

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2334**

As Agreed to March 25, 2025

**Brief\***

HB 2334 would amend the Insurance Holding Company Act, Uniform Insurance Agents Licensing Act, Public Adjusters Licensing Act, Captive Insurance Act (CI Act), and current law to allow travel insurance to be filed under either an accident and health or inland marine line of insurance. The bill would establish the Protected Cell Captive Insurance Company Act (Protected Cell Captive Act).

The bill would require the Commissioner of Insurance (Commissioner) to select and announce insurance calculations, instructions promulgated by the National Association of Insurance Commissioners (NAIC), or other documents required by the NAIC; add certain self-funded health plans to the list of plans to which the Insurance Code of the State of Kansas (Insurance Code) does not apply; and clarify law regarding health organization risk-based capital (RBC). The Commissioner would also have authority to take disciplinary actions and establish criteria to review when considering such disciplinary action against a public adjuster's license.

The bill would reduce insurance company premium tax rates and discontinues the remittance and crediting of a portion of the premium tax to the Insurance Department Service Regulation Fund.

The bill would also remove outdated statutory language and make technical amendments.

***Effective Dates***

All provisions of the bill would take effect upon publication in statute book with the exception of the provisions pertaining to the reduction of insurance premium tax rates, the discontinuance of the remittance and crediting of such tax, and the preservation of reports and returns, all of which would take effect on January 1, 2026, and upon publication in the statute book.

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***Selections of Insurance Calculations; NAIC-promulgated Instructions and Documents; Application of Insurance Code to Self-funded Health Plans; RBC; Insurance Holding Company Act***

The bill would make certain selections of calculations, instructions promulgated by the NAIC, or other documents required by the NAIC; add certain self-funded health plans to the list of plans to which the Insurance Code does not apply; clarify law regarding health organization RBC; amend the Insurance Holding Company Act; and make other clarifying and technical amendments.

*Insurance Calculations*

The bill would require the Commissioner to select and announce the version of insurance calculations, instructions promulgated by NAIC, or other documents that may be required by NAIC for the next calendar year by publishing the announcement in the *Kansas Register* no later than December 1st.

Calculations and instructions would include, but not be limited to, RBC instructions, RBC managed care instructions, and group capital calculation instructions.

*Self-funded Health Plans Excluded from Insurance Code Applicability*

The bill would add the following to the list of those entities or plans to which the Insurance Code would not apply:

- A self-funded health plan established or maintained for its employees by the State or subdivision of the State, a school district, any public authority, or by a county or city government or any political subdivision, agency, or instrumentality thereof; and
- A self-funded health plan established or maintained for its employees by a church or by a convention or association of churches that is exempt from tax under Section 501 of the Internal Revenue Code.

*Definitions Pertaining to RBC and Health Organization RBC Requirements*

The bill would amend definitions pertaining to RBC requirements and health organization RBC requirements.

**RBC Requirements**

- “RBC instructions” would mean the RBC instructions promulgated by the NAIC that are in effect as announced and noticed by the Commissioner.

## Health Organization RBC Requirements

- “Health organization” would mean a health maintenance organization, limited health service organization, dental or vision plan, hospital, medical, and dental indemnity or service corporation or other managed care organization licensed under articles of the Insurance Code relating to non-profit dental services corporations, non-profit medical and hospital service corporations, or health maintenance organizations and Medicare provider organizations, or an organization that is licensed as a life and health insurer under the Insurance Code general provisions relating to life insurance companies, and has been determined by the Commissioner to report predominantly health lines of business in accordance with a health statement test; and
- “RBC instructions” would mean the RBC instructions for managed care organizations promulgated by the NAIC that are in effect as announced and noticed by the Commissioner.

## Insurance Holding Company Act

The bill would add the following definitions to the Insurance Holding Company Act, in addition to adding the NAIC acronym to the defined terms:

- “Financial analysis handbook” would mean the version of the NAIC financial analysis handbook adopted by the NAIC and in effect that has been selected and noticed by the Commissioner;
- “Group capital calculation instructions” would mean the group capital calculation instructions selected and announced by the Commissioner;
- “NAIC Liquidity Stress Test Framework” would mean the separate NAIC publication that includes the history of the NAIC’s development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year and such scope criteria, instructions, and reporting templates as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC and as selected and announced by the Commissioner; and
- “Scope criteria” would mean, as detailed in the NAIC Liquidity Stress Test Framework, the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for such specified data year.

## *Insurance Holding Company Act Amendments*

The bill would amend the Insurance Holding Company Act to adopt provisions for group capital calculations and liquidity stress testing requirements and would align the Act with NAIC accreditation standards. The bill would require the Commissioner to maintain confidentiality of the information reported.

**Annual group capital calculation.** The bill would require the ultimate controlling person of every insurer subject to registration to concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The calculation report would be completed in accordance with the NAIC Group Capital Calculation Instructions, which may allow a controlling person who is not the ultimate controlling person to file such report, and according to the procedures within the financial analysis handbook. The report would be filed with the lead state commissioner of the insurance holding company system as determined by the Commissioner in accordance with the procedures within the financial analysis handbook.

The bill would provide exemptions for an insurer holding company system from filing the group capital calculations if certain requirements are met.

The bill would grant a lead state commissioner discretion in determining whether to require, exempt, or extend the filing of a group capital calculation report or to accept a limited group capital calculation report under certain conditions.

**Liquidity stress test.** The bill would require the ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework to file the results of a specific year's liquidity stress test. The filing would be made to the lead state insurance commissioner of the insurance holding company system as determined by procedures within the financial analysis handbook. The NAIC Liquidity Stress Test Framework would include scope criteria applicable to a specific data year. The bill would provide for the frequency of the scope criteria review, the effective date of any changes to the NAIC Liquidity Stress Test Framework, and the criteria for scoping an insurer in or out of the NAIC Liquidity Stress Test Framework.

The bill would require that the performance and filing of the results of a specific year's liquidity stress test comply with the NAIC Liquidity Stress Test Framework instructions and reporting template for that year and any lead state insurance commissioner determinations, in consultation with the NAIC Financial Stability Task Force.

**Deposit or bond requirement for insurer in hazardous financial condition.** If an insurer subject to the Insurance Holding Company Act that is deemed by the Commissioner to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, the bill would authorize the Commissioner to require the insurer secure and maintain either a deposit, held by the Commissioner, or a bond, as determined by the insurer at the insurer's discretion. Such bond or deposit would be for the protection of the insurer for the duration of the contract or agreement or the existence of the condition for which the Commissioner required the deposit or bond.

The bill would provide the concerns the Commissioner should consider in determining whether a deposit or bond would be required. The Commissioner would have discretion in determining the amount of the deposit or bond, not to exceed the value of the contract or agreement in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with a specific person.

**Records and data held by an affiliate.** The bill would maintain that all records and data of the insurer held by an affiliate, in whatever form maintained, are and would remain the property of the insurer, be subject to control of the insurer, be identifiable, and be segregated or readily capable of segregation at no additional cost to the insurer. The bill would provide a non-exhaustive list of the types of records and data within the possession, custody, or control of the

affiliate that would remain the property of the insurer. The bill would also provide that premiums or other funds belonging to the insurer that are collected or held by an affiliate would be deemed the exclusive property of and subject to the control of the insurer.

**Examination of financial condition by the Commissioner.** The bill would authorize the Commissioner to examine any registered insurer and the insurer's affiliate to ascertain the financial condition of such insurer, including the enterprise risk to the insurer by the ultimate controlling party or by any entity or combination of entities within the insurance holding company system or by the insurance holding company system on a consolidated basis.

**Confidentiality of data and records.** Continuing law provides that the provisions of this section would not be subject to the legislative review of exceptions to disclosure under the Kansas Open Records Act.

The bill would require the Commissioner to maintain the confidentiality of information reported or provided to the Commissioner, including the:

- Group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group-wide supervisor; and
- Liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group-wide supervisors.

The bill would add that the written agreements the Commissioner is required to enter into with the NAIC governing the sharing and use of information pursuant to the Insurance Holding Company Act would be required to:

- Exclude documents, materials, or information reported by insurance holding companies as part of the registration process;
- Prohibit the NAIC and its affiliates and subsidiaries from storing the information shared pursuant to the Insurance Holding Company Act in a permanent database after the underlying analysis is completed; and
- Provide for notification of the identity of the third-party consultant to the applicable insurers for documents, materials, or information reported by insurance holding companies as part of the registration process, in the case of an agreement involving a third-party consultant.

The bill would deem the group capital calculation and resulting group capital ratio and the liquidity stress test with its results and supporting disclosures, as regulatory tools for assessing group risks, capital adequacy, and group liquidity risks. The bill would prohibit construing such documents as a means to rank insurers or insurance holding company systems.

Unless otherwise required under the Act, the bill would provide that the following actions regarding a representation or statement of the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures of an insurer or insurer group, or of any component derived in the calculation by an insurer, broker, or other person engaged in the insurance business could be misleading and thereby prohibited:

- Making, publishing, disseminating, circulating, placing before the public, or directly or indirectly causing such actions through any of the following means of communication:
  - A newspaper, magazine, or other publication;
  - A notice, circular, pamphlet, letter, or poster;
  - Radio or television broadcast or by any electronic means of communication available to the public; or
  - In any other way as an advertisement, announcement, or statement.

The bill would authorize an insurer to publish announcements in a written publication for the sole purpose of rebutting a materially false statement if the insurer is able to demonstrate to the Commissioner with substantial proof of the falsity or inappropriateness of a materially false statement published in any written publication regarding the:

- Group capital calculation or resulting group capital ratio;
- Liquidity stress test result or supporting disclosures for such test; or
- Inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation, resulting group capital ratio, or liquidity stress test result or supporting disclosures.

#### *Health Benefit Plan Definition in the Patient Protection Act*

The bill would exclude the following from the definition of "health benefit plan" in the Patient Protection Act:

- A self-funded health plan established or maintained for its employees by the State or subdivision of the State, a school district, any public authority, or by a county or city government or any political subdivision, agency, or instrumentality thereof; and
- A self-funded health plan established or maintained for its employees by a church or by a convention or association of churches that is exempt from tax under Section 501 of the Internal Revenue Code.

#### *Statutes Repealed*

In addition to the statutes that would be repealed as a result of amendments made by the bill, the bill would also repeal the following statutes in the Insurance Code:

- KSA 40-249, pertaining to the expiration of the corporate powers of an insurance company organized under Kansas law for failure to issue policies within two years from the granting of its charter; and
- KSA 40-2c29, authorizing the Commissioner to adopt by rules and regulations any later versions of the RBC instructions promulgated by the NAIC.

### ***Actions on Licensure of Public Adjusters and Insurance Agents***

The bill would amend the Uniform Insurance Agents Licensing Act and the Public Adjusters Licensing Act to provide the Commissioner with the authority to consult the status of certain licenses or registrations in reviewing applications or renewals for insurance agents and public adjusters.

The Commissioner would also have the authority to suspend, revoke, or refuse to issue or renew a public adjuster's license for failing to respond to an inquiry from the Commissioner within 15 business days.

Additionally, the bill would establish criteria for the Commissioner to review when considering whether to deny, suspend, revoke, or refuse to renew the application for a public adjuster's license of an individual who has been convicted of a misdemeanor or felony.

### ***Review of Licenses and Registrations***

The bill would provide the Commissioner the authority to evaluate the status of public adjuster's licenses and securities registrations when reviewing insurance agent licenses or applications for insurance agent licenses. Similarly, the bill would provide the Commissioner the authority to evaluate the status of public adjuster's licenses and securities registrations when reviewing public adjuster's licenses or applications for public adjuster's licenses.

The Commissioner would also have the authority to suspend, revoke, or refuse to issue or renew a public adjuster's license for failing to respond to an inquiry from the Commissioner within 15 business days.

### ***Criteria for Review for Public Adjuster License Applicants Convicted of a Misdemeanor or Felony***

The bill would establish criteria for the Commissioner to review when considering whether to deny, suspend, revoke, or refuse to renew the application for a public adjuster license of an individual who has been convicted of a misdemeanor or felony:

- Applicant's age at the time of conduct;
- Recency of the conduct;
- Reliability of the information concerning the conduct;
- Seriousness of the conduct;
- Factors underlying the conduct;
- Cumulative effect of the conduct or the information;
- Evidence of rehabilitation;
- Applicant's social contributions since the conduct;
- Applicant's candor in the application process; and
- Materiality of any omissions or misrepresentations.

The bill would require the Commissioner to consider the following when determining whether to reinstate or grant to an applicant a public adjuster's license that has been revoked:

- Present moral fitness of the applicant;
- Demonstrated consciousness by the applicant of the wrongful conduct and disrepute that the conduct has brought to the insurance profession;
- Extent of the applicant's rehabilitation;
- Seriousness of the original conduct;
- Applicant's conduct subsequent to discipline;
- Amount of time that has elapsed since the original discipline;
- Applicant's character, maturity, and experience at the time of revocation; and
- Applicant's present competence and skills in the insurance industry.

[*Note:* These criteria are the same as current law for the Commissioner's review of insurance agent licensure or application for licensure (KSA 40-4909).]

The bill would state that any action taken as a result of such review that affects any license or imposes any administrative penalty would be taken only after notice and an opportunity for a hearing conducted in accordance with the Kansas Administrative Procedure Act.

The bill would specify that any costs incurred as a result of conducting an administrative hearing would be assessed against the person who is the subject of the hearing or any business entity represented by such person who is the party to the matters giving rise to the hearing. "Costs" would mean witness fees, mileage allowances, any costs associated with the reproduction of documents that become a part of the hearing record, and the expense of making a record of the hearing.

#### *Suspensions, Revocations, and Reapplication for Public Adjuster Licensure*

Under the bill, no person whose license as a public adjuster had been suspended or revoked could be employed by any insurance company doing business in the state either directly, indirectly, as an independent contractor, or otherwise to negotiate or effect contracts of insurance, suretyship, or indemnity or perform any act toward the solicitation or transaction of any business of insurance during the period of suspension or revocation.

An applicant to whom a public adjuster license is denied after a hearing would be prohibited from applying again for a public adjuster license until after a period of one year from the date of the Commissioner's order. A public adjuster licensee whose license was revoked could not apply again for a public adjuster license for two years after the Commissioner's order.

[*Note:* These terms are the same as current law for insurance agent licensure (KSA 40-4909).]

#### ***Captive Insurance Act and Protected Cell Captive Insurance Company Act***

The bill would establish the Protected Cell Captive Insurance Company Act and amend the Captive Insurance Act.



## *Protected Cell Captive Insurance Company Formation*

The Protected Cell Captive Insurance Company Act (Protected Cell Captive Act) would permit one or more sponsors to form a protected cell captive insurance company (company). A company would be incorporated as a stock insurer with the capital divided into shares and held by stockholders as either a mutual corporation, a non-profit corporation with one or more members, or as a limited liability company (LLC).

### *Definitions*

The Protected Cell Captive Act would define various terms, including the following:

- “Protected cell” would mean a separate account that is established by a company formed or licensed pursuant to the Act and in which an identified pool of assets and liabilities are segregated and insulated by means of the Act from the remainder of the company’s assets and liabilities in accordance with the terms of one or more participant contracts to fund the liability of the company with respect to the participants as set forth in the participant contracts;
- “Protected cell captive insurance company” would mean any captive insurance company:
  - In which the minimum capital and surplus required by the chapter are provided by one or more sponsors;
  - Formed or licensed under the Protected Cell Captive Act;
  - Insures the risks of separate participants through participant contracts; and
  - Funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the company’s general account; and
- “Sponsor” would mean any person or entity that is approved by the Commissioner to provide all or part of the capital and surplus required by the Protected Cell Captive Act and organize and operate a company.

### *Application Process*

The bill would list the materials that would be required to be filed with the Commissioner to apply to become a company, which would include the following:

- Materials that demonstrate how the applicant will account for loss and expense experience at a level of detail found to be sufficient by the Commissioner, and how it will report this experience;
- A statement acknowledging that financial records of the applicant, including records pertaining to any protected cells, will be made available for inspection or examination by the Commissioner or their designated agent;
- All contracts or sample contracts between the applicant and any participants; and

- Evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

### *Establishment and Maintenance of Protected Cells*

The Protected Cell Captive Act would state that a company formed or licensed pursuant to the Act could establish and maintain one or more incorporated or unincorporated protected cells to insure risks of one or more participants with the following conditions:

- A company could establish one or more protected cells if the Commissioner has approved in writing a plan of operation (plan) or amendments to a plan submitted by the company with respect to each protected cell. A plan would include, but not be limited to, the specific business objectives and investment guidelines of the protected cell, except that the Commissioner could require additional information in the plan. The Commissioner could put into effect a plan or amendments to a plan on or before the date that the approval is signed if the effective date is not earlier than the date that the plan or amendments to the plan were filed with the Kansas Insurance Department (Department);
- Upon the Commissioner's written approval of the plan, the company, in accordance with the approved plan, could attribute insurance obligations with respect to its insurance business to the protected cell;
- A protected cell would have its own distinct name or designation that would include the words "protected cell" or "incorporated cell." An incorporated cell formed as a series of a LLC would bear a distinct name or designation as reflected in its formation documents and include the words "series cell." Such names or designations could also be reasonably abbreviated;
- A company would transfer all assets attributable to a protected cell to one or more separately established and identified named accounts for the protected cell. Protected cell assets would be held in the named accounts for the purpose of satisfying the obligations of such protected cell;
- An incorporated protected cell could be organized and operated in any form of business organization authorized by the Commissioner, including, but not limited to, an individual series of a LLC as permitted under the Kansas Revised Limited Liability Company Act. Each incorporated protected cell of a protected cell captive insurer (insurer) would be treated as a captive insurer under the Protected Cell Captive Act and would have the power to enter into contracts, including an individual series of a LLC. Unless otherwise permitted by the organizational documents of a insurer, each incorporated protected cell of the insurer would have the same directors, secretary, and registered office as the protected cell captive insurer; and
- All attributions of assets and liabilities between a protected cell and the general account would be in accordance with the plan and participant contracts approved by the Commissioner. No other attribution of assets or liabilities would be made by a company between the company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell

would be required to be in cash or in readily marketable securities with established market values.

The Protected Cell Captive Act would not create a legal person separate from a company unless the protected cell is an incorporated cell. The assets would be owned by the protected cell. A company would not be able to represent itself as a trustee regarding the assets of a protected cell. A company could allow for a security interest to attach to the assets of account when in favor of a creditor of a protected cell and otherwise allowed under applicable laws.

**Investment management.** The Protected Cell Captive Act would permit a company to contract with or arrange for an investment advisor, commodity trading advisor, or other third party to manage the protected cell's assets when all remuneration, expenses, and other compensation are paid from the assets of the protected cell only.

**Administrative and Accounting Procedure Requirements.** The Protected Cell Captive Act would require that the company have administrative and accounting procedures in place that would properly identify each protected cell's assets and liabilities while keeping them separate and separately identifiable from the company's general accounts and attributable to one protected cell that is also separately identifiable from any other protected cell's assets and liabilities. The Protected Cell Captive Act would require that the remedy of tracing be available in the event of a violation of this provision, but tracing would not be the exclusive remedy.

When establishing a protected cell, the Protected Cell Captive Act would require a company to attribute to the protected cell assets a value that is at least equal to the reserves and other insurance liabilities attributed to the protected cell. Each protected cell would be accounted for separately in the records of the company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to participants and other factors as could be provided in the participant contract or required by the Commissioner.

No asset of a protected cell could be chargeable with liabilities arising from other insurance business that the company may conduct. Additionally, no sale, exchange, or transfer of assets could occur between or among protected cells without the consent of affected protected cells.

The Commissioner would be required to approve the sale, exchange, transfer of assets, dividend, or distribution from one protected cell to another company or participant. The Commissioner would be prohibited from any approval if it would result in an insolvency or impairment of a protected cell.

**Prohibition on combining cells.** The Protected Cell Captive Act would allow the combination of the assets of two or more protected cells for the purposes of investment, and such combination would not be construed as defeating the segregation of such assets for accounting or other purposes.

The Commissioner would be allowed to approve the use of alternative reliable methods of valuation and rating.

**Attributions of assets and liabilities.** The Protected Cell Captive Act would require that all attributions of assets and liabilities to the protected cells and the general account be in accordance with the plan approved by the Commissioner, including the performance under a reinsurance contract.

The Protected Cell Captive Act would clarify no other attribution of assets or liabilities would be made by a company between its general account and any protected cell or between any protected cells.

**Reinsurance contract.** The Protected Cell Captive Act would require all companies attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell. The bill would provide the performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the company is a party, including any payments made by or due to be made to the company pursuant to the terms of such agreement, would reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell.

**Conservation, rehabilitation, and liquidation of a company.** The bill would provide that in connection with conservation, rehabilitation, and liquidation of a company, the assets and liabilities of a protected cell would, to the extent that the Commissioner determines that such assets and liabilities are separable, at all times be kept separate from and not be commingled with those of other protected cells and the company.

**Annual reporting.** The Protected Cell Captive Act would require annual filings with the Commissioner of such financial reports as required by the Commissioner. Reports would be required to include accounting statements detailing the financial experience of each protected cell.

**Insolvency notice.** The Protected Cell Captive Act would require written notification to the Commissioner of any protected cell's insolvency within ten business days of such insolvency or inability to meet its claim or expense obligations.

**Changes within a protected cell.** The Protected Cell Captive Act would require the Commissioner to approve each participant contract in writing prior to the contract taking effect. The Protected Cell Captive Act would also require that the addition of each new protected cell as well as the withdrawal or termination of an existing protected cell would be considered a change in the plan and would require the Commissioner's written approval before the change could occur.

**Business written by a company.** The Protected Cell Captive Act would allow each company for each protected cell to write business that would meet the following conditions:

- Fronted by an insurance company licensed under the laws of any state;
- Reinsured by a reinsurer authorized or approved by the Department; or
- Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the Commissioner. The amount of security provided could not be less than the reserves associated with those liabilities that are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell. The Commissioner could require the company to increase the funding of any security arrangement established under this subsection. If the form of security is a letter of credit, the letter of credit would be issued or confirmed by a

bank approved by the Commissioner. A trust maintained pursuant to this subsection would be established in a form and upon such terms approved by the Commissioner.

**Separation of protected cells due to a company's insolvency.** The Protected Cell Captive Act would provide a methodology for the Commissioner to separate solvent protected cells from a insolvent company pursuant to an acceptable plan of operation.

**Unincorporated and incorporated protected cells.** The Protected Cell Captive Act would permit the companies formed or licensed under such Act to establish and operate both incorporated and unincorporated protected cells. The Protected Cell Captive Act would require biographical affidavits for owners of incorporated cells, including series members of a series LLC. Biographical affidavits would not be required for participants in unincorporated cells.

### *Participants in a Company*

The Protected Cell Captive Act would allow a sponsor to be a participant in a company as well as associations, corporations, LLCs, partnerships, trusts, and other business entities.

A participant would not be required to be a shareholder of a company. A participant would only be able to insure the participant's own risks through a company unless otherwise approved by the Commissioner.

### *Application of Insurers Supervision, Rehabilitation, and Liquidation Act*

The Protected Cell Captive Act would clarify that the Insurers Supervision, Rehabilitation and Liquidation Act would be applicable to a company. Upon any order of supervision, rehabilitation, or liquidation of a company, the bill would state the receiver would manage the assets and liabilities of the company.

Notwithstanding the provisions of the Insurers Supervision, Rehabilitation and Liquidation Act, the bill would require that:

- No assets of a protected cell could be used to pay any expenses or claims other than those attributable to the protected cell; and
- A company's capital and surplus would be available at all times to pay any expenses of or claims against the company.

### *Legal Action*

The Protected Cell Captive Act would require pleadings in any legal action brought by or against a company to specify which protected cell or cells should be named as a party to the suit. If the general account is party to the suit, it would be separately identified in the pleadings as if it were a protected cell. A legal action brought against a company that does not specify one or more protected cells would be deemed to be brought against the general account only. A protected cell that is not named in the pleadings would not be party to the legal action, and a protected cell named erroneously or without proper cause would be entitled to prompt dismissal.

Unless specified by the plan, participant contract, or other prior contractual agreement, the assets of one protected cell could not be encumbered or seized to satisfy the obligations of or a judgment against any other protected cell. No protected cell would be required to defend the rights and obligations of another protected cell.

In any legal action involving a company or a protected cell, any papers, documents, or property of a non-party protected cell would be afforded the same status during discovery as those of an unrelated third party. A non-party protected cell would have standing to appear and petition for any appropriate relief to protect the confidentiality of its papers or documents.

### *Captive Insurance Company Conversion*

The Protected Cell Captive Act would provide a procedure for a company or a protected cell of a company to be converted to any form of captive insurance company that is allowed in Kansas Insurance Law with consent of the Commissioner. The Commissioner would be able to issue to the converting protected cell a certificate of authority with an effective date of its original date of formation as a protected cell.

The bill would establish the following criteria for determining the filing or submission requirements for certain companies:

- A series of a LLC would file organizational documents with the Secretary of State that comply with Kansas law and include the date of formation as a series. Any new entity would possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor;
- Any other type of incorporated protected cell entity would file amended organizational documents with the Secretary of State that comply with Kansas law; or
- Other entities would file organizational documents with the Secretary of State that comply with Kansas law or any other applicable provision governing formation of that type of entity, including the date of formation as a cell. The new entity would possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor cell.

**Revised certificate of authority.** The Protected Cell Captive Act would permit a captive insurance company to apply to the Commissioner for conversion to become a protected cell captive insurance company. Upon approval by the Commissioner and the filing of amended organizational documents with the Secretary of State, the captive insurance company would be issued a revised certificate of authority. The effective date of the revised certificate of authority would remain the same as the effective date of the prior captive insurance company.

### *Redomestication of Captive Insurance Companies*

The bill would provide for a foreign or alien insurer to become a domestic company by complying with all of the requirements of the bill relating to the organization and licensing of a domestic company of the same type with the approval of the Commissioner. A company redomesticating to Kansas could be organized under any lawful corporate form permitted by the bill.

For insurance companies domiciled in foreign or alien jurisdictions that allow for the redomestication of insurance companies, the bill would authorize redomestication to Kansas and would state that the company is no longer a domestic legal entity of foreign or alien jurisdiction. A company wishing to redomesticate would be required to file organizational documents with the Secretary of State that comply with state law regarding corporations, the Captive Insurance Act (CI Act), and the Kansas Uniform Partnership Act, or any other applicable provision.

The company would be required to file a copy of the Secretary of State's acknowledgment letter with the Commissioner, who would then be required to issue a certificate of authority, pursuant to the CI Act.

Upon the completion of a redomestication, the bill would consider the captive insurance company to be domiciled in this state and subject to Kansas law. The captive insurance company would be deemed to have a formation date corresponding to its original formation date in the foreign or alien domicile.

For the purposes of the financial examination required by the CI Act, any examination conducted by the foreign or alien domicile substantially similar to an examination completed for companies domiciled in Kansas would be recognized for the purposes of establishing a period of time when the next examination would be due.

#### *Amendments to the Captive Insurance Act*

The bill would also amend the CI Act. The CI Act would permit a captive insurance company (CIC) to continue to apply to the Commissioner for a certificate of authority but would clarify the following exceptions as follows:

- A pure CIC could not insure any risks other than those of its parent and affiliated companies, any controlled unaffiliated business, or combination thereof; and
- A CIC could provide workers' compensation insurance, insurance in the nature of workers' compensation insurance, and the reinsurance of such policies unless prohibited by federal law, the Kansas Insurance Law, or any other state having jurisdiction over the transaction.

The bill would also add the following exceptions:

- A CIC could provide excess or stop-loss accident and health insurance unless prohibited by federal law or the laws of the State of Kansas having jurisdiction over the transaction; and
- Any CIC could provide workers' compensation insurance, insurance in the nature of workers' compensation insurance, and reinsurance of such policies unless prohibited by federal law, the laws of the State of Kansas, or any other state having jurisdiction over the transaction.

**Provisional certificate of authority.** The bill would amend the CI Act to permit the Commissioner to issue a provisional certificate of authority to any applicant CIC if the

Commissioner deems that the public interest will be served by the issuance of the provisional certificate.

Before issuing the provisional certificate, the applicant would be required to file a completed application and pay all necessary fees. The Commissioner would be required to make a preliminary finding of acceptability regarding the expertise, experience, and character of the person who would control and manage the applicant captive.

The Commissioner could place limits of authority on any provisional certificate holder as well as revoke a provisional certificate if the interests of the insureds or the public are endangered. If the applicant fails to complete the regular application for a certificate of authority, the provisional certificate would terminate by operation of law.

The Commissioner would have the authority to enact any necessary rules and regulations for a program regarding the issuance of provisional certificates of authority.

**Application and renewal fees.** Each CIC would pay a non-refundable fee of up to \$2,500 to the Commissioner for each application and an annual renewal fee of up to \$2,500, payable to the Commissioner.

**Unimpaired paid-in capital and surplus requirements.** The bill would amend the CI Act to reflect the following unimpaired paid-in capital and surplus requirements of not less than:

- \$250,000 for a pure CIC;
- \$500,000 for an association CIC incorporated as a stock insurer; and
- \$100,000 for a protected cell CIC.

**Frequency of examinations.** Current law requires the Commissioner to make or direct to be made at least every three years a financial examination of any CIC in the process of organization or applying for admission or doing business in Kansas. The bill would amend the frequency of the examination to every five years.

**Requirement to join a policy form organization.** The bill would amend the CI Act to clarify that a CIC would not be required to join a policy form organization.

**Premium tax for redomesticated companies and one-year exemption.** The bill would provide for a company redomesticating under the CI Act to only be liable for taxes paid on direct premiums and assumed reinsurance premiums paid to the company after redomestication. If a company redomesticated under the CI Act after July 1 of any year, the company would only be subject to 50 percent of the minimum premium tax.

Any redomesticated foreign or alien company would be required to report all premium taxes due, but could, either in its first or second year of operations after redomesticating into Kansas, elect to forgo the payment of premium taxes. A company choosing to forgo payment of premium taxes that surrenders its certificate of authority or redomesticates to another jurisdiction within five years of redomestication in Kansas would immediately pay an amount equal to the forgone premium tax plus 10 percent per annum from the date of the forgone premium.



**Taxation of CIC.** The bill would clarify that the tax provided for in the CI Act would constitute all taxes collectible under the laws of Kansas from any CIC, and no other occupation tax or any other tax would be levied or collected from any CIC by the state or any political subdivision.

### ***Classification and Filing of Travel Insurance Coverage***

The bill would amend current law to allow travel insurance coverage for sickness, accident, disability, or death occurring during travel as either a separate policy or along with related coverages of emergency evacuation or repatriation of remains, to be classified and filed under either an accident and health or inland marine line of insurance.

### ***Insurance Company Premium Tax Rates; Preservation of Documents***

The bill would reduce insurance company premium tax rates from 2.0 percent to 1.98 percent per year for tax year 2026 and subsequent years. Beginning January 1, 2026, the bill would remove the requirement that the 1.0 percent of insurance company premium taxes received by the Commissioner be transferred to the State Treasurer to the credit of the Insurance Department Service Regulation Fund.

The bill would require that all reports and returns required by the bill, and rules and regulations adopted pursuant to the bill, be preserved for a minimum of three years or until the Commissioner orders such documents destroyed.

### ***Entities Eligible for Reduced Premium Tax Rates***

The premium tax rate reduction would apply to the following entities organized under Kansas law or the laws of any other state, territory, or country:

- Capital stock insurance companies;
- Mutual legal reserve life insurance companies;
- Mutual life, accident, and health associations;
- Mutual fire, hail, casualty, and multiple line insurers [*Note: Hail is not included in this line of insurers for entities organized under the laws of any other state, territory, or country.*];
- Reciprocal or interinsurance exchanges;
- Mutual non-profit hospital service corporations;
- Non-profit medical service corporations;
- Non-profit dental service corporations;
- Non-profit optometric service corporations; and
- Non-profit pharmacy service corporations.

### **Conference Committee Action**

The Conference Committee agreed to the provisions of HB 2334, as amended by the Senate Committee of the Whole, and agreed to add the following to the bill:

- SB 28, as amended by the House Committee on Insurance;
- SB 32, as amended by the House Committee on Insurance;
- SB 121, as amended by the House Committee on Insurance; and
- HB 2046, as amended by the Senate Committee on Financial Institutions and Insurance.

The Conference Committee further agreed to change the effective date to upon publication in the statute book.

## **Background**

The Conference Committee inserted the following into HB 2334, as amended by the Senate Committee of the Whole: SB 28, as amended by the House Committee; SB 32, as amended by the House Committee; SB 121, as amended by the House Committee; and HB 2046, as amended by the Senate Committee.

### ***HB 2334 (Captive Insurance Act and Protected Cell Captive Insurance Company Act)***

The bill was introduced by the House Committee on Insurance at the request of Representative Tarwater.

#### *House Committee on Insurance*

In the House Committee hearing on February 14, 2025, **proponent** testimony was provided by Representative Tarwater and industry experts from Dickinson Wright and Elevate Risk Solutions. The conferees stated generally that captive insurance is an alternative to self-insurance and the proposed reforms are a way to modernize and strengthen the insurance regulatory framework.

Written-only proponent testimony was provided by a representative of Employers for Affordable Healthcare.

No other testimony was provided.

The House Committee amended the bill to set the maximum fee amount CICs would be required to pay to the Commissioner. [*Note:* The Conference Committee retained this amendment.]

#### *Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing on March 5, 2025, **proponent** testimony was provided by Representative Tarwater and industry experts from Dickinson Wright and Pinnacle. Representative Tarwater stated that modernizing the CI Act and allowing for protected cell captives to operate in Kansas would allow for many Kansas-based companies that utilize captive insurance to domicile in Kansas.

The Senate Committee hearing was continued on March 12, 2025. Representative Tarwater and an industry expert representing Elevate Risk Solutions provided additional informational testimony.

Written-only proponent testimony was provided by representatives of Elevate Risk Solutions and Kansas Employers for Affordable Healthcare.

No other testimony was provided.

The Senate Committee amended the bill to restore language regarding the ability for captive insurance companies to provide accident and health insurance [*Note: The Conference Committee retained this amendment.*] and to make the bill effective upon publication in the *Kansas Register*. [*Note: The Conference Committee did not retain this amendment.*]

#### *Senate Committee of the Whole*

The Senate Committee of the Whole amended the bill to provide for the redomestication of a foreign or alien captive insurance company and to provide for a redomesticated foreign or alien insurance company to be exempt from premium taxes for one year of operations. [*Note: The Conference Committee retained these amendments.*]

#### ***SB 28 (Actions on Licensure of Public Adjusters and Insurance Agents)***

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of a representative of the Department.

#### *Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing on January 30, 2025, **proponent** testimony was provided by a representative of the Department, who stated that the bill brings parity between the statutes that govern insurance agents and public adjusters and allows the Commissioner discretion when reviewing their licensure.

Written-only proponent testimony was provided by a representative of the National Insurance Crime Bureau.

The Committee amended the bill to specify that public adjuster licensees must respond to an inquiry from the Commissioner within 15 business days. [*Note: The Conference Committee retained this amendment.*]

#### *House Committee on Insurance*

In the House Committee hearing on March 3, 2025, no testimony was provided.

The House Committee amended the bill to change the effective date to be upon publication in the *Kansas Register*. [*Note: The Conference Committee did not retain this amendment.*]

***SB 32 (Insurance Company Premium Tax Rates; Preservation of Documents)***

The bill was introduced by the Senate Committee of Assessment and Taxation at the request of a representative of the Department.

*Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing on February 4, 2025, **proponent** testimony was provided by a representative of the Department, who stated the state premium tax is assessed on all premium insurance written by insurance companies in Kansas. The representative noted, with the exception of the 1.0 percent of all premium taxes collected that are retained by the Department for administrative purposes, the premium tax collections are remitted to the State General Fund (SGF). The representative stated the bill would eliminate the portion of the premium tax retained by the Department, which the Department has determined is not needed, and lower the tax rate by the difference.

No other testimony was provided.

Following discussion on the bill, the Senate Committee recommended the bill be placed on the Consent Calendar.

*House Committee on Insurance*

In the House Committee hearing on February 26, 2025, **proponent** testimony was provided by a representative of the Department, which mirrored the testimony provided during the Senate Committee hearing. The representative clarified the premium tax fee would be reduced by 0.02 percent.

No other testimony was provided.

The House Committee amended the bill to take effect upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

***SB 121 (Selections of Insurance Calculations; NAIC-promulgated Instructions and Documents; Application of Insurance Code to Self-funded Health Plans; RBC; Insurance Holding Company Act)***

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of a representative of the Department.

*Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing on February 10, 2025, **proponent** testimony was provided by representatives of the Department and The University of Kansas Health System. The Department representative stated the changes would assist the Department in remaining accredited by the NAIC, as well as update two financial regulatory tools to better ascertain insurance company solvency. The University of Kansas Health System representative requested

an amendment to clarify that self-funded plans offered by churches, government entities, and similar organizations continue to be exempt from classification as health insurers under state law.

No other testimony was provided.

The Senate Committee amended the bill to exempt certain self-funded health plans from Insurance Code applicability, add the same plans to those plans excluded from the definition of health benefit plan in the Patient Protection Act, and make a technical amendment. [Note: The Conference Committee retained this amendment.]

#### *House Committee on Insurance*

In the House Committee hearing on March 3, 2025, no testimony was provided.

The House Committee amended the bill to change the effective date to be upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

#### ***HB 2046 (Classification and Filing of Travel Insurance Coverage)***

HB 2046 was introduced by the House Committee on Insurance at the request of a representative of the American Council of Life Insurers.

#### *House Committee on Insurance*

In the House Committee hearing on January 29, 2025, **proponent** testimony was provided by a representative of the American Council of Life Insurers, who indicated the bill would fully align statute with the NAIC Travel Insurance Model Act, which would reduce confusion with insurers by clarifying the appropriate lines of business to file policies. The representative also indicated the bill would ensure consumers have access to travel insurance coverage for everything from travel-related emergency evacuations to repatriation of remains.

No other testimony was provided.

#### *Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing on February 27, 2025, **proponent** testimony was provided by a representative of the American Council of Life Insurers, who indicated the bill would clarify travel insurance filing guidance by amending statute to align with the NAIC Travel Insurance Model Act, which would reduce confusion with insurers by directing the filing of travel policies under the appropriate line of business. The representative also noted the bill would ensure consumers have access to coverage for travel-related emergency evacuations, repatriation of remains, or both.

No other testimony was provided.

The Senate Committee amended the bill to change the effective date to be upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

## **Fiscal Information**

### ***HB 2334 (Captive Insurance Act and Protected Cell Captive Insurance Company Act)***

According to the fiscal note prepared by the Division of the Budget on HB 2334, as introduced, the Department states the bill has the potential to increase or decrease revenues to its fee funds starting in FY 2026. The reduction to the captive application and renewal fees could reduce revenues into its Captive Insurance Regulation and Supervision Fund. However, the fee reduction and other changes in the bill could result in additional CICs being licensed, thus increasing revenues from application and renewal fees. If there are additional CICs as a result of the enactment of the bill, then there would also be an increase in premium taxes collected and deposited into the State General Fund (SGF). However, the Department cannot estimate the fiscal effect of the bill.

The Office of Judicial Administration (OJA) states that the bill could increase the number of cases filed in district court because it establishes a cause of action. This, in turn, would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Enactment of the bill could result in the collection of docket fees that would be deposited into the SGF. However, OJA cannot estimate a precise fiscal effect. Any fiscal effect associated with the bill is not reflected in *The FY 2026 Governor's Budget Report*.

The League of Kansas Municipalities and the Kansas Association of Counties state that enactment of the bill would have no fiscal effect on cities or counties.

### ***SB 28 (Actions on Licensure of Public Adjusters and Insurance Agents)***

According to the fiscal note prepared by the Division of the Budget on SB 28, as introduced, the Department states the bill would increase agency operating expenditures by an unknown amount; however, any increase would be absorbed by existing resources.

### ***SB 32 (Insurance Company Premium Tax Rates; Preservation of Documents)***

According to the fiscal note prepared by the Division of the Budget on SB 32, as introduced, the Department indicates enactment of the bill would reduce the agency's Insurance Department Service Regulation Fund revenues by approximately \$2.0 million each fiscal year beginning in FY 2026. The Department also indicates the bill would not affect SGF revenues. Although the total tax collected is reduced, the elimination of the 1.0 percent transferred to the Department from that tax would make the bill revenue neutral for the SGF. Any fiscal effect associated with the bill is not reflected in *The FY 2026 Governor's Budget Report*.

***SB 121 (Selections of Insurance Calculations; NAIC-promulgated Instructions and Documents; Application of Insurance Code to Self-funded Health Plans; RBC; Insurance Holding Company Act)***

According to the fiscal note prepared by the Division of the Budget on SB 121, as introduced, the Department indicates enactment of the bill would have no fiscal effect.

***HB 2046 (Classification and Filing of Travel Insurance Coverage)***

According to the fiscal note prepared by the Division of the Budget on HB 2046, as introduced, the Department indicates the enactment of the bill would have no fiscal effect.

Insurance; Protected Cell Captive Insurance Company Act; Captive Insurance Act; captive insurance; self-insurance; foreign captive insurance company; Insurance Code of the State of Kansas; Commissioner of Insurance; risk-based capital instructions; health financial reports; National Association of Insurance Commissioners; NAIC Holding Company System Regulatory Act; group capital calculations; liquidity stress testing; Insurance Holding Company Act; self-funded health plan exemptions; Patient Protection Act; licensing; insurance agents; public adjusters; duties and powers; travel insurance; accident and health insurance; inland marine insurance; insurance companies; premium tax rate; Kansas Insurance Department; Insurance Department Service Regulation Fund

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