any person who violates any of the  
 110 provisions of s. 516.02, s. 516.031, s. 516.05(3), s. 516.05(6),  
 111 or s. 516.07(1)(e) commits ~~is guilty of~~ a misdemeanor of the  
 112 first degree, punishable as provided in s. 775.082 or s.

HB 275

2012

113 | 775.083.

114 |       Section 3. This act shall take effect July 1, 2012.

**INSURANCE & BANKING SUBCOMMITTEE**

**HB 275 by Rep. Burgin  
Consumer Finance Charges**

**AMENDMENT SUMMARY  
November 16, 2011**

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**Amendment 1** by Rep. Burgin (Line 114): Clarifies that the changes only apply to those consumer finance loans entered into on or after July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 275 (2012)

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(s) Burgin offered the following:

**Amendment**

6 Remove line 114 and insert:

7 Section 3. This act shall take effect July 1, 2012, and  
8 shall apply to all consumer finance loans entered into on or  
9 after that date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 307 Workers' Compensation Certificate-of-exemption Process
SPONSOR(S): Bernard
TIED BILLS: IDEN./SIM. BILLS: SB 676

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Insurance & Banking Subcommittee, ANALYST: Reilly, STAFF DIRECTOR: Cooper.

SUMMARY ANALYSIS

Under Florida law, corporate officers can elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered "employees" for premium calculation purposes...

The Division of Workers' Compensation processes applications for construction industry exemptions (which are valid for 2 years) and non-construction industry exemptions (which have no expiration date). In the construction industry, corporate officers and members of limited liability companies (LLCs) who are at least 10% owners of the corporation or LLC may elect to be exempt.

Applicants for exemption are required to complete DWC-Form 250, "Notice of Election to be Exempt," which must be notarized. For construction industry exemptions, applicants must also pay a \$50 filing fee and submit documentation of their requisite ownership interest.

House Bill 307 excludes members of non-construction LLCs from the definition of employee, unless they elect to be included as employees. Thus, members that do not make such election are exempt from workers' compensation coverage requirements.

The bill allows for the electronic submission of exemption applications, with streamlined reporting requirements (e.g., elimination of notarization requirement and, for construction industry exemptions, the filing of copies of stock certificates). Additional data elements to be reported by all applicants are date of birth, Florida driver's license number or Florida identification card number...

House bill 307 also provides that all certificates of election to be exempt issued on or after January 1, 2013 are valid for 2 years from the effective date stated on the certificate.

DFS has indicated that an electronic submission process could result in a significant decrease in the percentage of staff who review and process exemptions.

Except as otherwise provided, the bill takes effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Workers' Compensation Exemptions<sup>1</sup>**

Section 440.05, F.S., "Election of exemption; revocation of election; notice, certification," permits corporate officers to elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered employees for premium calculation purposes, and are not eligible to receive workers' compensation benefits if they suffer a workplace injury. The term "corporate officers" is defined in s. 440.02(9), F.S., to include members of limited liability companies (LLCs) in the construction industry who own at least 10% of the LLC.<sup>2,3</sup>

##### **Construction Industry versus Non-Construction Exemptions**

The Division of Workers' Compensation (DWC) processes applications for construction industry exemptions (which are valid for 2 years) and non-construction industry exemptions (which have no expiration date). In the construction industry, corporate officers and members of limited liability companies (LLCs) with a minimum 10% ownership interest in the corporation or LLC, respectively, may elect to be exempt. There is no ownership requirement associated with non-construction industry exemptions. However, as non-construction LLC members are not considered corporate officers, they are not eligible for an exemption.

##### **Exemption Applications<sup>4</sup>**

Currently, applicants for exemption complete a "Notice of Election to be Exempt" form (DWC-250). The application must be notarized, and submitted to the Division of Workers' Compensation. Construction industry applications must also be accompanied by a \$50 application fee and proof of requisite ownership (a copy of the stock certificate or documentation of 10% ownership of the LLC). A construction industry exemption is valid for 2 years, while there is no time limit on non-construction exemptions.

##### **Effect of the Bill:**

##### **Non-Construction LLC Members**

The bill amends the definition of "employee" under the Workers' Compensation Law to include non-construction LLC members that devote full time to the LLC and elect to be included as employees. Notice of the election must be mailed to the Division of Workers' Compensation. Non-construction LLC members who do not make such an election are exempt from workers' compensation coverage requirements.

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<sup>1</sup>For an overview of the exemption process and eligibility requirements, see the Department of Financial Services website: <http://www.myfloridacfo.com/wc/employer/exemption.html> (last accessed November 9, 2011).

<sup>2</sup>The "Florida Limited Liability Companies Act" (LLC Act) is contained in ss. 608.401-608.705, F.S. An LLC is defined as an LLC organized and existing under the act. In general, an LLC has "the attributes of both a corporation and a partnership..." See 51 Am. Jur. 2d, Limited Liability Companies, s. 1.

<sup>3</sup> The LLC Act defines an LLC member as "any person who has been admitted to a limited liability company as a member in accordance with this chapter and has an economic interest in a limited liability company which may, but need not, be represented by a capital account or, in the case of a foreign limited liability company, has been admitted to a limited liability company as a member in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized."

<sup>4</sup> The application fee for a construction industry exemption is \$50. There is no application fee for a non-construction industry exemption application. Pursuant to s. 440.05(8)(b), F.S., monies collected by the Division of Workers' Compensation are used to fund the division's investigative efforts, most of which relate to the construction industry.

## **Paperless Exemption Application Process**

The bill allows for the electronic submission of exemption applications, with streamlined reporting requirements (e.g., elimination of notarization requirement and, for construction industry exemptions, the filing of copies of stock certificates). Additional data elements to be reported by all applicants electronically are date of birth, Florida driver's license number or Florida identification card number. Construction industry applicants will also provide a statement of ownership interest. Within 60 days of expiration of a construction industry exemption, the Department of Financial Services (DFS) is required to send notice to the exemption holder, either at the address on the exemption certificate or to the e-mail on file with DFS.

The bill provides that all certificates of exemption issued by the Division of Workers' Compensation on or after January 1, 2013 are valid for 2 years.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 440.02, F.S., relating to the definition of employee.

**Section 2.** Amends s. 440.05, F.S., providing for the electronic submission of workers' compensation exemption applications.

**Section 3.** Amends s. 440.05(6), F.S., providing a 2-year expiration period for all certificates of election to be exempt issued on or after January 1, 2013.

**Section 4.** Provides for the act to take effect upon becoming law, except as otherwise provided.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

No impact.

2. Expenditures:

The Department of Financial Services informs that providing for an electronic application process would eliminate the need for eight (8) staff who review and process exemptions, which is a 23% reduction of exemption process staffing and a savings of \$327,835 in salaries and benefits over the FY 2011-2012 budget.

As applicants for workers' compensation exemptions can currently fill out their application online at the Division of Workers' Compensation's website, the Division believes that costs associated with modifying its exemption technology to provide for electronic submissions would be minimal.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**



The changes will streamline the exemption process and make it easier for applicants to complete and submit an exemption. The elimination of the requirement to notarize the exemption application will reduce a regulatory step for applicants and eliminate the cost associated with using a notary.

With an established expiration period for all exemptions, persons with non-construction industry exemptions will have to apply for an exemption every 2 years. Presently, non-construction industry exemptions do not have an expiration date. The bill, however, will not result in new fees, as there continues to be no application fee for non-construction industry exemptions.

#### D. FISCAL COMMENTS:

The electronic submission process is part of the Department of Financial Services' LBR and Schedule VIII-B submission for FY 2012-2013.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The Division of Workers' Compensation would have to amend Rule 69L-6.012 "Notice of Election to be Exempt" to reflect the new statutory requirements.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division of Workers' Compensation presently provides walk-in assistance in all Compliance District Offices and will continue to provide assistance. Computers will be available in the District Offices for exemption applicants who may not have access to a computer.

Non-construction industry exemptions do not have an expiration date. The bill provides for a 2-year expiration date for all exemptions. While this will require non-construction industry exemptionholders to re-apply for exemption every 2 years, it will assist in ensuring that the information on which each exemption is based remains timely during the exemption period. For example, currently a corporate officer with a construction industry exemption who leaves the corporation remains in possession of a "certificate of election to be exempt" that does not have an expiration date.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to the workers' compensation  
 3           certificate-of-exemption process; amending s. 440.02,  
 4           F.S.; redefining the term "employee" for purposes of  
 5           workers' compensation; amending s. 440.05, F.S.;  
 6           revising requirements relating to election of  
 7           exemption from coverage to include applicability to  
 8           members of limited liability companies; revising  
 9           requirements for submitting a notice of election of  
 10          exemption; revising duties of the Department of  
 11          Financial Services relating to the expiration of  
 12          certificates of exemption; expanding applicability of  
 13          requirements relating to certificates of exemption;  
 14          providing effective dates.

15  
 16   Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Paragraphs (b) and (c) of subsection (15) of  
 19           section 440.02, Florida Statutes, are amended to read:

20           440.02 Definitions.—When used in this chapter, unless the  
 21           context clearly requires otherwise, the following terms shall  
 22           have the following meanings:

23           (15)

24           (b) "Employee" includes any person who is an officer of a  
 25           corporation and who performs services for remuneration for such  
 26           corporation within this state, whether or not such services are  
 27           continuous.

28           1. Any officer of a corporation may elect to be exempt

29 from this chapter by filing ~~written~~ notice of the election with  
 30 the department as provided in s. 440.05.

31 2. As to officers of a corporation who are engaged in the  
 32 construction industry, no more than three officers of a  
 33 corporation or of any group of affiliated corporations may elect  
 34 to be exempt from this chapter by filing ~~written~~ notice of the  
 35 election with the department as provided in s. 440.05. Officers  
 36 must be shareholders, each owning at least 10 percent of the  
 37 stock of such corporation and listed as an officer of such  
 38 corporation with the Division of Corporations of the Department  
 39 of State, in order to elect exemptions under this chapter. For  
 40 purposes of this subparagraph, the term "affiliated" means and  
 41 includes one or more corporations or entities, any one of which  
 42 is a corporation engaged in the construction industry, under the  
 43 same or substantially the same control of a group of business  
 44 entities which are connected or associated so that one entity  
 45 controls or has the power to control each of the other business  
 46 entities. The term "affiliated" includes, but is not limited to,  
 47 the officers, directors, executives, shareholders active in  
 48 management, employees, and agents of the affiliated corporation.  
 49 The ownership by one business entity of a controlling interest  
 50 in another business entity or a pooling of equipment or income  
 51 among business entities shall be prima facie evidence that one  
 52 business is affiliated with the other.

53 3. An officer of a corporation who elects to be exempt  
 54 from this chapter by filing a ~~written~~ notice of the election  
 55 with the department as provided in s. 440.05 is not an employee.

56

57 Services are presumed to have been rendered to the corporation  
 58 if the officer is compensated by other than dividends upon  
 59 shares of stock of the corporation which the officer owns.

60 (c) "Employee" includes:

61 1. A sole proprietor, a member of a limited liability  
 62 company, or a partner who is not engaged in the construction  
 63 industry, devotes full time to the proprietorship, limited  
 64 liability company, or partnership, and elects to be included in  
 65 the definition of employee by filing notice thereof as provided  
 66 in s. 440.05.

67 2. All persons who are being paid by a construction  
 68 contractor as a subcontractor, unless the subcontractor has  
 69 validly elected an exemption as permitted by this chapter, or  
 70 has otherwise secured the payment of compensation coverage as a  
 71 subcontractor, consistent with s. 440.10, for work performed by  
 72 or as a subcontractor.

73 3. An independent contractor working or performing  
 74 services in the construction industry.

75 4. A sole proprietor who engages in the construction  
 76 industry and a partner or partnership that is engaged in the  
 77 construction industry.

78 Section 2. Subsections (2), (3), and (6) of section  
 79 440.05, Florida Statutes, are amended to read:

80 440.05 Election of exemption; revocation of election;  
 81 notice; certification.-

82 (2) Each sole proprietor, member of a limited liability  
 83 company, or partner who elects to be included in the definition  
 84 of "employee" or who, after such election, revokes that election

85 | must mail to the department in Tallahassee notice to such  
 86 | effect, in accordance with a form to be prescribed by the  
 87 | department.

88 |       (3) Each officer of a corporation who is engaged in the  
 89 | construction industry and who elects an exemption from this  
 90 | chapter or who, after electing such exemption, revokes that  
 91 | exemption, must submit ~~mail~~ a ~~written~~ notice to such effect to  
 92 | the department on a form prescribed by the department. ~~The~~  
 93 | ~~notice of election to be exempt from the provisions of this~~  
 94 | ~~chapter must be notarized and under oath.~~ The notice of election  
 95 | to be exempt which is electronically submitted to the department  
 96 | by the officer of a corporation who is allowed to claim an  
 97 | exemption as provided by this chapter must list the name,  
 98 | federal tax identification number, date of birth, Florida  
 99 | driver's license number or Florida identification card number  
 100 | ~~social security number~~, all certified or registered licenses  
 101 | issued pursuant to chapter 489 held by the person seeking the  
 102 | exemption, ~~a copy of relevant documentation as to employment~~  
 103 | ~~status filed with the Internal Revenue Service as specified by~~  
 104 | ~~the department, a copy of the relevant occupational license in~~  
 105 | ~~the primary jurisdiction of the business, and the registration~~  
 106 | number of the corporation filed with the Division of  
 107 | Corporations of the Department of State, and the percentage of  
 108 | ownership ~~along with a copy of the stock certificate~~ evidencing  
 109 | the required ownership under this chapter. The notice of  
 110 | election to be exempt must identify each corporation that  
 111 | employs the person electing the exemption and must list the  
 112 | social security number or federal tax identification number of

113 each such employer and the additional documentation required by  
 114 this section. In addition, the notice of election to be exempt  
 115 must provide that the officer electing an exemption is not  
 116 entitled to benefits under this chapter, must provide that the  
 117 election does not exceed exemption limits for officers provided  
 118 in s. 440.02, and must certify that any employees of the  
 119 corporation whose officer elects an exemption are covered by  
 120 workers' compensation insurance. Upon receipt of the notice of  
 121 the election to be exempt, receipt of all application fees, and  
 122 a determination by the department that the notice meets the  
 123 requirements of this subsection, the department shall issue a  
 124 certification of the election to the officer, unless the  
 125 department determines that the information contained in the  
 126 notice is invalid. The department shall revoke a certificate of  
 127 election to be exempt from coverage upon a determination by the  
 128 department that the person does not meet the requirements for  
 129 exemption or that the information contained in the notice of  
 130 election to be exempt is invalid. The certificate of election  
 131 must list the name of the corporation listed in the request for  
 132 exemption. A new certificate of election must be obtained each  
 133 time the person is employed by a new or different corporation  
 134 that is not listed on the certificate of election. A copy of the  
 135 certificate of election must be sent to each workers'  
 136 compensation carrier identified in the request for exemption.  
 137 Upon filing a notice of revocation of election, an officer who  
 138 is a subcontractor or an officer of a corporate subcontractor  
 139 must notify her or his contractor. Upon revocation of a  
 140 certificate of election of exemption by the department, the

141 department shall notify the workers' compensation carriers  
 142 identified in the request for exemption.

143 (6) A construction industry certificate of election to be  
 144 exempt which is issued in accordance with this section shall be  
 145 valid for 2 years after the effective date stated thereon. Both  
 146 the effective date and the expiration date must be listed on the  
 147 face of the certificate by the department. The construction  
 148 industry certificate must expire at midnight, 2 years from its  
 149 issue date, as noted on the face of the exemption certificate. A  
 150 construction industry certificate of election to be exempt may  
 151 be revoked before its expiration by the officer for whom it was  
 152 issued or by the department for the reasons stated in this  
 153 section. At least 60 days before ~~prior to~~ the expiration date of  
 154 a construction industry certificate of exemption ~~issued after~~  
 155 ~~December 1, 1998~~, the department shall send notice of the  
 156 expiration date ~~and an application for renewal~~ to the  
 157 certificateholder at the address on the certificate or to the e-  
 158 mail address on file with the department.

159 Section 3. Effective January 1, 2013, subsection (6) of  
 160 section 440.05, Florida Statutes, as amended by act, is amended  
 161 to read:

162 440.05 Election of exemption; revocation of election;  
 163 notice; certification.-

164 (6) A ~~construction industry~~ certificate of election to be  
 165 exempt which is issued on or after January 1, 2013, in  
 166 accordance with this section shall be valid for 2 years after  
 167 the effective date stated thereon. Both the effective date and  
 168 the expiration date must be listed on the face of the

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169 certificate by the department. The ~~construction industry~~  
 170 certificate must expire at midnight, 2 years from its issue  
 171 date, as noted on the face of the exemption certificate. A  
 172 ~~construction industry~~ certificate of election to be exempt may  
 173 be revoked before its expiration by the officer for whom it was  
 174 issued or by the department for the reasons stated in this  
 175 section. At least 60 days before the expiration date of a  
 176 ~~construction industry~~ certificate of exemption, the department  
 177 shall send notice of the expiration date to the  
 178 certificateholder at the address on the certificate or to the e-  
 179 mail address on file with the department.



180 Section 4. Except as otherwise expressly provided in this  
 181 act, this act shall take effect upon becoming a law.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 379 Captive Insurance  
**SPONSOR(S):** Nuñez  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 610

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Gault 	Cooper 
2) Finance & Tax Committee			
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

Captive insurance is a form of self-insurance where an insurer is created and wholly owned by one or more non-insurers to provide owners with coverage. Captive insurance was originally an offshore industry, but the United States now hosts domiciles with some of the highest numbers of captives in the world. Many states with legislation similar to HB 379 have experienced positive economic impacts. The bill is designed to match legislation common in the industry to attract captive insurance companies and, ultimately, receive the economic benefits of a captive insurance domicile. Also, several economic benefits exist for businesses choosing to start a captive insurance company instead of traditional insurance.

Florida law currently provides for the creation of a captive insurance company but none exist in the state. The bill expands current law, creating new provisions relating to formation, incorporation, coverage, capital and surplus, licensure and authorization, reporting, and reinsurance.

The bill allows for the creation of pure captive insurance companies, association captive insurance companies, industrial insured captive insurance companies, special purpose captive insurance companies, and captive reinsurance companies.

The bill requires captive insurance companies to incorporate as a mutual or stock insurer, depending on the captive's formation.

The bill allows captive insurance companies to provide any and all insurance under the Florida Insurance Code, except for workers compensation, health insurance, and personal motor vehicle or homeowners' insurance. A captive reinsurance company, however, may only apply to write reinsurance covering property and casualty insurance or reinsurance contracts.

The capital and surplus required depends on the captive's formation. For instance: pure captives must have at least \$250,000 in total capital and surplus; and captive reinsurance companies must have capital or surplus not less than the greater of \$300 million or 10% of reserves.

Many licensure and authorization requirements required by law still apply to captives, but the bill includes specific requirements, such as, holding an annual board of directors' meeting in Florida.

The bill requires captive reinsurance companies to follow most of the provisions applying to captive insurance companies, but the bill also provides separate requirements in areas such as capital and surplus requirements, coverage, and incorporation.

The fiscal impact is indeterminate.

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background on Captive Insurance:

Captive insurance is a form of self-insurance where an insurer is created and wholly owned by one or more non-insurers to provide owners with coverage.<sup>1</sup> Unlike traditional self-insurance, the owner does not retain risk but transfers risk; the insured pay premiums to the captive insurer in exchange for the coverage of a specific risk.<sup>2</sup> Companies generally pursue this alternative risk transfer arrangement when commercial insurance becomes unavailable or reaches excessive costs.<sup>3</sup>

Captives may take many formations, often being divided into pure captives and group captives. Each formation may vary in allowable corporate structure, capital and surplus, underwritten risks, and number of owners. Most captive insurance companies are formed as pure captives,<sup>4</sup> meaning that the captive is a wholly-owned subsidiary that insures the risks of its parents and affiliates.<sup>5</sup> Group captives typically include association captives, industrial captives, risk retention groups, and reciprocals; each is owned by and insures a group.<sup>6</sup>

Branch captives and rent-a-captives are unique among the industry. A branch captive is essentially the extended arm of a pure captive from a separate domicile. Instead of forming a new pure captive, the branch captive remains within the same corporation.<sup>7</sup> Rent-a-captives allow companies unwilling or unable to meet the capital and surplus requirements on their own to use an outside entity's capital, surplus, and services for a rental fee.<sup>8</sup> Rent-a-captives today are commonly formed as segregated or protected cell captives, which organize legal barriers among its renters' assets.<sup>9</sup>

Forming a captive insurance company may provide a number of advantages including:

- *Tailored insurance policy.*<sup>10</sup> A captive insurer may be able to create overall savings and have more claims control through coverage and policy provisions that are unique to the individual business being insured and its risk profile.
- *Reduced premiums.*<sup>11</sup> Commercial insurers' costs include amounts to cover the insurers' profit margin and overheads, such as advertising and commissions. A captive insurer would not need to factor these elements into the premium it charges.
- *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.
- *Access to Reinsurance.* Captive insurance companies acquire direct access to wholesale reinsurance markets, thus evading related extra costs commercial carriers may include.<sup>12</sup>

<sup>1</sup> <http://www2.iii.org/glossary/c/> (last viewed September 19, 2011).

<sup>2</sup> [http://www.iii.org/issue\\_updates/captives-and-other-risk-financing-options.html](http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html) (last viewed October 7, 2011).

<sup>3</sup> *Id.*

<sup>4</sup> Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. Retrieved October 7, 2011.

<sup>5</sup> [http://hawaiicaptives.com/captive\\_basics/faqs.html](http://hawaiicaptives.com/captive_basics/faqs.html) (last viewed October 7, 2011).

<sup>6</sup> <http://www.captive.utah.gov/rrg.html> (last viewed October 7, 2011). See also: Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9.

<sup>7</sup> Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. Retrieved October 7, 2011.

<sup>8</sup> [http://www.iii.org/issue\\_updates/captives-and-other-risk-financing-options.html](http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html) (last viewed October 13, 2011).

<sup>9</sup> <http://captive.com/newsstand/articles/GlosAlt.html> (last viewed October 13, 2011).

<sup>10</sup> <http://www.vermontcaptive.com/captive-basics/why-captive.html> (last viewed October 14, 2011). See also: <http://www.dccaptives.org/i4a/pages/index.cfm?pageid=3382>; <http://captive.insurance.ky.gov/CapHome.aspx>; Captive Insurance Basics: <http://www.sccia.org/displaycommon.cfm?an=3>

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

- *Tax Deductions.* Premiums paid to the captive insurer may be deductible expenses for Federal income tax purposes.<sup>13</sup> Income tax against the captive insurer will vary depending on the coverage and amount, though certain companies may qualify for a full exemption.<sup>14</sup>

Some disadvantages to forming a captive insurance company may include:

- *Regulations.*<sup>15</sup> Companies planning to form a captive insurance company should expect heightened regulations compared to other available forms of self insurance.
- *Long-term.*<sup>16</sup> Benefits are not realized immediately. Formation is a long-term investment with elevated risk, and companies' commitment to the captive cannot be as flexible as with commercial policies.
- *Administrative Costs.*<sup>17</sup> Forming a captive may require extra personnel and management as well as time away from the parent company or companies. Administering a possible acquisition or merger may also become more complicated when a captive is involved.

### **Captive Insurance Domiciles:**

Early on, captive insurance companies were only available offshore. Most United States (U.S.) companies created their captive insurance company through Bermuda or the Cayman Islands. Although these and other offshore domiciles remain popular, the U.S. has become home to over 30 captive domiciles, including the District of Columbia (D.C.). A few U.S. captive domiciles, such as Florida, are considered inactive in the captive industry.<sup>18</sup> Most domiciles remain active, with numbers of captives ranging from one to several hundred.<sup>19</sup> The states with the most captive insurance companies are Vermont, Utah, Hawaii, South Carolina, and D.C., representing about 67% of captive insurance companies domiciled in the U.S.<sup>20, 21</sup>

Florida captive insurance legislation became effective in 1982. 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 Part I<sup>22</sup> 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."<sup>23</sup>

<sup>13</sup> 26 U.S.C. 162(a)

<sup>14</sup> 26 U.S.C. 501(c)(15)

<sup>15</sup> <http://captive.insurance.ky.gov/Faq.aspx> (last viewed October 17, 2011).

<sup>16</sup> Captive Insurance Basics: <http://www.sccia.org/displaycommon.cfm?an=3> (last viewed October 17, 2011).

<sup>17</sup> <http://www.captive.com/service/SCG/ProsAndCons.html> (last viewed October 19, 2011).

<sup>18</sup> Meaning that legislation allows captive insurance companies, but, because regulations have not kept up to date or for various other reasons, none exist in the domicile. No captive insurance companies exist in Florida even though captives may be created under Chapter 628, Part V Fla. Stat.

<sup>19</sup> In 2010, Maine reportedly had 1 captive, while Vermont had 572; fourteen states had 10 or more captive insurance companies. [http://www.iii.org/issue\\_updates/captives-and-other-risk-financing-options.html](http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html) (last viewed November 2, 2011). Vermont's current website shows that Vermont has over 900 captives. <http://www.vermontcaptive.com/about-us.html> (last viewed November 9, 2011).

<sup>20</sup> [http://www.iii.org/issue\\_updates/captives-and-other-risk-financing-options.html](http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html) (last viewed November 2, 2011).

<sup>21</sup> Most states set forth similar criteria for captives to be domiciled in their state – i.e., capital and surplus requirements, reporting requirements, requirement to hold meetings in the state, etc. Many states set themselves apart by promoting their supportive infrastructure (captive managing firms, lawyers, auditors, etc., knowledgeable of captive insurance transactions) and working relationship with the industry. Vermont, for instance, emphasizes the number of its regulators working solely with captive insurance.

<sup>22</sup> Part I of ch. 628, F.S., is entitled "STOCK AND MUTUAL INSURERS: ORGANIZATION AND CORPORATE PROCEDURES."

<sup>23</sup> s. 628.901, F.S.

## Effect of the Bill:

### *Definitions*

Unlike current law, the bill provides a definition section and includes eighteen definitions. The bill changes the term “captive insurer” to “captive insurance company” and redefines said term as a pure captive insurance company, association captive insurance company, captive reinsurance company, special purpose captive insurance company, or industrial insured captive insurance company. These captive formations are all included in the definitions section. The bill retains the definition of an industrial insured, while limiting the definition of an industrial insured captive insurance company to a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

### *Formation*

The statute only provides for the formation of pure captives<sup>24</sup> and industrial captives,<sup>25</sup> with more explicit qualifications and criteria for the latter. The bill expands the possible captive formations to include pure captives, association captives, special purpose captives, industrial insured captives, and captive reinsurers.

### *Incorporation*

Currently, before receiving authority to insure in Florida, insurers are required to incorporate as stock insurers,<sup>26</sup> mutual insurers,<sup>27</sup> or reciprocal insurers.<sup>28, 29</sup> The Florida Insurance Code, however, places captive insurance regulation under Chapter 628, titled “Stock and Mutual Insurers; Holding Companies,” seemingly excluding the incorporation of captives as reciprocal insurers. Further, no provision within the captive insurance law explicitly references incorporation options or requirements.

Like current law, the bill limits captive insurance companies’ corporate structure to stock and mutual insurers. Unlike current law, however, the bill creates provisions specifying the corporate arrangement allowable for different captive formations. For instance: pure captives must incorporate as stock insurers or as public benefit, mutual benefit, or religious nonprofit corporations;<sup>30</sup> association captives and industrial insured captives must incorporate as either stock insurers or a mutual insurers; and captive reinsurance companies must incorporate as stock insurers.

The bill also requires the following:

- The captive must have at least three incorporators, of which, at least two must be Florida residents.
- At least one member of the captive’s board of directors must be a Florida resident.
- Before the captive submits its articles of incorporation to the Secretary of State, the captive must obtain a certificate from OIR finding<sup>31</sup> that the captive will promote the general good of the state.
- With stock insurers, the capital stock must be issued at par value of not less than \$1 or more than \$100 per share.

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<sup>24</sup> A captive that insures the risks of its parent and affiliated companies, by contemporary terms, is referred to as a “pure captive.” Current law does not explicitly refer to the formation of a “pure” captive; however, it only authorizes, other than industrial insured captive insurers, captive insurers that insure the risks of its parent and affiliated companies. s. 628.905(2), F.S.

<sup>25</sup> s. 628.903, F.S.

<sup>26</sup> A “stock insurer” is an incorporated insurer with its capital divided into shares and owned by its stockholders. s. 628.021, F.S.

<sup>27</sup> A “mutual insurer” is an incorporated insurer without permanent capital stock, the governing body of which is elected in accordance with [Chapter 628, Part I]. s. 628.031, F.S.

<sup>28</sup> A “reciprocal insurer” means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves. s. 629.021, F.S.

<sup>29</sup> s. 624.404, F.S.

<sup>30</sup> Public benefit, mutual benefit, and religious nonprofit must adhere to the Florida Not for Profit Corporation Act.

<sup>31</sup> OIR 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; and other aspects OIR deems advisable.

- Florida Corporate and Not for Profit Corporate law apply, including fees, unless it conflicts with any provision in the bill.

### Coverage

Under current law, captives may apply to OIR to provide commercial property, commercial casualty, and commercial marine insurance coverage, but not workers' compensation or employer's liability insurance.<sup>32</sup> Also, an industrial insured captive insurer may provide workers compensation and employer's liability insurance only in excess of at least \$25 million in the annual aggregate.<sup>33</sup> The bill does not make this distinction between the formation of the captive and the allowable coverage. The bill allows captives to apply to OIR for all insurance authorized in Florida, except for workers compensation, health insurance, and personal motor vehicle or homeowners' insurance. With a captive reinsurance company, however, the bill distinctly allows it to apply to write reinsurance covering property and casualty insurance or reinsurance contracts.

### Capital and Surplus

Current law requires industrial insured captive insurers to maintain unimpaired capital and surplus of at least \$20 million before it can be licensed.<sup>34</sup> Pure captive licensure requires unimpaired paid-in capital of at least \$500,000 and surplus of at least \$250,000.<sup>35</sup> The bill substantially reduces the capital and surplus requirements for industrial insured captives and pure captives, requiring a combined capital and surplus of \$500,000 for industrial insured captives<sup>36</sup> and \$250,000 for pure captives. The bill also specifies capital and surplus requirements for the other available captive formations. Note, however, that the bill allows OIR to decide the capital and surplus requirements for special purpose captive insurance companies.<sup>37</sup> The following chart exemplifies the bill's capital and surplus requirements according to formation.

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Captive Formation	Capital	Surplus	Total
Pure Captive	\$100,000	\$150,000	\$250,000
Association Captive - stock	\$400,000	\$350,000	\$750,000
Association Captive - mutual	N/A	\$750,000	\$750,000
Industrial Captive - stock	\$200,000	\$300,000	\$500,000
Industrial Captive - mutual	N/A	\$500,000	\$500,000
Special Purpose Captive	Capital and surplus to be determined by OIR.		
Captive Reinsurance Company	Capital or surplus not less than the greater of \$300 million or 10% or reserves.		

The bill also allows the office to require additional capital – but not surplus – for captive insurance companies after considering the type, volume and nature of the insurance business transacted. However, OIR may require additional capital or surplus for captive *reinsurance* companies after the same considerations.

Finally, the bill requires captive insurance and reinsurance companies to obtain approval from OIR before they can pay out dividends<sup>38</sup> of excess capital or surplus.

### Licensure and Authorization

Current captive law includes Chapter 628 of the Florida Insurance Code, which contains the requirements for stock and mutual insurers to apply for a permit<sup>39</sup> and the associated fees.<sup>40</sup> The bill

<sup>32</sup> s. 628.905(1), F.S.

<sup>33</sup> s. 628.905(6), F.S.

<sup>34</sup> s. 628.903(2)(c), F.S.

<sup>35</sup> s. 628.907, F.S.

<sup>36</sup> This requirement applies to industrial insured captives incorporated as *stock* corporations, as opposed to industrial insured captives incorporated as *mutual* corporations, which do not have a capital requirement.

<sup>37</sup> OIR must take into account the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of risks to be insured.

<sup>38</sup> Or any other form of distribution.

also includes Chapter 628,<sup>41</sup> but it creates additional filing requirements specific to captive insurers. If a conflict arises between the two, the specific provisions within the bill will govern. Also, the bill makes no mention of fees so the fees provided within Chapter 628 should govern.

The bill specifically requires the captive insurer or reinsurer to file with OIR the following:

- A certified copy of its articles of incorporation and bylaws;
- A statement of its financial condition under oath by its president and secretary;
- Evidence of the amount and liquidity of the proposed captive's assets relative to the risks to be assumed;
- Evidence of adequate expertise, experience, and character of the person(s) who will manage the company;
- Evidence of the overall soundness of the company's plan of operation;
- Evidence of adequate loss prevention programs of the company's parent, member organizations, or industrial insureds (note: this is not an explicit requirement for captive reinsurance companies); and
- Any other factors relevant to the OIR in ascertaining whether the company will be able to meet its policy obligations.

After meeting the filing requirements, the captive needs to obtain from OIR a license to insure or reinsure in Florida and do the following:

- Hold at least one board of directors' meeting each year in Florida;
- Maintain its principal place of business in Florida; and
- Appoint a resident registered agent to act on its behalf in Florida.

The bill applies the above application process and requirements to foreign or alien captive insurance companies<sup>42</sup> wishing to make Florida their captive's domicile. Current law provides that an industrial insured captive insurer need not be incorporated in Florida if it is validly incorporated in another jurisdiction. No discussion of redomestication exists beyond that provision. The bill does not create an exemption for industrial insured captive insurers; they must reincorporate in Florida.

### *Reporting*

Current law requires captive insurance companies to submit, at least annually, a financial condition report to OIR,<sup>43</sup> and grants the Financial Services Commission authority to adopt by rule the form in which captive insurers shall report.<sup>44</sup> The law explicitly states that this is the only annual report that is required. The bill revises this language so that a captive insurance company *may* not be required to submit any other annual report, though limits the scope of other possible annual reporting requirements to Part V, Captive Insurers. The Financial Services Commission retains the authority to adopt by rule the form in which captive insurance companies shall report. The bill specifically requires captive reinsurance companies to report identically.

Additionally, the bill requires the financial report to be annual but no later than March 1, as opposed to current law, in which annual reporting is based around the company's fiscal year.<sup>45</sup> However, the bill does allow for *pure* captive insurance companies to apply to file annually based on the parent company's fiscal year. Pure captives are also required to file pages 1-7 of the National Association of

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<sup>39</sup> s. 628.051, F.S. Application for permit to form insurer.

<sup>40</sup> s. 624.501, F.S. Filing, license, appointment, and miscellaneous fees.

<sup>41</sup> An example of an additional requirement from Chapter 628 would be the requirement of applicants to file the name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the insurer. s. 628.051(2)(b), F.S.

<sup>42</sup> The bill does not provide a definition for foreign or alien captive insurance companies. Presumptively, these are captive insurance companies domiciled in another jurisdiction.

<sup>43</sup> The report must be verified under oath by two of the captive's executive officers. s. 628.911(2), F.S.

<sup>44</sup> s. 628.911, F.S.

<sup>45</sup> s. 628.911(2), F.S.

Insurance Commissioners (NAIC) Annual Statement to help provide sufficient detail to support the premium tax return.<sup>46</sup>

### *Reinsurance*

Current law regulates captive reinsurance from both the perspective of a captive insurance company *acquiring* reinsurance and from the perspective of a captive insurance company *providing* reinsurance.<sup>47</sup> First, the law specifies that captive insurers may only use reinsurers authorized by OIR to reinsure part or all of its risks.<sup>48</sup> In certain circumstances, however, credit on account of reinsurance may be ceded to an unauthorized reinsurer.<sup>49</sup> Second, captive insurers are not permitted to reinsure risks in Florida when those risks are written by unauthorized insurers.<sup>50</sup> While the provisions under current law direct regulation mostly at captive insurance companies *acquiring* reinsurance, the bill's provisions direct regulation mostly at captive insurance companies *providing* reinsurance.

The bill provides specific incorporation, reporting, capitalization, and licensing requirements for captive reinsurance companies, as discussed above. The bill also provides requirements for captive reinsurance companies regarding an annual captive reinsurance tax,<sup>51</sup> discounting loss and loss adjustment expense reserves, and the management of companies' assets, as follows:

- The captive reinsurance company tax proposed by the bill is an annual \$5,000 tax.<sup>52</sup> It is the only tax collectible on a captive reinsurance company by this state, except for occupation tax and ad valorem taxes on real and personal property.
- Captive reinsurance companies are allowed to discount their loss and loss adjustment expense reserves. If they do, they must file an annual actuarial opinion on loss and loss adjustment expense reserves by an independent actuary.
- At least 35% of a captive reinsurance company's assets must be managed by an asset manager domiciled in Florida.

### *Miscellaneous*

- The bill provides a net asset requirement, in addition to the capital and surplus requirement, for pure captives<sup>53</sup> and special purpose captives.<sup>54</sup>
- The Financial Services Commission is required to set standards ensuring that a parent or affiliated company can exercise risk management control of any unaffiliated business to be insured by a pure captive.
- OIR must consider licensed captive insurance companies for issuance of a certificate of authority to act as an insurer in this state.

The bill provides that it will be effective upon becoming a law.

## B. SECTION DIRECTORY:

- Section 1. Amends s. 628.901, F.S., by creating and revising definitions.
- Section 2. Amends s. 628.905, F.S., by expanding authorization and licensure requirements.
- Section 3. Amends s. 628.907, F.S., by specifying capital requirements for different captive formations and restricting dividend payment.
- Section 4. Creates s. 628.908, F.S., providing specific surplus requirements for different captive formations and restricting dividend payment.

<sup>46</sup> This requirement is not intended to imply that only pure captives must pay a premium tax.

<sup>47</sup> Note that most of the section referring to reinsurance refers to captive insurance companies acquiring reinsurance.

<sup>48</sup> s. 628.913(1)(a), F.S.

<sup>49</sup> s. 628.913(1)(b), F.S.

<sup>50</sup> s. 628.913(6), F.S.

<sup>51</sup> An amendment has been prepared removing this provision.

<sup>52</sup> *Id.*

<sup>53</sup> Net assets must at least be \$250,000.

<sup>54</sup> Net asset requirement determined by OIR.



- Section 5. Amends s. 628.909, F.S., by excluding certain laws in the Florida Insurance Code from being applicable.
- Section 6. Creates s. 628.910, F.S., providing specific incorporation options and requirements for different captive formations.
- Section 7. Amends s. 628.911, F.S., by revising reporting requirements and including captive reinsurance companies.
- Section 8. Creates s. 628.912, F.S., providing requirements for captive reinsurance companies discounting loss and loss adjustment expense reserves.
- Section 9. Amends s. 628.913, F.S., by substantially revising and creating specific authorization and licensure requirements for captive reinsurance companies.
- Section 10. Creates s. 628.914, F.S., providing minimum capital or surplus for captive reinsurance companies and restricting payment of dividends.
- Section 11. Creates s. 628.9141, F.S., providing specific incorporation requirements for captive reinsurance companies.
- Section 12. Creates s. 628.9142, F.S., providing authorization for captives to reinsure ceded risks and providing requirements to receive credits on reserves.
- Section 13. Creates s. 628.9143, F.S., providing captive reinsurance tax requirements.
- Section 14. Creates s. 628.918, F.S., providing requirement for managing assets of captive reinsurance companies.
- Section 15. Creates s. 628.919, F.S., providing requirement of standards ensuring parent control of risk management over controlled unaffiliated businesses.
- Section 16. Creates s. 628.920, F.S., providing eligibility for a captive insurance company to receive a certificate of authority.
- Section 17. Amends s. 626.7491(2)(e), F.S., by revising a reference to captive insurance companies.
- Section 18. Repeals s. 628.903, F.S.
- Section 19. Provides that the act will be effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

According to OIR,<sup>55</sup> the fiscal impact cannot be determined at this time, nor can the Office anticipate the extent of additional staff resources that would be required to handle licensure applications and

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<sup>55</sup> OIR staff analysis for HB 379 dated November 8, 2011, is on file with the House Insurance & Banking Subcommittee.

monitor the on-going financial oversight of captive insurers and reinsurers. A cost will occur to update Office filing systems for the intake of captives.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

States that have seen growth in captive insurance companies have seen positive economic impact through job creation. If the number of captive insurance companies grows in Florida, one would expect similar job growth for actuaries, lawyers, accountants, administrators, and support personal. Also, for a company forming a captive insurance company, an insurance policy tailored to the individual company's risk profile should effectuate overall savings.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires the Financial Services Commission to set rules establishing standards to ensure that a parent or affiliated company can exercise risk management control over any unaffiliated business to be insured by a pure captive.

The bill allows the Financial Services Commission to adopt by rule the form in which captive insurance companies must report.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to captive insurance; amending s.  
 3           628.901, F.S.; providing definitions; amending s.  
 4           628.905, F.S.; expanding the kinds of insurance for  
 5           which a captive insurer may seek licensure; limiting  
 6           the risks that certain captive insurers may insure;  
 7           specifying requirements and conditions relating to a  
 8           captive insurer's authority to conduct business;  
 9           requiring that before licensure certain captive  
 10          insurers must file or submit to the Office of  
 11          Insurance Regulation specified information, documents,  
 12          and statements; requiring a captive insurance company  
 13          to file specific evidence with the office relating to  
 14          the financial condition and quality of management and  
 15          operations of the company; authorizing a foreign or  
 16          alien captive insurance company to become a domestic  
 17          captive insurance company by complying with specified  
 18          requirements; authorizing the office to waive any  
 19          requirements for public hearings relating to the  
 20          redomestication of an alien captive insurance company;  
 21          amending s. 628.907, F.S.; revising capitalization  
 22          requirements for specified captive insurance  
 23          companies; requiring capital of specified captive  
 24          insurance companies to be held in certain forms;  
 25          requiring contributions to captive insurance companies  
 26          that are stock insurer corporations to be in a certain  
 27          form; authorizing the office to issue a captive  
 28          insurance company license conditioned upon certain

29 evidence relating to possession of specified capital;  
 30 authorizing revocation of a conditional license under  
 31 certain circumstances; authorizing the office to  
 32 prescribe certain additional capital and net asset  
 33 requirements; requiring such additional requirements  
 34 relating to capital and net assets to be held in  
 35 specified forms; requiring dividends or distributions  
 36 of capital or surplus to meet certain conditions and  
 37 be approved by the office; requiring certain  
 38 irrevocable letters of credit to meet certain  
 39 standards; creating s. 628.908, F.S.; prohibiting the  
 40 issuance of a license to specified captive insurance  
 41 companies unless such companies possess and maintain  
 42 certain levels of unimpaired surplus; authorizing the  
 43 office to condition issuance of a captive insurance  
 44 company license upon the provision of certain evidence  
 45 relating to the possession of a minimum amount of  
 46 unimpaired surplus; authorizing revocation of a  
 47 conditional license under certain circumstances;  
 48 requiring dividends or distributions of capital or  
 49 surplus to meet certain conditions and be approved by  
 50 the office; requiring certain irrevocable letters of  
 51 credit to meet certain standards; amending s. 628.909,  
 52 F.S.; providing for applicability of certain statutory  
 53 provisions to specified captive insurers; creating s.  
 54 628.910, F.S.; providing requirements, options, and  
 55 conditions relating to how a captive insurance company  
 56 may be incorporated or organized as a business;

57 | amending s. 628.911, F.S.; providing reporting  
 58 | requirements for specified captive insurance companies  
 59 | and captive reinsurance companies; creating s.  
 60 | 628.912, F.S.; authorizing a captive reinsurance  
 61 | company to discount specified losses subject to  
 62 | certain conditions; amending s. 628.913, F.S.;  
 63 | authorizing a captive reinsurance company to apply to  
 64 | the office for licensure to write reinsurance covering  
 65 | property and casualty insurance or reinsurance  
 66 | contracts; authorizing the office to allow a captive  
 67 | reinsurance company to write reinsurance contracts  
 68 | covering risks in any state; specifying that a captive  
 69 | reinsurance company is subject to specified  
 70 | requirements and must meet specified conditions to  
 71 | conduct business in this state; creating s. 628.914,  
 72 | F.S.; specifying requirements and conditions relating  
 73 | to the capitalization or maintenance of reserves by a  
 74 | captive reinsurance company; creating s. 628.9141,  
 75 | F.S.; specifying requirements and conditions relating  
 76 | to the incorporation of a captive reinsurance company;  
 77 | creating s. 628.9142, F.S.; providing for the effect  
 78 | on reserves of certain actions taken by a captive  
 79 | insurance company relating to providing reinsurance  
 80 | for specified risks; creating s. 628.9143, F.S.;  
 81 | requiring a captive reinsurance company to annually  
 82 | pay a specified tax amount; prohibiting any other  
 83 | taxation of a captive reinsurance company other than  
 84 | an occupation tax and certain ad valorem taxes;

85 |       subjecting a captive reinsurance company to sanctions  
 86 |       for failures relating to the payment of taxes;  
 87 |       creating s. 628.918, F.S.; requiring a specified  
 88 |       percentage of a captive reinsurance company's assets  
 89 |       to be managed by an asset manager domiciled in this  
 90 |       state; creating s. 628.919, F.S.; authorizing the  
 91 |       Financial Services Commission to adopt rules  
 92 |       establishing certain standards for control of an  
 93 |       unaffiliated business by a parent or affiliated  
 94 |       company relating to coverage by a pure captive  
 95 |       insurance company; creating s. 628.920, F.S.;  
 96 |       requiring that a licensed captive insurance company  
 97 |       must be considered for issuance of a certificate of  
 98 |       authority as an insurer under certain circumstances;  
 99 |       amending s. 626.7491, F.S.; conforming a cross-  
 100 |       reference; repealing s. 628.903, F.S., relating to  
 101 |       "industrial insured captive insurer" defined, to  
 102 |       conform to changes made by this act; providing an  
 103 |       effective date.

104 |  
 105 | Be It Enacted by the Legislature of the State of Florida:

106 |  
 107 |       Section 1. Section 628.901, Florida Statutes, is amended  
 108 | to read:

109 |       628.901 Definitions ~~"Captive insurer" defined.~~ As used in  
 110 | ~~For the purposes of this part, unless the context requires~~  
 111 | otherwise, the term: except as provided in s. 628.903, a  
 112 | ~~"captive insurer" is a domestic insurer established under part I~~

113 ~~to insure the risks of a specific corporation or group of~~  
114 ~~corporations under common ownership owned by the corporation or~~  
115 ~~corporations from which it accepts risk under a contract of~~  
116 ~~insurance.~~

117 (1) "Affiliated company" means a company in the same  
118 corporate system as a parent, an industrial insured, or a member  
119 organization by virtue of common ownership, control, operation,  
120 or management.

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

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

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

131 (3) "Association captive insurance company" means a  
132 company that insures risks of the member organizations of the  
133 association and their affiliated companies.

134 (4) "Captive insurance company" means a pure captive  
135 insurance company, association captive insurance company,  
136 captive reinsurance company, special purpose captive insurance  
137 company, or industrial insured captive insurance company formed  
138 or licensed under this chapter.

139 (5) "Captive reinsurance company" means a reinsurance  
140 company that is formed or licensed under this chapter and is

141 wholly owned by a qualifying reinsurance parent company. A  
 142 captive reinsurance company is a stock corporation.

143 (6) "Consolidated debt to total capital ratio" means the  
 144 ratio of the sum of all debts and hybrid capital instruments as  
 145 described in paragraph (a) to total capital as described in  
 146 paragraph (b).

147 (a) Debts and hybrid capital instruments include, but are  
 148 not limited to, all borrowings from banks, all senior debt, all  
 149 subordinated debts, all trust preferred shares, and all other  
 150 hybrid capital instruments that are not included in the  
 151 determination of consolidated GAAP net worth issued and  
 152 outstanding.

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

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

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

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

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

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

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



169        (10) "Industrial insured" means an insured that:  
 170        (a) Has gross assets in excess of \$50 million;  
 171        (b) Procures insurance through the use of a full-time  
 172 employee of the insured who acts as an insurance manager or  
 173 buyer or through the services of a person licensed as a property  
 174 and casualty insurance agent, broker, or consultant in such  
 175 person's state of domicile;  
 176        (c) Has at least 100 full-time employees; and  
 177        (d) Pays annual premiums of at least \$200,000 for each  
 178 line of insurance purchased from the industrial insured captive  
 179 insurer or at least \$75,000 for any line of coverage in excess  
 180 of at least \$25 million in the annual aggregate. The purchase of  
 181 umbrella or general liability coverage in excess of \$25 million  
 182 in the annual aggregate shall be deemed to be the purchase of a  
 183 single line of insurance.  
 184        (11) "Industrial insured captive insurance company" means  
 185 a company that insures risks of the industrial insureds that  
 186 comprise the industrial insured group and their affiliated  
 187 companies.  
 188        (12) "Member organization" means any individual,  
 189 corporation, limited liability company, partnership, or  
 190 association that belongs to an association.  
 191        (13) "Office" means the Office of Insurance Regulation.  
 192        (14) "Parent" means any corporation, limited liability  
 193 company, partnership, or individual that directly or indirectly  
 194 owns, controls, or holds with power to vote more than 50 percent  
 195 of the outstanding voting interests of a captive insurance  
 196 company.

197 |       (15) "Pure captive insurance company" means a company that  
 198 | insures risks of its parent, affiliated companies, controlled  
 199 | unaffiliated businesses, or a combination thereof.

200 |       (16) "Qualifying reinsurer parent company" means a  
 201 | reinsurer authorized to write reinsurance by this state that has  
 202 | a consolidated GAAP net worth of not less than \$500 million and  
 203 | a consolidated debt to total capital ratio of not greater than  
 204 | 0.50.

205 |       (17) "Special purpose captive insurance company" means a  
 206 | captive insurance company that is formed or licensed under this  
 207 | chapter that does not meet the definition of any other type of  
 208 | captive insurance company defined in this section.

209 |       (18) "Treasury rates" means the United States Treasury  
 210 | STRIPS asked yield as published in the Wall Street Journal as of  
 211 | a balance sheet date.

212 |       Section 2. Section 628.905, Florida Statutes, is amended  
 213 | to read:

214 |       628.905 Licensing; authority.—

215 |       (1) Any captive insurer, when permitted by its charter or  
 216 | articles of incorporation, may apply to the office for a license  
 217 | to do any and all insurance authorized under the insurance code,  
 218 | ~~provide commercial property, commercial casualty, and commercial~~  
 219 | ~~marine insurance coverage~~ other than workers' compensation and  
 220 | health employer's liability insurance coverage, except that: an  
 221 | ~~industrial insured captive insurer may apply for a license to~~  
 222 | ~~provide workers' compensation and employer's liability insurance~~  
 223 | ~~as set forth in subsection (6).~~

224 |       (a) A pure captive insurance company may not insure any

225 risks other than those of its parent, affiliated companies,  
 226 controlled unaffiliated businesses, or a combination thereof.

227 (b) An association captive insurance company may not  
 228 insure any risks other than those of the member organizations of  
 229 its association and their affiliated companies.

230 (c) An industrial insured captive insurance company may  
 231 not insure any risks other than those of the industrial insureds  
 232 that comprise the industrial insured group and their affiliated  
 233 companies.

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

236 (e) A captive insurance company may not provide personal  
 237 motor vehicle or homeowners' insurance coverage or any component  
 238 of such coverages.

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

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

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

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

249 (c) Maintain its principal place of business in this  
 250 state; and

251 (d) Appoint a resident registered agent to accept service  
 252 of process and to otherwise act on its behalf in this state. In

253 the case of a captive insurance company formed as a corporation  
 254 or a nonprofit corporation, whenever the registered agent cannot  
 255 with reasonable diligence be found at the registered office of  
 256 the captive insurance company, the Chief Financial Officer of  
 257 this state must be an agent of the captive insurance company  
 258 upon whom any process, notice, or demand may be served.

259 (3) (a) Before receiving a license, a captive insurance  
 260 company formed as a corporation or a nonprofit corporation must  
 261 file with the office a certified copy of its articles of  
 262 incorporation and bylaws, a statement under oath of its  
 263 president and secretary showing its financial condition, and any  
 264 other statements or documents required by the office.

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

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

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

272 3. The overall soundness of the company's plan of  
 273 operation;

274 4. The adequacy of the loss prevention programs of the  
 275 company's parent, member organizations, or industrial insureds,  
 276 as applicable; and

277 5. Any other factors considered relevant by the office in  
 278 ascertaining whether the company will be able to meet its policy  
 279 obligations ~~In addition to information otherwise required by~~  
 280 ~~this code, each applicant captive insurer shall file with the~~

281 ~~office evidence of the adequacy of the loss prevention program~~  
 282 ~~of its insureds.~~

283       (4) Upon approval of the office, a foreign or alien  
 284 captive insurance company may become a domestic captive  
 285 insurance company by complying with all of the requirements of  
 286 law relative to the organization and licensing of a domestic  
 287 captive insurance company of the same or equivalent type in this  
 288 state and by filing with the Secretary of State its articles of  
 289 association, charter, or other organizational documents,  
 290 together with any appropriate amendments that have been adopted  
 291 in accordance with the laws of this state to bring the articles  
 292 of association, charter, or other organizational documents into  
 293 compliance with the laws of this state, along with a certificate  
 294 of good standing issued by the office. After this is  
 295 accomplished, the captive insurance company is entitled to the  
 296 necessary or appropriate certificates and licenses to continue  
 297 transacting business in this state and is subject to the  
 298 authority and jurisdiction of this state. In connection with  
 299 this redomestication, the office may waive any requirements for  
 300 public hearings. It is not necessary for a captive insurance  
 301 company redomesticating into this state to merge, consolidate,  
 302 transfer assets, or otherwise engage in any other  
 303 reorganization, other than as specified in this section ~~An~~  
 304 ~~industrial insured captive insurer need not be incorporated in~~  
 305 ~~this state if it has been validly incorporated under the laws of~~  
 306 ~~another jurisdiction.~~

307       ~~(5) An industrial insured captive insurer is subject to~~  
 308 ~~all provisions of this part except as otherwise indicated.~~

309 ~~(6) An industrial insured captive insurer may not provide~~  
 310 ~~workers' compensation and employer's liability insurance except~~  
 311 ~~in excess of at least \$25 million in the annual aggregate.~~

312 Section 3. Section 628.907, Florida Statutes, is amended  
 313 to read:

314 628.907 Minimum capital and net assets requirements;  
 315 restriction on payment of dividends surplus.-

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

319 (a) ~~(1)~~ In the case of a pure captive insurance company,  
 320 not less than \$100,000. ~~Unimpaired paid-in capital of at least~~  
 321 ~~\$500,000; and~~

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

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

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

332 (2) The office may not issue a license to a captive  
 333 insurance company incorporated as a stock insurer unless the  
 334 company possesses and maintains unrestricted net assets of:

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

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

342           (3) Contributions to a captive insurance company  
 343 incorporated as a stock insurer must be in the form of cash,  
 344 cash equivalent, or an irrevocable letter of credit issued by a  
 345 bank chartered by this state or a member bank of the Federal  
 346 Reserve System with a branch office in this state, or as  
 347 approved by the office.

348           (4) For purposes of this section, the office may issue a  
 349 license expressly conditioned upon the captive insurance company  
 350 providing to the office satisfactory evidence of possession of  
 351 the minimum required unimpaired paid-in capital. Until this  
 352 evidence is provided, the captive insurance company may not  
 353 issue any policy, assume any liability, or otherwise provide  
 354 coverage. The office may revoke the conditional license if  
 355 satisfactory evidence of the required capital is not provided  
 356 within a maximum period of time, not to exceed 1 year, to be  
 357 established by the office at the time the conditional license is  
 358 issued.

359           (5) The office may prescribe additional capital or net  
 360 assets based upon the type, volume, and nature of insurance  
 361 business transacted. Contributions in connection with these  
 362 prescribed additional net assets or capital must be in the form  
 363 of:

364           (a) Cash;

365           (b) Cash equivalent;  
 366           (c) An irrevocable letter of credit issued by a bank  
 367 chartered by this state or a member bank of the Federal Reserve  
 368 System with a branch office in this state, or as approved by the  
 369 office; or

370           (d) Securities invested as provided in part II of chapter  
 371 625.

372           (6) A captive insurance company may not pay a dividend out  
 373 of, or other distribution with respect to, capital or surplus in  
 374 excess of the limitations set forth in this chapter without the  
 375 prior approval of the office. Approval of an ongoing plan for  
 376 the payment of dividends or other distributions must be  
 377 conditioned upon the retention, at the time of each payment, of  
 378 capital or surplus in excess of amounts specified by, or  
 379 determined in accordance with formulas approved by, the office.

380           (7) An irrevocable letter of credit that is issued by a  
 381 financial institution other than a bank chartered by this state  
 382 or a member bank of the Federal Reserve System must meet the  
 383 same standards as an irrevocable letter of credit that has been  
 384 issued by a bank chartered by this state or a member bank of the  
 385 Federal Reserve System.

386           Section 4. Section 628.908, Florida Statutes, is created  
 387 to read:

388           628.908 Surplus requirements; restriction on payment of  
 389 dividends.—

390           (1) The office may not issue a license to a captive  
 391 insurance company unless the company possesses and maintains  
 392 unimpaired surplus of:



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

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

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

399 (d) In the case of an association captive insurance  
 400 company incorporated as a mutual insurer, not less than  
 401 \$750,000.

402 (e) In the case of an industrial insured captive insurance  
 403 company incorporated as a mutual insurer, not less than  
 404 \$500,000.

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

410 (2) For purposes of this section, the office may issue a  
 411 license expressly conditioned upon the captive insurance company  
 412 providing to the office satisfactory evidence of possession of  
 413 the minimum required unimpaired surplus. Until this evidence is  
 414 provided, the captive insurance company may not issue any  
 415 policy, assume any liability, or otherwise provide coverage. The  
 416 office may revoke the conditional license if satisfactory  
 417 evidence of the required surplus is not provided within a  
 418 maximum period of time, not to exceed 1 year, to be established  
 419 by the office at the time the conditional license is issued.

420           (3) A captive insurance company may not pay a dividend out  
 421 of, or other distribution with respect to, capital or surplus in  
 422 excess of the limitations set forth in this chapter without the  
 423 prior approval of the office. Approval of an ongoing plan for  
 424 the payment of dividends or other distribution must be  
 425 conditioned upon the retention, at the time of each payment, of  
 426 capital or surplus in excess of amounts specified by, or  
 427 determined in accordance with formulas approved by, the office.

428           (4) An irrevocable letter of credit that is issued by a  
 429 financial institution other than a bank chartered by this state  
 430 or a member bank of the Federal Reserve System must meet the  
 431 same standards as an irrevocable letter of credit that has been  
 432 issued by a bank chartered by this state or a member bank of the  
 433 Federal Reserve System.

434           Section 5. Section 628.909, Florida Statutes, is amended  
 435 to read:

436           628.909 Applicability of other laws.—

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

440           (2) The following provisions of the Florida Insurance Code  
 441 ~~shall~~ apply to captive insurers who are not industrial insured  
 442 captive insurers to the extent that such provisions are not  
 443 inconsistent with this part:

444           (a) Chapter 624, except for ss. 624.407, 624.408,  
 445 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

446           (b) Chapter 625, part II.

447           (c) Chapter 626, part IX.

448 (d) Sections 627.730-627.7405, when no-fault coverage is  
 449 provided.

450 (e) Chapter 628.

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

454 (a) Chapter 624, except for ss. 624.407, 624.408,  
 455 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

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

458 (c) Chapter 626, part IX.

459 (d) Sections 627.730-627.7405 when no-fault coverage is  
 460 provided.

461 (e) Chapter 628, except for ss. 628.341, 628.351, and  
 462 628.6018.

463 Section 6. Section 628.910, Florida Statutes, is created  
 464 to read:

465 628.910 Incorporation options and requirements.-

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

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

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

472 (2) An association captive insurance company or an  
 473 industrial insured captive insurance company may be:

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

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

479 (3) A captive insurance company may not have fewer than  
 480 three incorporators of whom not fewer than two must be residents  
 481 of this state.

482 (4) In the case of a captive insurance company formed as a  
 483 corporation or a nonprofit corporation, before the articles of  
 484 incorporation are transmitted to the Secretary of State, the  
 485 incorporators shall petition the office to issue a certificate  
 486 setting forth a finding that the establishment and maintenance  
 487 of the proposed entity will promote the general good of the  
 488 state. In arriving at this finding, the office must consider:

489 (a) The character, reputation, financial standing, and  
 490 purposes of the incorporators;

491 (b) The character, reputation, financial responsibility,  
 492 insurance experience, and business qualifications of the  
 493 officers and directors; and

494 (c) Other aspects as the office considers advisable.

495 (5) The articles of incorporation, the certificate issued  
 496 pursuant to this section, and the organization fees required by  
 497 the Florida Business Corporation Act or the Florida Not For  
 498 Profit Corporation Act, as applicable, must be transmitted to  
 499 the Secretary of State, who must record the articles of  
 500 incorporation and the certificate.

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

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

508       (8) A captive insurance company formed as a corporation or  
 509 a nonprofit corporation, pursuant to the provisions of this  
 510 chapter, has the privileges and is subject to the provisions of  
 511 the general corporation law, including the Florida Not For  
 512 Profit Corporation Act for nonprofit corporations, as  
 513 applicable, as well as the applicable provisions contained in  
 514 this chapter. If a conflict occurs between a provision of the  
 515 general corporation law, including the Florida Not For Profit  
 516 Corporation Act for nonprofit corporations, as applicable, and a  
 517 provision of this chapter, the latter controls. The provisions  
 518 of this title pertaining to mergers, consolidations,  
 519 conversions, mutualizations, and redomestications apply in  
 520 determining the procedures to be followed by a captive insurance  
 521 company in carrying out any of the transactions described in  
 522 such provisions, except that the office may waive or modify the  
 523 requirements for public notice and hearing in accordance with  
 524 rules the office may adopt addressing categories of  
 525 transactions. If a notice of public hearing is required, but no  
 526 one requests a hearing, the office may cancel the hearing.

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

532 Section 7. Section 628.911, Florida Statutes, is amended  
 533 to read:

534 628.911 Reports and statements.—

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

538 (2) Annually no later than March 1, a captive insurance  
 539 company or a captive reinsurance company insurer shall, ~~within~~  
 540 ~~60 days after the end of its fiscal year and as often as the~~  
 541 ~~office may deem necessary,~~ submit to the office a report of its  
 542 financial condition verified by oath of two of its executive  
 543 officers. Except as provided in this part, a captive insurance  
 544 company or a captive reinsurance company must report using  
 545 generally accepted accounting principles, unless the office  
 546 approves the use of statutory accounting principles, with useful  
 547 or necessary modifications or adaptations required or approved  
 548 or accepted by the office for the type of insurance and kinds of  
 549 insurers to be reported upon, and as supplemented by additional  
 550 information required by the office. The Financial Services  
 551 Commission may adopt by rule the form in which captive insurance  
 552 companies insurers shall report.

553 (3) (a) A pure captive insurance company may make written  
 554 application for filing the required report on a fiscal year end  
 555 that is consistent with the parent company's fiscal year. If an  
 556 alternative reporting date is granted, the annual report is due  
 557 60 days after the fiscal year end.

558 (b) In order to provide sufficient detail to support the  
 559 premium tax return, the pure captive insurance company must file

560 no later than March 1 of each year for each calendar year end  
 561 pages 1-7 of the National Association of Insurance Commissioners  
 562 (NAIC) Annual Statement, verified by oath of two of its  
 563 executive officers.

564 Section 8. Section 628.912, Florida Statutes, is created  
 565 to read:

566 628.912 Discounting of loss and loss adjustment expense  
 567 reserves.—

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

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

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

578 Section 9. Section 628.913, Florida Statutes, is amended  
 579 to read:

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

582 .628.913 Captive reinsurance companies.—

583 (1) A captive reinsurance company, if permitted by its  
 584 articles of incorporation or charter, may apply to the office  
 585 for a license to write reinsurance covering property and  
 586 casualty insurance or reinsurance contracts. A captive

587 reinsurance company authorized by the office may write  
 588 reinsurance contracts covering risks in any state.

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

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

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

595 (c) Maintain its principal place of business in this  
 596 state; and

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

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

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

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

604 (c) Other documents required by the office.

605 (4) In addition to the information required by this  
 606 section, the captive reinsurance company must file with the  
 607 office evidence of:

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

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

612 (c) The overall soundness of the company's plan of  
 613 operation; and



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

617 Section 10. Section 628.914, Florida Statutes, is created  
 618 to read:

619 628.914 Minimum capitalization or reserves for captive  
 620 reinsurance companies.-

621 (1) The office may not issue a license to a captive  
 622 reinsurance company unless the company possesses and maintains  
 623 capital or unimpaired surplus of not less than the greater of  
 624 \$300 million or 10 percent of reserves. The surplus may be in  
 625 the form of cash or securities as permitted by part II of  
 626 chapter 625.

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

630 (3) A captive reinsurance company may not pay a dividend  
 631 out of, or other distribution with respect to, capital or  
 632 surplus in excess of the limitations without the prior approval  
 633 of the office. Approval of an ongoing plan for the payment of  
 634 dividends or other distributions must be conditioned upon the  
 635 retention, at the time of each payment, of capital or surplus in  
 636 excess of amounts specified by, or determined in accordance with  
 637 formulas approved by, the office.

638 Section 11. Section 628.9141, Florida Statutes, is created  
 639 to read:

640 628.9141 Incorporation of a captive reinsurance company.-

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

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

647 (3) Before the articles of incorporation are transmitted  
 648 to the Secretary of State, the incorporators shall comply with  
 649 all the requirements of s. 628.091.

650 (4) The capital stock of a captive reinsurance company  
 651 must be issued at par value of not less than \$1 or more than  
 652 \$100 per share.

653 (5) At least one of the members of the board of directors  
 654 of a captive reinsurance company incorporated in this state must  
 655 be a resident of this state.

656 Section 12. Section 628.9142, Florida Statutes, is created  
 657 to read:

658 628.9142 Reinsurance; effect on reserves.-

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

661 (2) A captive insurance company may take credit for  
 662 reserves on risks or portions of risks ceded to authorized  
 663 insurers or reinsurers and unauthorized insurers or reinsurers  
 664 complying with the provisions of s. 624.610. A captive insurer  
 665 may not take credit for reserves on risks or portions of risks  
 666 ceded to an unauthorized insurer or reinsurer if the insurer or  
 667 reinsurer is not in compliance with s. 624.610.

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668 Section 13. Section 628.9143, Florida Statutes, is created  
 669 to read:

670 628.9143 Annual captive reinsurance tax.—

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

673 (2) The tax provided in this section is the only tax  
 674 collectible under the laws of this state from a captive  
 675 reinsurance company, and no tax on reinsurance premiums, other  
 676 than occupation tax, nor any other taxes, except ad valorem  
 677 taxes on real and personal property used in the production of  
 678 income, may be levied or collected from a captive reinsurance  
 679 company by this state or a county, city, or municipality within  
 680 this state.

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

684 Section 14. Section 628.918, Florida Statutes, is created  
 685 to read:

686 628.918 Management of assets of captive reinsurance  
 687 company.—At least 35 percent of the assets of a captive  
 688 reinsurance company must be managed by an asset manager  
 689 domiciled in this state.

690 Section 15. Section 628.919, Florida Statutes, is created  
 691 to read:

692 628.919 Standards to ensure risk management control by  
 693 parent company.—The Financial Services Commission shall adopt  
 694 rules establishing standards to ensure that a parent or  
 695 affiliated company is able to exercise control of the risk

696 management function of any controlled unaffiliated business to  
 697 be insured by the pure captive insurance company.

698 Section 16. Section 628.920, Florida Statutes, is created  
 699 to read:

700 628.920 Eligibility of licensed captive insurance company  
 701 for certificate of authority to act as insurer.—A licensed  
 702 captive insurance company that meets the necessary requirements  
 703 of this part imposed upon an insurer must be considered for  
 704 issuance of a certificate of authority to act as an insurer in  
 705 this state.

706 Section 17. Paragraph (e) of subsection (2) of section  
 707 626.7491, Florida Statutes, is amended to read:

708 626.7491 Business transacted with producer controlled  
 709 property and casualty insurer.—

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

711 (e) "Licensed insurer" or "insurer" means any person,  
 712 firm, association, or corporation licensed to transact a  
 713 property or casualty insurance business in this state. The  
 714 following are not licensed insurers for the purposes of this  
 715 section:

- 716 1. Any risk retention group as defined in:
  - 717 a. The Superfund Amendments Reauthorization Act of 1986,  
 718 Pub. L. No. 99-499, 100 Stat. 1613 (1986);
  - 719 b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq.  
 720 (1982 and Supp. 1986); or
  - 721 c. Section 627.942(9).
- 722 2. Any residual market pool or joint underwriting  
 723 authority or association; and

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724           3. Any captive insurance company ~~insurer~~ as defined in s.  
725   628.901.

726           Section 18. Section 628.903, Florida Statutes, is  
727 repealed.

728           Section 19. This act shall take effect upon becoming a  
729 law.



## INSURANCE & BANKING SUBCOMMITTEE

### HB 379 by Rep. Nunez Captive Insurance

#### AMENDMENT SUMMARY November 16, 2011

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**Amendment 1** by Rep. Nunez (Strike-all). The amendment contains many of the same provisions of the bill while making the following changes:

- Amending the definitions for captive insurance company, captive reinsurance company, qualifying reinsurer parent company and industrial insured captive insurance company to address drafting errors and make technical changes.
- Clarifying that a captive insurance company cannot provide workers compensation, health, personal motor vehicle and personal residential property insurance.
- Requiring an association captive insurance company to inform its insureds that the policies are not covered by the Florida Insurance Guaranty Association and the rates and forms are not regulated by any regulatory agency.
- Providing that a captive insurance company pay the same application fees and other miscellaneous fees that currently apply to other types of insurance companies in Florida.
- Clarifying the requirements for a captive insurance company to file its articles of incorporation for approval with OIR prior to formation of the company.
- Correcting various drafting errors and technical changes pertaining to the premium taxes to be paid and the annual reports to be filed by captive insurance companies.
- Clarifying that a captive reinsurance company cannot directly insure risks.
- Deleting the section pertaining to the annual captive reinsurance tax.

**Amendment to Amendment 1** by Rep. Nunez (lines 247-248). Requires applicants for licensure to provide OIR detailed biographical information for specified individuals and allows the office to deny applicants who have engaged in certain criminal activities. Also permits OIR to take certain disciplinary action against captive insurers for specified crimes.





COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 379 (2012)

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:

**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 I~~  
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 ~~Ne~~ 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

Amendment No. 1

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

Amendment No. 1

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.—

Amendment No. 1

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.

644

645

646

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



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 379 (2012)

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 379 (2012)

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.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 379 (2012)

Amendment No. a1-1

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(s) Nuñez offered the following:  
4

5 **Amendment to Amendment (1) by Representative Nuñez (with**  
6 **title amendment)**

7 Between lines 247 and 248 of the amendment, insert:

8 Section 2. Section 628.906, is created to read:

9 Section 628.906. Application requirements; restrictions on  
10 eligibility of officers and directors.—

11 (a) To evidence competence and trustworthiness of its  
12 officers and directors, the application for authority to act as  
13 a captive insurance company or captive reinsurance company shall  
14 include, but not be limited to, background investigations,  
15 biographical affidavits, and fingerprint cards for all officers  
16 and directors.

17 (b) The office may deny, suspend, or revoke the authority  
18 to transact captive insurance or captive reinsurance in this  
19 state if any person who was an officer or director of an

Amendment No. a1-1

20 insurer, reinsurer, captive insurance company, captive  
21 reinsurance company, financial institution, or financial  
22 services business doing business in the United States, any  
23 state, or under the law of any other country and who served in  
24 that capacity within the 2-year period prior to the date the  
25 insurer, reinsurer, captive insurance company, captive  
26 reinsurance company, financial institution, or financial  
27 services business became insolvent, serves as an officer or  
28 director of a captive insurance company or officer or director  
29 of a captive reinsurance company authorized in this state unless  
30 the officer or director demonstrates that his or her personal  
31 actions or omissions were not a contributing cause to the  
32 insolvency.

33 (c) The office may deny, suspend, or revoke the authority  
34 to transact insurance or reinsurance in this state of any  
35 captive insurance company or captive reinsurance company if any  
36 person, including any stockholder or incorporator, who exercises  
37 or has the ability to exercise effective control of the captive  
38 insurance company or captive reinsurance company, or who  
39 influences or has the ability to influence the transaction of  
40 the business of the captive insurance company or captive  
41 reinsurance company, has been found guilty of, or has pleaded  
42 guilty or nolo contendere to, any felony or crime involving  
43 moral turpitude, including a crime of dishonesty or breach of  
44 trust, punishable by imprisonment of 1 year or more under the  
45 law of the United States or any state thereof or under the law  
46 of any other country without regard to whether a judgment of  
47 conviction has been entered by the court having jurisdiction in

Amendment No. a1-1

48 such case. However, in the case of a captive insurance company  
49 or captive reinsurance company operating under a subsisting  
50 certificate of authority or license, the captive insurance  
51 company or captive reinsurance company shall remove any such  
52 person immediately upon discovery of the conditions set forth in  
53 this paragraph when applicable to such person or upon the order  
54 of the office, and the failure to so act shall be grounds for  
55 revocation or suspension of the captive insurance company's or  
56 captive reinsurance company's license.

57  
58 -----  
59 **T I T L E A M E N D M E N T**

60 Remove line 666 of the amendment and insert:  
61 redomestication of an alien captive insurance company; creating  
62 s. 628.906, F.S.; requiring biographical affidavits and  
63 background investigations for all officers and directors;  
64 providing restrictions on officers and directors involved with  
65 insolvent insurers under certain conditions; providing  
66 restrictions on officers and directors found guilty of, or that  
67 have pleaded guilty or nolo contendere to, any felony or crime  
68 involving moral turpitude, including a crime of dishonesty or  
69 breach of trust; amending



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4085 Workers' Compensation

SPONSOR(S): Caldwell

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Callaway	Cooper
2) Economic Affairs Committee			

SUMMARY ANALYSIS

This bill repeals two statutes relating to workers' compensation. Section 627.092, F.S., relating to a Workers' Compensation Administrator position is repealed and s. 627.312(2), F.S., providing obsolete transition guidelines for policies of the Workers' Compensation Joint Underwriting Association is repealed.

Workers' Compensation Administrator

Section 627.092, F.S., creates the position of Workers' Compensation Administrator within the Office of Insurance Regulation (OIR) to monitor insurance company compliance in workers' compensation. The OIR does not currently have an employee designated as the Workers' Compensation Administrator and does not have primary responsibility for monitoring insurance company compliance with workers' compensation laws. Thus, this bill repeals s. 627.092, F.S.

Florida Workers' Compensation Joint Underwriting Association

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA or Association) was created by statute in 1993 and began writing claims on January 1, 1994. The FWCJUA is an insurer of last resort, meaning it provides workers' compensation insurance for those employers who cannot obtain it in the voluntary market (from private insurers, self insurance funds, etc.). It operates as a self-funded residual market and is nonprofit.

From the FWCJUA's inception in 1993 through July 2003, there were three rating plans established within the Association for various classifications of risks: Subplan A, Subplan B, and Subplan C. All employers obtaining workers' compensation insurance from the FWCJUA were assigned to one of these three rating plans.

In 2003, the Legislature established a new subplan within the FWCJUA: Subplan D. This subplan provided workers' compensation coverage for generally small employers (15 or fewer employees) and charitable organizations. Unlike the other three subplans which had actuarially sound rates, rates for Subplan D were capped as a percentage over the voluntary market rates and thus were not required to be actuarially sound. Consequently, in 2004, Subplan D generated a substantial deficit. Because Subplan D (and Subplan C) issued assessable policies, employers in Subplan D were to be assessed in 2004 to defray the subplan's deficit.

In response to the deficit in Subplan D and the resulting assessment, the 2004 Legislature revamped the FWCJUA before the assessment for Subplan D was levied. The 2004 Legislature provided an appropriation to defray the FWCJUA's deficit and a funding mechanism to help defray future deficits in the FWCJUA. The legislation also created a three-tier rating system to replace the subplan rating system.

Section 627.312(2), F.S., was enacted in 2004 to guide the FWCJUA's transition from the subplan rating system to the tier rating system. This statute required FWCJUA policies with effective dates between May 28, 2004, the effective date of the 2004 law, and June 30, 2004 to be transferred from the subplan rating system to the tier rating system and rerated for premium purposes. Because the June 30, 2004 date has passed, s. 627.312(2), F.S., is obsolete. Thus, this bill repeals this law.

The bill has no fiscal impact and is effective on July 1, 2012.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Workers' Compensation Administrator**

Section 627.092, F.S., creates the position of Workers' Compensation Administrator within the Office of Insurance Regulation (OIR) to monitor insurance company compliance in workers' compensation. The OIR does not currently have an employee designated as the Workers' Compensation Administrator. Moreover, the OIR is not statutorily responsible for overall monitoring and auditing of the performance of workers' compensation insurance companies. Instead, the Bureau of Monitoring and Audit within the Division of Workers' Compensation in the Department of Financial Services has this statutory responsibility.<sup>1</sup> The OIR's responsibility in workers' compensation is primarily to review and approve workers' compensation rates.

This bill repeals s. 627.092, F.S., because the OIR does not have an employee designated as the Workers' Compensation Administrator and does not have primary responsibility for monitoring insurance company compliance with workers' compensation laws.

##### **Florida Workers' Compensation Joint Underwriting Association**

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA or Association) was created by statute in 1993 and began writing claims on January 1, 1994. The FWCJUA is an insurer of last resort, meaning it provides workers' compensation insurance for those employers who cannot obtain it in the voluntary market (from private insurers, self insurance funds, etc.). It operates as a self-funded residual market and is nonprofit.

From the FWCJUA's inception in 1993 through July 2003, there were three rating plans established within the Association for various classifications of risks: Subplan A, Subplan B, and Subplan C. All employers obtaining workers' compensation insurance from the FWCJUA were assigned to one of these three rating plans. All three subplans had to maintain actuarially sound rates but the rate charged varied in each subplan in accordance with the risk characteristics of the employers obtaining workers' compensation insurance in the subplan. Employers in Subplan C received an assessable workers' compensation policy, meaning these employers could be assessed to pay any deficits incurred in Subplan C.<sup>2</sup> Policies in Subplans A and B were not assessable.

In 2003, the Legislature established a new subplan within the FWCJUA: Subplan D. This subplan provided workers' compensation coverage for generally small employers (15 or fewer employees) and charitable organizations. Unlike the other three subplans which had actuarially sound rates, rates for Subplan D were capped as a percentage over the voluntary market rates and thus were not required to be actuarially sound.<sup>3</sup> Consequently, in 2004, Subplan D generated a substantial deficit. Because Subplan D (and Subplan C) issued assessable policies, employers in Subplan D were to be assessed in 2004 to defray the subplan's deficit.

However, in response to the deficit in Subplan D and the resulting assessment, the 2004 Legislature revamped the FWCJUA before the assessment for Subplan D was levied.<sup>4</sup> The changes made to the FWCJUA in 2004 were done to reduce and eliminate the deficit in Subplan D and to ensure future

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<sup>1</sup> s. 440.525, F.S., authorizes the Department of Financial Services to examine and investigate workers' compensation insurers.

<sup>2</sup> A deficit occurred if the premiums taken in by the WCJUA for policies written in the subplan were not sufficient to cover the claims or reserves of the subplan. If a deficit occurred, then the employers in each subplan were charged an additional amount to cover the difference between the premiums taken in and the amount the subplan had to pay out in claims or the reserves that were required to be set aside. The additional amount was pro rated among employers in the subplan based on the premium each employer paid. There was no statutory limit on the number of times employers could be assessed or on the amount of the assessment. Although the WCJUA had a deficit in Subplan C during the subplan's existence, the Association did not assess the employers in Subplan C to cover the deficit because the Association's investment income was sufficient to cover the deficit.

<sup>3</sup> Rates for policies in Subplan D were priced at the voluntary market rate with a surcharge not to exceed 25%, however the surcharge for those organizations exempt from federal income tax under 501(c)(3) was not to exceed 10%.

<sup>4</sup> Ch. 2004-266, L.O.F.

deficits in the FWCJUA would not occur. The 2004 Legislature provided an appropriation to defray the FWCJUA's deficit and a funding mechanism to help defray future deficits in the FWCJUA. Accordingly, employers in Subplan D were never assessed for the subplan's deficit.

The 2004 legislation also created a three-tier rating system to replace the subplan rating system. Statutory criteria for each tier ensured employers obtaining workers' compensation insurance in the FWCJUA were placed in tiers that better defined the employer's risk. The tier rating system also provided the WCJUA with a premium better associated with the employer's risk.<sup>5</sup>

Section 627.312(2), F.S., was enacted in 2004 to guide the FWCJUA's transition from the subplan rating system to the tier rating system. This statute required FWCJUA policies with effective dates between May 28, 2004, the effective date of the 2004 law, and June 30, 2004 to be transferred from the subplan rating system to the tier rating system and rerated for premium purposes. Because the June 30, 2004 date has passed, s. 627.312(2), F.S., is obsolete. Thus, this bill repeals this law.

**B. SECTION DIRECTORY:**

**Section 1:** Repeals s. 627.092, F.S., relating to the position of Workers' Compensation Administrator.

**Section 2:** Repeals s. 627.312(2), F.S., relating to transitional provisions for the Florida Workers' Compensation Joint Underwriting Association.

**Section 3:** Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>5</sup> Initially, the premiums for two of the three tiers were capped at a percentage above the voluntary market rate but by January 1, 2007, the premiums in all tiers were required to be actuarially sound.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None provided in the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                   A bill to be entitled  
 2           An act relating to workers' compensation; repealing s.  
 3           627.092, F.S., relating to the Workers' Compensation  
 4           Administrator, to abolish the position; amending s.  
 5           627.312, F.S.; deleting an obsolete transitional  
 6           requirement for certain policies of the Florida  
 7           Workers' Compensation Joint Underwriting Association;  
 8           providing an effective date.

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

Section 1. Section 627.092, Florida Statutes, is repealed.

Section 2. Section 627.312, Florida Statutes, is amended  
 to read:

627.312 Transitional provision ~~provisions.~~ ~~Effective upon~~  
~~this act becoming a law:~~

(1) Notwithstanding s. 627.311(5), no policy in subplan  
 "D" of the Florida Workers' Compensation Joint Underwriting  
 Association is subject to an assessment for the purpose of  
 funding a deficit.

~~(2) Any policy issued by the Florida Workers' Compensation~~  
~~Joint Underwriting Association with an effective date between~~  
~~the date on which this act becomes a law and June 30, 2004,~~  
~~shall be rerated and placed in the appropriate tier provided in~~  
~~s. 627.311(5), as amended, effective July 1, 2004, and shall be~~  
~~subject to the premiums and charges provided for in that section~~  
~~as amended.~~

Section 3. This act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4087 Repeal of a Workers' Compensation Independent Actuarial Peer Review Requirement
SPONSOR(S): Albritton
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Insurance & Banking Subcommittee, Reilly Rgr, Cooper. Row 2: 2) Economic Affairs Committee.

SUMMARY ANALYSIS

Section 627.725, F.S., requires the Financial Services Commission (FSC) to contract, at least once every other year, for an independent actuarial review and analysis of the ratemaking processes of any licensed rating organization that makes workers' compensation rate filings in Florida.

House Bill 4087 repeals s. 627.725, F.S. Since enactment of this section in 2003, four reports have been published. The next report is due on February 1, 2012.

The bill will eliminate the direct cost of the report, and associated administrative costs.

The bill provides an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Unlike other lines of insurance, workers' compensation insurers in Florida do not make rate filings. Instead, a licensed rating organization, currently the National Council on Compensation Insurance (NCCI), collects data from workers' compensation insurers. Based on actuarial analysis, NCCI then submits recommendations (for rate changes or to maintain rates) to the Office of Insurance Regulation (OIR). At a rate hearing, NCCI presents its analysis, responds to questions by OIR officials (including the Insurance Commissioner and staff actuaries) about the methodologies used, and stakeholders offer testimony in support of and in opposition to the filing. OIR then undertakes an extensive review of the filing, taking into consideration the issues discussed at the hearing. In connection with the review, the OIR can ask NCCI to submit additional information or to amend its filing. Ultimately, the OIR can approve or deny the filing. Recently, the OIR approved a request for an 8.9% increase in overall workers' compensation rates effective January 1, 2012.

Section 627.725, F.S., was enacted in 2003 as part of workers' compensation reform legislation (ch. 2003-412, L.O.F.). At that time, Florida's workers' compensation insurance rates consistently ranked as the most expensive or second most expensive in the country. The section requires the Financial Services Commission (FSC) to contract, at least once every other year, for an independent actuarial review and analysis of the ratemaking processes of any licensed rating organization that makes workers' compensation rate filings in Florida. The contract must provide for submission of a final report to the FSC, the President of the Senate and the Speaker of the House of Representatives. The costs of the independent actuarial review are paid from the Workers' Compensation Administrative Trust Fund.

Four actuarial peer review reports have been published to date. In large part, they have identified issues and solutions that had previously been identified and discussed by the OIR in reviewing NCCI's rate filings.

##### Effect of the Bill

House Bill 4087 repeals s. 627.725, F.S. and is effective July 1, 2012.

#### B. SECTION DIRECTORY:

**Section 1.** Repeals s. 627.285, F.S., providing for an independent actuarial peer review of workers' compensation rating organizations.

**Section 2.** Provides an effective date of July 1, 2012.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The cost of the independent actuarial report required by s. 627.725, F.S., which is repealed by this bill, was \$104,535 in 2004, \$76,000 in 2006, \$65,000 in 2008, and \$35,000 in 2010. Associated

administrative costs (e.g., time spent by OIR staff preparing requests for proposal and executing contracts) would also be eliminated.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

See above ("Fiscal Impact on State Government: Expenditures")

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



HB 4087

2012

1                                   A bill to be entitled  
 2       An act relating to repeal of a workers' compensation  
 3       independent actuarial peer review requirement;  
 4       repealing s. 627.285, F.S., relating to the duty of  
 5       the Financial Services Commission to contract for a  
 6       periodic report regarding an actuarial peer review and  
 7       analysis of the ratemaking process of any licensed  
 8       rating organization that makes rate filings for  
 9       workers' compensation insurance; providing an  
 10      effective date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

13  
 14       Section 1.   Section 627.285, Florida Statutes, is repealed.  
 15       Section 2.   This act shall take effect July 1, 2012.