

## CHAPTER 2013-209

### Committee Substitute for House Bill No. 1191

An act relating to captive insurance; amending s. 628.901, F.S.; revising definitions; amending s. 628.905, F.S.; revising terminology; prohibiting an industrial insured captive insurance company from insuring risks other than specified risks; authorizing the licensure of industrial insured captive insurance companies to provide workers compensation and employer's liability insurance in excess of a specified amount; requiring an industrial insured captive insurance company to maintain a certain amount of capital and surplus in order to continue to write such excess workers compensation; specifying that certain duties or actions are the responsibility of the Office of Insurance Regulation; amending s. 628.907, F.S.; conforming a provision; amending s. 628.909, F.S.; providing applicability of specified provisions to captive insurance companies and industrial insured captive insurance companies; conforming provisions; amending ss. 628.9142, 628.915, and 628.917, F.S.; conforming provisions; amending s. 628.919, F.S.; requiring a pure captive insurance company to submit certain standards relating to the risk management of controlled unaffiliated businesses to the Office of Insurance Regulation for approval; providing an effective date.

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

Section 1. Paragraph (d) of subsection (8) and subsections (9) and (13) of section 628.901, Florida Statutes, are amended to read:

628.901 Definitions.—As used in this part, the term:

(8) "Industrial insured" means an insured that:

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

(9) "Industrial insured captive insurance company" means a ~~captive insurance~~ company that provides insurance only to the industrial insureds that are its stockholders or members, and affiliates thereof, or to the stockholders, and affiliates thereof, of its parent corporation. An industrial insured captive insurance company can also provide reinsurance to insurers only on risks written by such insurers for the industrial insureds that are the stockholders or members, and affiliates thereof, of the industrial insured captive insurance company insurer, or the stockholders, and affiliates thereof, of the parent corporation of the industrial insured captive insurance company insurer.

(13) “Qualifying reinsurer parent company” means a reinsurer ~~that~~ which currently holds a certificate of authority or qualifies for credit for reinsurance under s. 624.610(3) and possesses, ~~letter of eligibility or is an accredited or a satisfactory non-approved reinsurer in this state possessing a consolidated GAAP net worth of at least \$500 million and a consolidated debt to total capital ratio of not greater than 0.50.~~

Section 2. Subsections (1) and (2), paragraph (b) of subsection (4), and subsection (5) of section 628.905, Florida Statutes, are amended to read:

628.905 Licensing; authority.—

(1) A captive insurance company insurer, if permitted by its charter or articles of incorporation, may apply to the office for a license to do any and all insurance authorized under the insurance code, other than workers’ compensation and employer’s liability, life, health, personal motor vehicle, and personal residential property insurance, except that:

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

(b) An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies, or its stockholders or members, and affiliates thereof, of the industrial insured captive, or the stockholders or affiliates of the parent corporation of the industrial insured captive insurance company.

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

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

(e) An industrial insured captive insurance company with unencumbered capital and surplus of at least \$20 million may be licensed to provide workers’ compensation and employer’s liability insurance in excess of \$25 million in the annual aggregate. An industrial insured captive insurance company must maintain unencumbered capital and surplus of at least \$20 million to continue to write such excess workers’ compensation insurance in Florida.

(2) To conduct insurance business in this state, a captive insurance company insurer must:

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

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

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

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

(4) A captive insurance company or captive reinsurance company must pay to the office a nonrefundable fee of \$1,500 for processing its application for license.

(b) The office may charge a fee of \$5 for any document requiring certification of authenticity or the signature of a representative of the office commissioner or his or her designee.

(5) If the office commissioner is satisfied that the documents and statements filed by the captive insurance company comply with this chapter, the office commissioner may grant a license authorizing the company to conduct insurance business in this state until the next succeeding March 1, at which time the license may be renewed.

Section 3. Subsection (1) of section 628.907, Florida Statutes, is amended to read:

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

(1) A captive insurance company ~~insurer~~ may not be issued a license unless it possesses and thereafter maintains unimpaired paid-in capital of:

(a) In the case of a pure captive insurance company, at least \$100,000;—

(b) In the case of an industrial insured captive insurance company incorporated as a stock insurer, at least \$200,000; and—

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

Section 4. Section 628.909, Florida Statutes, is amended to read:

628.909 Applicability of other laws.—

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

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

insurance companies insurers to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

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

(e) Chapter 628.

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

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

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

(c) Chapter 626, part IX.

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

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

Section 5. Section 628.9142, Florida Statutes, is amended to read:

628.9142 Reinsurance; effect on reserves.—

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

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

Section 6. Section 628.915, Florida Statutes, is amended to read:

628.915 Exemption from compulsory association.—

(1) No captive insurance company insurer shall be permitted to join or contribute financially to any joint underwriting association or guaranty fund in this state; nor shall any captive insurance company insurer, its insured, or its parent or any affiliated company receive any benefit from any such joint

underwriting association or guaranty fund for claims arising out of the operations of such captive insurer.

(2) No industrial insured captive insurance company insurer shall be permitted to join or contribute financially to any joint underwriting association or guaranty fund in this state; nor shall any industrial insured captive insurance company insurer, its industrial insured, or its parent or any affiliated company receive any benefit from any such joint underwriting association or guaranty fund for claims arising out of the operations of such industrial insured captive insurance company insurer.

Section 7. Section 628.917, Florida Statutes, is amended to read:

628.917 Insolvency and liquidation.—In the event that a captive insurance company insurer is insolvent as defined in chapter 631, the office shall liquidate the captive insurance company insurer pursuant to the provisions of part I of chapter 631; except that the office shall make no attempt to rehabilitate such insurance company insurer.

Section 8. Section 628.919, Florida Statutes, is amended to read:

628.919 Standards to ensure risk management control by parent company.—A pure captive insurance company shall submit to the office for approval ~~The Financial Services Commission shall adopt rules establishing~~ standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company.

Section 9. This act shall take effect July 1, 2013.

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.