

HOUSE BILL No. 2334

By Committee on Insurance

Requested by Representative Tarwater

2-7

1 AN ACT concerning insurance; relating to captive insurance companies;
2 providing for incorporated cell captive insurance companies and
3 protected cell captive insurance companies; enacting the Kansas
4 protected cell captive insurance company act; providing for a
5 provisional certificate of authority; expanding the types of insurance
6 that a captive insurance company may provide; extending the period of
7 time in-between financial examinations conducted by the
8 commissioner; amending K.S.A. 40-4304, 40-4312 and 40-4314 and
9 K.S.A. 2024 Supp. 40-4302 and 40-4308 and repealing the existing
10 sections.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. Sections 1 through 10, and amendments thereto, shall
14 be known and may be cited as the Kansas protected cell captive insurance
15 company act.

16 New Sec. 2. (a) One or more sponsors may form a protected cell
17 captive insurance company under this act. This act shall apply to protected
18 cell captive insurance companies.

19 (b) A protected cell captive insurance company shall be incorporated
20 as a stock insurer with its capital divided into shares and held by the
21 stockholders as a mutual corporation, as a nonprofit corporation with one
22 or more members or as a limited liability company.

23 New Sec. 3. As used in this act, unless the context requires otherwise:

24 (a) "Act" means the Kansas protected cell captive insurance company
25 act;

26 (b) "general account" means all assets and liabilities of a protected
27 cell captive insurance company not attributable to a protected cell;

28 (c) "participant" means a person or an entity, authorized to be a
29 participant by section 5, and amendments thereto, or any affiliate of a
30 participant, that is insured by a protected cell captive insurance company if
31 the losses of the participant are limited through a participant contract;

32 (d) "participant contract" means a contract by which a protected cell
33 captive insurance company insures the risks of a participant and limits the
34 losses of each such participant to its pro rata share of the assets of one or
35 more protected cells identified in such participant contract;

1 (e) "protected cell" means a separate account that is established by a
2 protected cell captive insurance company formed or licensed pursuant to
3 this act and in which an identified pool of assets and liabilities are
4 segregated and insulated by means of this act from the remainder of the
5 protected cell captive insurance company's assets and liabilities in
6 accordance with the terms of one or more participant contracts to fund the
7 liability of the protected cell captive insurance company with respect to the
8 participants as set forth in the participant contracts;

9 (f) "protected cell assets" means all assets, contract rights and general
10 intangibles identified with and attributable to a specific protected cell of a
11 protected cell captive insurance company;

12 (g) "protected cell captive insurance company" means any captive
13 insurance company:

14 (1) In which the minimum capital and surplus required by the chapter
15 are provided by one or more sponsors;

16 (2) that is formed or licensed under this act;

17 (3) that insures the risks of separate participants through participant
18 contracts; and

19 (4) that funds its liability to each participant through one or more
20 protected cells and segregates the assets of each protected cell from the
21 assets of other protected cells and from the assets of the protected cell
22 captive insurance company's general account;

23 (h) "protected cell liabilities" means all liabilities and other
24 obligations identified with and attributed to a specific protected cell of a
25 protected cell captive insurance company; and

26 (i) "protected cell liabilities" means all liabilities and other
27 obligations identified with and attributed to a specific protected cell of a
28 protected cell captive insurance company; and

29 (j) "sponsor" means any person or entity that is approved by the
30 commissioner to provide all or part of the capital and surplus required by
31 this act and organize and operate a protected cell captive insurance
32 company.

33 New Sec. 4. In addition to the information required by K.S.A. 40-
34 4302, and amendments thereto, each applicant-protected cell captive
35 insurance company shall file with the commissioner the following:

36 (a) Materials demonstrating how the applicant will account for the
37 loss and expense experience of each protected cell at a level of detail
38 found to be sufficient by the commissioner, and how it will report such
39 experience to the commissioner;

40 (b) a statement acknowledging that all financial records of the
41 applicant, including records pertaining to any protected cells, shall be
42 made available for inspection or examination by the commissioner or the
43 commissioner's designated agent;

1 (c) all contracts or sample contracts between the applicant and any
2 participants; and

3 (d) evidence that expenses shall be allocated to each protected cell in
4 a fair and equitable manner.

5 New Sec. 5. A protected cell captive insurance company formed or
6 licensed under this chapter may establish and maintain one or more
7 incorporated or unincorporated protected cells to insure risks of one or
8 more participants, subject to the following conditions:

9 (a) (1) A protected cell captive insurance company may establish one
10 or more protected cells if the commissioner has approved in writing a plan
11 of operation or amendments to a plan of operation submitted by the
12 protected cell captive insurance company with respect to each protected
13 cell. A plan of operation includes, but is not limited to, the specific
14 business objectives and investment guidelines of the protected cell, except
15 that the commissioner may require additional information in the plan of
16 operation. The commissioner may put into effect a plan of operation or
17 amendments to a plan of operation on or before the date that the approval
18 is signed if the effective date is not earlier than the date that the plan of
19 operation or amendments to the plan of operation were filed with the
20 department;

21 (2) upon the commissioner's written approval of the plan of operation,
22 the protected cell captive insurance company, in accordance with the
23 approved plan of operation, may attribute insurance obligations with
24 respect to its insurance business to the protected cell;

25 (3) a protected cell shall have its own distinct name or designation
26 that shall include the words "protected cell" or "incorporated cell." An
27 incorporated cell formed as a series of a limited liability company shall
28 bear a distinct name or designation as reflected in its formation documents
29 and include the words "series cell." Such names or designations may also
30 be reasonably abbreviated, including, without limitation, pc or p.c. for
31 "protected cell," ic, i.c., ipc, or i.p.c. for "incorporated cell" and sc, s.c.,
32 spc or s.p.c. for "series cell";

33 (4) the protected cell captive insurance company shall transfer all
34 assets attributable to a protected cell to one or more separately established
35 and identified protected cell accounts bearing the name or designation of
36 such protected cell. Protected cell assets shall be held in the protected cell
37 accounts for the purpose of satisfying the obligations of such protected
38 cell;

39 (5) an incorporated protected cell may be organized and operated in
40 any form of business organization authorized by the commissioner,
41 including, but not limited to, an individual series of a limited liability
42 company as provided for in the Kansas revised limited liability company
43 act. Each incorporated protected cell of a protected cell captive insurer

1 shall be treated as a captive insurer for purposes of this act and shall have
2 the power to enter into contracts, including an individual series of a limited
3 liability company. Unless otherwise permitted by the organizational
4 documents of a protected cell captive insurer, each incorporated protected
5 cell of the protected cell captive insurer shall have the same directors,
6 secretary and registered office as the protected cell captive insurer; and

7 (6) all attributions of assets and liabilities between a protected cell
8 and the general account shall be in accordance with the plan of operation
9 and participant contracts approved by the commissioner. No other
10 attribution of assets or liabilities shall be made by a protected cell captive
11 insurance company between the protected cell captive insurance
12 company's general account and its protected cells. Any attribution of assets
13 and liabilities between the general account and a protected cell shall be in
14 cash or in readily marketable securities with established market values.

15 (b) The creation of a protected cell does not create, with respect to
16 such protected cell, a legal person separate from the protected cell captive
17 insurance company unless the protected cell is an incorporated cell.
18 Amounts attributed to a protected cell under this section, including assets
19 transferred to a protected cell account, are deemed to be owned by the
20 protected cell. No protected cell captive insurance company shall be, or
21 represent itself as a trustee with respect to those protected cell assets of
22 such protected cell account. Notwithstanding the provisions of this
23 subsection, the protected cell captive insurance company may allow for a
24 security interest to attach to protected cell assets or a protected cell
25 account when in favor of a creditor of the protected cell and otherwise
26 allowed under applicable law.

27 (c) This act shall not be construed to prohibit the protected cell
28 captive insurance company from contracting with or arranging for an
29 investment advisor, commodity trading advisor or other third party to
30 manage the protected cell assets of a protected cell if all remuneration,
31 expenses and other compensation of the third-party advisor or manager are
32 payable from the protected cell assets of such protected cell and not from
33 the protected cell assets of other protected cells or the assets of the
34 protected cell captive insurance company's general account.

35 (d) (1) A protected cell captive insurance company shall establish
36 administrative and accounting procedures necessary to properly identify
37 the one or more protected cells of the protected cell captive insurance
38 company and the protected cell assets and protected cell liabilities
39 attributable to the protected cells. The directors of a protected cell captive
40 insurance company shall keep protected cell assets and protected cell
41 liabilities:

42 (A) Separate and separately identifiable from the assets and liabilities
43 of the protected cell captive insurance company's general account; and

1 (B) attributable to one protected cell that is separate and separately
2 identifiable from protected cell assets and protected cell liabilities
3 attributable to other protected cells.

4 (2) If subsection (d)(1) is violated, then the remedy of tracing is
5 applicable to protected cell assets when commingled with protected cell
6 assets of other protected cells or the assets of the protected cell captive
7 insurance company's general account. The remedy of tracing shall not be
8 construed as an exclusive remedy.

9 (e) When establishing a protected cell, the protected cell captive
10 insurance company shall attribute to the protected cell assets a value that is
11 at least equal to the reserves and other insurance liabilities attributed to
12 such protected cell.

13 (f) Each protected cell shall be accounted for separately on the books
14 and records of the protected cell captive insurance company to reflect the
15 financial condition and results of operations of such protected cell, net
16 income or loss, dividends or other distributions to participants and such
17 other factors as may be provided in the participant contract or required by
18 the commissioner.

19 (g) No asset of a protected cell shall be chargeable with liabilities
20 arising out of any other insurance business that the protected cell captive
21 insurance company may conduct.

22 (h) No sale, exchange or other transfer of assets shall be made by
23 such protected cell captive insurance company between or among any of
24 its protected cells without the consent of such protected cells.

25 (i) No sale, exchange, transfer of assets, dividend or distribution shall
26 be made from a protected cell to another protected cell captive insurance
27 company or participant without the commissioner's approval. In no event
28 shall the commissioner's approval be given if the sale, exchange, transfer,
29 dividend or distribution would result in the insolvency or impairment of a
30 protected cell.

31 (j) All attributions of assets and liabilities to the protected cells and
32 the general account shall be in accordance with the plan of operation
33 approved by the commissioner. No other attribution of assets or liabilities
34 shall be made by a protected cell captive insurance company between its
35 general account and any protected cell or between any protected cells. The
36 protected cell captive insurance company shall attribute all insurance
37 obligations, assets and liabilities relating to a reinsurance contract entered
38 into with respect to a protected cell to such protected cell. The
39 performance under such reinsurance contract and any tax benefits, losses,
40 refunds or credits allocated pursuant to a tax allocation agreement to which
41 the protected cell captive insurance company is a party, including any
42 payments made by or due to be made to the protected cell captive
43 insurance company pursuant to the terms of such agreement, shall reflect

1 the insurance obligations, assets and liabilities relating to the reinsurance
2 contract that are attributed to such protected cell.

3 (k) In connection with the conservation, rehabilitation or liquidation
4 of a protected cell captive insurance company, the assets and liabilities of a
5 protected cell shall, to the extent that the commissioner determines that
6 such assets and liabilities are separable, at all times be kept separate from
7 and shall not be commingled with those of other protected cells and the
8 protected cell captive insurance company.

9 (l) Each protected cell captive insurance company shall annually file
10 with the commissioner such financial reports as required by the
11 commissioner. Any such financial report shall include, without limitation,
12 accounting statements detailing the financial experience of each protected
13 cell.

14 (m) Each protected cell captive insurance company shall notify the
15 commissioner in writing within 10 business days of any protected cell that
16 is insolvent or otherwise unable to meet its claim or expense obligations.

17 (n) No participant contract shall take effect without the
18 commissioner's prior written approval. The addition of each new protected
19 cell, the withdrawal of any participant or the termination of any existing
20 protected cell shall constitute a change in the plan of operation requiring
21 the commissioner's prior written approval.

22 (o) The business written by a protected cell captive insurance
23 company, with respect to each protected cell, shall be:

24 (1) Fronted by an insurance company licensed under the laws of any
25 state;

26 (2) reinsured by a reinsurer authorized or approved by this state; or

27 (3) secured by a trust fund in the United States for the benefit of
28 policyholders and claimants or funded by an irrevocable letter of credit or
29 other arrangement that is acceptable to the commissioner. The amount of
30 security provided shall be not less than the reserves associated with those
31 liabilities that are neither fronted nor reinsured, including reserves for
32 losses, allocated loss adjustment expenses, incurred but not reported losses
33 and unearned premiums for business written through the participant's
34 protected cell. The commissioner may require the protected cell captive
35 insurance company to increase the funding of any security arrangement
36 established under this subsection. If the form of security is a letter of
37 credit, the letter of credit shall be issued or confirmed by a bank approved
38 by the commissioner. A trust maintained pursuant to this subsection shall
39 be established in a form and upon such terms approved by the
40 commissioner.

41 (p) Notwithstanding this act or other laws of Kansas, and in addition
42 to article 36 of chapter 40 of the Kansas Statutes Annotated, and
43 amendments thereto, in the event of an insolvency of a protected cell

1 captive insurance company in which the commissioner determines that one
2 or more protected cells remain solvent, the commissioner may separate
3 such cells from the protected cell captive insurance company and may
4 allow, on application of the protected cell captive insurance company, for
5 the conversion of such protected cells into one or more new or existing
6 protected cell captive insurance companies or one or more other captive
7 insurance companies, pursuant to such plan of operation as the
8 commissioner deems acceptable.

9 (q) Biographical affidavits shall not be required for participants in
10 unincorporated cells. Biographical affidavits shall be required for owners
11 of incorporated cells, including series members of a series LLC.

12 (r) A protected cell captive insurance company formed or licensed
13 under this act may establish and operate unincorporated and incorporated
14 protected cells.

15 New Sec. 6. (a) Associations, corporations, limited liability
16 companies, partnerships, trusts and other business entities may be
17 participants in any protected cell captive insurance company formed or
18 licensed under this chapter.

19 (b) A sponsor may be a participant in a protected cell captive
20 insurance company.

21 (c) A participant shall not be required to be a shareholder of the
22 protected cell captive insurance company or any affiliate thereof.

23 (d) A participant shall insure only such participant's own risks
24 through a protected cell captive insurance company, unless otherwise
25 approved by the commissioner.

26 New Sec. 7. (a) Notwithstanding the provisions of section 4, and
27 amendments thereto, the assets of two or more protected cells may be
28 combined for purposes of investment, and such combination shall not be
29 construed as defeating the segregation of such assets for accounting or
30 other purposes.

31 (b) Notwithstanding any other provision of this act, the commissioner
32 may approve the use of alternative reliable methods of valuation and
33 rating.

34 New Sec. 8. (a) Except as otherwise provided in this section the
35 insurers supervision, rehabilitation and liquidation act shall apply to a
36 protected cell captive insurance company.

37 (b) Upon any order of supervision, rehabilitation, or liquidation of a
38 protected cell captive insurance company, the receiver shall manage the
39 assets and liabilities of the protected cell captive insurance company
40 pursuant to this section.

41 (c) Notwithstanding the provisions of the insurers supervision,
42 rehabilitation and liquidation act:

43 (1) No assets of a protected cell shall be used to pay any expenses or

1 claims other than those attributable to such protected cell; and

2 (2) a protected cell captive insurance company's capital and surplus
3 shall be available at all times to pay any expenses of or claims against the
4 protected cell captive insurance company.

5 New Sec. 9. (a) The pleadings in any legal action brought by or
6 against a protected cell captive insurance company shall specify which
7 protected cell or cells should be named as a party to the suit. If the general
8 account is party to this suit, it shall be separately identified in the
9 pleadings as if it were a protected cell.

10 (b) A legal action brought against a protected cell captive insurance
11 company that does not specify one or more protected cells shall be deemed
12 to have been brought against the general account only.

13 (c) Any protected cell that is not named in the pleadings of the legal
14 action shall not be deemed to be a party to the legal action. Any protected
15 cell that is erroneously named as a party or named without proper cause
16 shall be entitled to prompt dismissal from the legal action.

17 (d) Unless specified by the plan of operation, participant contract or
18 other prior contractual agreement, the assets of one protected cell may not
19 be encumbered or seized to satisfy the obligations of or a judgment against
20 any other protected cell. No protected cell shall have a duty to defend the
21 rights and obligations of any other protected cell.

22 (e) In any legal action involving a protected cell captive insurance
23 company or a protected cell, any papers, documents or property of a
24 nonparty protected cell shall be afforded the same status during discovery
25 as the documents or property of any other unrelated third party. A nonparty
26 protected cell shall have standing to appear and petition for any
27 appropriate relief to protect the confidentiality of its papers or documents.

28 New Sec. 10. (a) (1) Upon the application of a protected cell captive
29 insurance company, one of its protected cells may be converted to any
30 form of captive insurance company authorized pursuant to chapter 40 of
31 the Kansas Statutes Annotated, and amendments thereto, with the consent
32 of the commissioner. The commissioner may issue to the converting
33 protected cell a certificate of authority with an effective date of its original
34 date of formation as a protected cell.

35 (2) The following shall be the criteria for determining the filing or
36 submission requirements of:

37 (A) A series of a limited liability company, the cell shall file
38 organizational documents with the secretary of state that comply with
39 article 43 of chapter 40 and chapters 17 and 56A of the Kansas Statutes
40 Annotated, and amendments thereto, as applicable. The organizational
41 documents shall include the date of formation as a series. Upon
42 conversion, the formation date of the series shall be deemed as the
43 formation date of the new entity. The new entity shall possess all assets

1 and liabilities, including outstanding insurance liabilities, owned by the
 2 predecessor series;

3 (B) any other type of incorporated protected cell entity, then the
 4 converting protected cell shall submit amended organizational documents
 5 to the secretary of state that comply with article 43 of chapter 40 and
 6 chapters 17 and 56A of the Kansas Statutes Annotated, and amendments
 7 thereto, as applicable; or

8 (C) neither a series of a limited liability company nor an incorporated
 9 protected cell, the cell shall file organizational documents with the
 10 secretary of state that comply with article 43 of chapter 40 and chapters 17
 11 and 56A of the Kansas Statutes Annotated, and amendments thereto, as
 12 applicable, or any other applicable provision governing formation of that
 13 type of entity. The organizational documents shall include the date of
 14 formation as a cell. Upon conversion, the formation date of the cell shall
 15 be deemed as the formation date of the new entity. The new entity shall
 16 possess all assets and liabilities, including outstanding insurance liabilities,
 17 owned by the predecessor cell.

18 (b) A captive insurance company may apply to the commissioner for
 19 conversion to become a protected cell captive insurance company under
 20 any form permitted under this section. Upon compliance with this section,
 21 approval by the commissioner and the filing of amended organizational
 22 documents with the secretary of state, the captive insurance company shall
 23 be issued a revised certificate of authority. The effective date of the revised
 24 protected cell captive insurance company's certificate of authority shall
 25 remain the same as the effective date of the prior captive insurance
 26 company.

27 Sec. 11. K.S.A. 2024 Supp. 40-4302 is hereby amended to read as
 28 follows: 40-4302. (a) Any captive insurance company, when permitted by
 29 its organizational documents, may apply to the commissioner for a
 30 certificate of authority to do any and all insurance comprised in K.S.A. 40-
 31 901 et seq., 40-1102(1)(a), (1)(c) through (1)(n), and amendments thereto,
 32 and to issue life, accident and health insurance policies ~~provided~~, *except*
 33 that:

34 (1) ~~No~~A pure captive insurance company shall *not* insure any risks
 35 other than those of its parent and affiliated companies ~~and, upon prior~~
 36 ~~approval of the commissioner~~, any controlled unaffiliated business ~~up to~~
 37 ~~5% of total direct written premium or combination thereof~~;

38 (2) no association captive insurance company shall insure any risks
 39 other than those of its association and those of the member organizations
 40 of its association. No association captive insurance company shall expose
 41 itself to loss on any one risk or hazard in an amount exceeding 10% of its
 42 paid-up capital and surplus;

43 (3) no captive insurance company shall provide personal lines of

1 insurance, ~~workers' compensation~~, employers' liability insurance coverage,
 2 long-term care coverage, critical care coverage, surety, title insurance,
 3 credit insurance or any component thereof, except that a technology-
 4 enabled fiduciary financial institution insurance company shall be
 5 permitted to provide contracts of suretyship and credit insurance in
 6 accordance with K.S.A. 2024 Supp. 40-4354, and amendments thereto;

7 (4) ~~no~~ captive insurance company ~~shall accept or~~ *may provide*
 8 *workers compensation insurance, insurance in the nature of workers*
 9 *compensation insurance and the reinsurance* ~~except as provided in K.S.A.~~
 10 ~~40-4311, and amendments thereto~~ *of such policies unless prohibited by*
 11 *federal law, the provisions of chapter 40 of the Kansas Statutes Annotated,*
 12 *and amendments thereto, or any other state having jurisdiction over the*
 13 *transaction;*

14 (5) *a captive insurance company may provide excess or stop-loss*
 15 *accident and health insurance unless prohibited by federal law or the laws*
 16 *of the state having jurisdiction over the transaction;*

17 (6) *any captive insurance company may provide workers*
 18 *compensation insurance, insurance in the nature of workers'*
 19 *compensation insurance and reinsurance of such policies unless*
 20 *prohibited by federal law, the laws of the state of Kansas or any other*
 21 *state having jurisdiction over the transaction;*

22 (7) ~~no~~ captive insurance company shall provide ~~accident and health,~~
 23 life insurance or annuities on a direct basis;

24 ~~(6)~~(8) no captive insurance company authorized as a life insurance
 25 company shall transact business other than life insurance; and

26 ~~(7)~~(9) no captive insurance company authorized to transact business
 27 under article 9 or 11 of chapter 40 of the Kansas Statutes Annotated, and
 28 amendments thereto, shall engage in the business of life insurance.

29 (b) No captive insurance company organized under the laws of this
 30 state shall do any insurance business in this state unless *such captive*
 31 *insurance company*:

32 (1) ~~It~~ First obtains from the commissioner a certificate of authority
 33 authorizing it to do insurance business in this state;

34 (2) *has* its board of directors, members, partners, managers,
 35 committee of managers or other governing body ~~holds~~ *hold* at least one
 36 meeting each year in this state;

37 (3) ~~it~~ maintains its principal place of business in this state; and

38 (4) ~~it~~ authorizes the commissioner to accept service of process on its
 39 behalf in accordance with K.S.A. 40-218, and amendments thereto.

40 (c) Before receiving a certificate of authority, an applicant captive
 41 insurance company shall file with the commissioner:

42 (1) A copy of the applicant captive insurance company's
 43 organizational documents; and

1 (2) a plan of operation or a feasibility study describing the anticipated
2 activities and results of the applicant captive insurance company that shall
3 include:

4 (A) The company's loss prevention program of its parent and
5 insureds, as applicable;

6 (B) historical and expected loss experience of the risks to be insured
7 or reinsured by the applicant captive insurance company;

8 (C) pro forma financial statements and projections of the proposed
9 business operations of the applicant captive insurance company;

10 (D) an analysis of the adequacy of the applicant captive insurance
11 company's proposed premiums, assets and capital and surplus levels
12 relative to the risks to be insured or reinsured by the captive insurance
13 company;

14 (E) a statement of the applicant captive insurance company's net
15 retained limited liability on any contract of insurance or reinsurance ~~that~~
16 *such insurance company* intends to issue and the nature of any reinsurance
17 it intends to cede;

18 (F) a statement certifying that the applicant captive insurance
19 company's investment policy is in compliance with this act and specifying
20 the type of investments to be made;

21 (G) a statement identifying the geographic areas in which the
22 applicant captive insurance company intends to operate;

23 (H) a statement identifying the persons or organizations that will
24 perform the applicant captive insurance company's major operational
25 functions, including management, underwriting, accounting, asset
26 investment, claims adjusting and loss control and the adequacy of the
27 expertise, experience and character of such persons or organizations; and

28 (I) whenever required by the commissioner, an appropriate opinion
29 by a qualified independent actuary regarding the adequacy of the applicant
30 captive insurance company's proposed capital, surplus and premium levels;

31 (3) a description of the coverages, deductibles, coverage limits, rates
32 and forms, together with any additional information that the commissioner
33 may require;

34 (4) such other items deemed *to be* relevant by the commissioner in
35 ascertaining whether the proposed captive insurance company will be able
36 to meet its obligations; and

37 (5) any modification or change in the items required under this
38 subsection that shall require the prior approval of the commissioner.

39 *(d) Notwithstanding any other provision of this act, the commissioner*
40 *may issue a provisional certificate of authority to any applicant captive*
41 *insurance company if the commissioner deems that the public interest will*
42 *be served by the issuance of such a provisional certificate.*

43 *(1) As a condition precedent to the issuance of a provisional*

1 certificate of authority under this subsection, the applicant shall have filed
2 a complete application containing all information required in subsection
3 (c) and paid all necessary fees. The commissioner shall have made a
4 preliminary finding that the expertise, experience and character of the
5 person who shall control and manage the applicant captive are
6 acceptable.

7 (2) The commissioner may by order limit the authority of any
8 provisional certificate holder in any way deemed to be necessary in order
9 to protect insureds and the public. The commissioner may revoke a
10 provisional certificate holder if the interests of the insureds or the public
11 are endangered. If the applicant fails to complete the regular application
12 for a certificate of authority, the provisional certificate of authority shall
13 terminate by operation of law.

14 (3) The commissioner may enact all rules and regulations necessary
15 to implement a program for the issuance of provisional certificates of
16 authority.

17 ~~(d)~~(e) Each captive insurance company ~~not in existence on January 1,~~
18 ~~2018,~~ shall pay to the commissioner a nonrefundable fee of ~~\$10,000-~~
19 \$2,500 for examining, investigating and processing its application for a
20 certificate of authority. The commissioner is authorized to retain legal,
21 financial, actuarial, analysis and examination services from outside the
22 department, the reasonable costs of which shall be charged against the
23 applicant. In addition, it shall pay a renewal fee of \$2,500 for each year
24 thereafter ~~of \$10,000.~~

25 ~~(e)~~(f) Each captive insurance company ~~already in existence on-~~
26 ~~January 1, 2018,~~ shall pay an annual renewal fee of \$110 until January 1,
27 2028, after which date, the provisions of subsection ~~(d)~~ (e) shall apply.

28 ~~(f)~~(g) If the commissioner is satisfied that the documents and
29 statements that such captive insurance company has filed comply with the
30 provisions of this act, the commissioner may grant a certificate of
31 authority authorizing a:

32 (1) Captive insurance company other than a technology-enabled
33 fiduciary financial institution to do insurance business in this state until
34 March 1 thereafter, which certificate of authority may be renewed; and

35 (2) technology-enabled fiduciary financial institution insurance
36 company to do insurance business in this state until the later of March 1
37 thereafter or the maturity date of the last payment-in-kind asset held by
38 such technology-enabled fiduciary financial institution insurance company
39 pursuant to this act.

40 ~~(g)~~(h) Information submitted under this section shall be and remain
41 confidential; and shall not be made public by the commissioner or any
42 employee or agent of the commissioner without the written consent of the
43 company, except that:

1 (1) Such information may be discoverable by a party in a civil action
2 or contested case to which the captive insurance company that submitted
3 such information is a party, upon a showing by the party seeking to
4 discover such information that:

5 (A) The information sought is relevant to and necessary for the
6 furtherance of such action or case;

7 (B) the information sought is unavailable from other ~~non-confidential~~
8 *nonconfidential* sources;

9 (C) a subpoena issued by a judicial or administrative officer or
10 competent jurisdiction has been submitted to the commissioner; and

11 (D) the privacy of a qualified policyholder shall be protected in any
12 court proceeding concerning such qualified policyholder if the technology-
13 enabled fiduciary financial institution insurance company so petitions the
14 court. Upon the filing of such petition, any information, including, but not
15 limited to, an instrument, inventory, statement or verified report produced
16 by the technology-enabled fiduciary financial institution insurance
17 company regarding a policy issued to a qualified policyholder or payment-
18 in-kind assets held by the technology-enabled fiduciary financial
19 institution insurance company to satisfy claims of such qualified
20 policyholder, all payment-in-kind policies, all petitions relevant to such
21 information and all court orders thereon, shall be sealed upon filing and
22 shall not be made a part of the public record of the proceeding, except that
23 such petition shall be available to the court, the commissioner, the
24 technology-enabled fiduciary financial institution insurance company, their
25 attorneys and to such other interested persons as the court may order upon
26 a showing of good cause;

27 (2) the commissioner may disclose such information to a public
28 officer having jurisdiction over the regulation of insurance in another state,
29 provided that:

30 (A) Such public official shall agree in writing to maintain the
31 confidentiality of such information; and

32 (B) the laws of the state in which such public official serves requires
33 such information to be and to remain confidential;

34 (3) access may also be granted to the national association of
35 insurance commissioners and its affiliates, and the international
36 association of supervisors and its affiliates. Such parties must agree in
37 writing prior to receiving the information to provide to it the same
38 confidential treatment as required by this section, unless the company
39 gives prior written consent; and

40 (4) the privacy of those who have established an affiliated fidfin trust
41 or alternative asset custody account shall be protected in any court
42 proceeding concerning such trust or custody account if the acting trustee,
43 custodian, trustor or any beneficiary so petition the court. Upon the filing

1 of such a petition, the instrument, inventory, statement filed by any trustee
2 or custodian, annual verified report of the trustee or custodian and all
3 petitions relevant to trust administration and all court orders thereon shall
4 be sealed upon filing and shall not be made a part of the public record of
5 the proceeding, except that such petition shall be available to the court, the
6 trustor, the trustee, the custodian, any beneficiary, their attorneys and to
7 such other interested persons as the court may order upon a showing of
8 good cause.

9 Sec. 12. K.S.A. 40-4304 is hereby amended to read as follows: 40-
10 4304. (a) No captive insurance company shall be issued a certificate of
11 authority unless ~~it~~ *such company* shall possess and thereafter maintain
12 unimpaired paid-in capital and surplus of *not less than*:

13 (1) ~~In the case of a pure captive insurance company, not less than~~
14 ~~\$250,000, in the case of a pure captive insurance company;~~ *and*

15 (2) ~~in the case of an association captive insurance company~~
16 ~~incorporated as a stock insurer, not less than \$500,000, in the case of an~~
17 ~~association captive insurance company incorporated as a stock insurer;~~
18 *and*

19 (3) *\$100,000, in the case of a protected cell captive insurance*
20 *company.*

21 (b) Such capital may be in the form of cash or, upon approval of the
22 commissioner, an irrevocable letter of credit issued by a bank chartered by
23 the state of Kansas or the United States comptroller of currency, domiciled
24 in Kansas, and approved by the commissioner.

25 (c) In connection with the issuance of a certificate of authority, the
26 commissioner may prescribe additional minimum capital and surplus
27 based upon the type, volume and nature of the insurance business
28 transacted.

29 (d) Loans of minimum capital and surplus funds shall be prohibited.
30 Notwithstanding the foregoing, the minimum capital and surplus funds
31 may be received by the issuance of a surplus note as approved by the
32 commissioner.

33 (e) No pure captive insurance company shall make a loan or an
34 investment in its parent company or affiliates without prior written
35 approval of the commissioner, and any such loan or investment shall be
36 evidenced by documentation approved by the commissioner.

37 Sec. 13. K.S.A. 2024 Supp. 40-4308 is hereby amended to read as
38 follows: 40-4308. (a) Whenever the commissioner deems necessary, but at
39 least once every ~~three~~ *five* years, the commissioner may make, or direct to
40 be made, a financial examination of any captive insurance company in the
41 process of organization or applying for admission or doing business in
42 Kansas. The commissioner may engage in continuous analysis for the
43 preparation of the examination. In addition, at the commissioner's

1 discretion, the commissioner may make, or direct to be made, a market
2 regulation examination of any insurance company doing business in
3 Kansas.

4 (b) In scheduling and determining the nature, scope and frequency of
5 examinations of financial condition, the commissioner shall consider such
6 matters as the results of financial statement analyses and ratios, changes in
7 management or ownership, actuarial opinions, reports of independent
8 certified public accountants and other criteria as set forth in the examiner's
9 handbook adopted by the national association of insurance commissioners
10 in effect when the commissioner exercises discretion under this subsection.

11 (c) The commissioner shall have free access to the books and papers
12 of any such company that relate to its business and to the books and papers
13 kept by any of its agents and may examine under oath, which the
14 commissioner shall be empowered to administer, the directors, officers,
15 agents or employees of any such company in relation to its affairs,
16 transactions and condition.

17 (d) For the purpose of such analysis, the commissioner may require
18 reports and other documents be filed with the commissioner.

19 (e) The commissioner may also examine or investigate any person, or
20 the business of any person, insofar as such examination or investigation is,
21 in the sole discretion of the commissioner, necessary or material to the
22 examination of the company, but such examination or investigation shall
23 not infringe upon or extend to any communications or information
24 accorded privileged or confidential status under any other laws of this
25 state.

26 (f) Upon determining that an examination should be conducted, the
27 commissioner or the commissioner's designee shall appoint one or more
28 examiners to perform the examination and instruct such examiners as to
29 the scope of the examination. The commissioner may also employ such
30 other guidelines or procedures as the commissioner may deem appropriate.

31 (g) When making an examination under this act, the commissioner
32 may retain attorneys, appraisers, independent actuaries, independent
33 certified public accountants or other professionals and specialists as
34 examiners, the reasonable cost of which shall be paid by the company that
35 is the subject of the examination.

36 (h) (1) Not later than 30 days following completion of the
37 examination or at such earlier time as the commissioner shall prescribe,
38 the examiner in charge shall file with the department a verified written
39 report of examination under oath. Not later than 30 days following receipt
40 of the verified report, the department shall transmit the report to the
41 company examined, together with a notice that shall afford such company
42 examined a reasonable opportunity of not more than 30 days to make a
43 written submission or rebuttal with respect to any matters contained in the

1 examination report.

2 (2) Within 30 days of the end of the period allowed for the receipt of
3 written submissions or rebuttals, the commissioner shall fully consider and
4 review the report, together with any written submissions or rebuttals and
5 any relevant portions of the examiners' workpapers, and enter an order:

6 (A) Adopting the examination report as filed or with modification or
7 corrections. If the examination report reveals that the company is operating
8 in violation of any law, rule and regulation or prior order of the
9 commissioner, the commissioner may order the company to take any
10 action the commissioner considers necessary and appropriate to cure such
11 violations;

12 (B) rejecting the examination report with directions to the examiners
13 to reopen the examination for purposes of obtaining additional data,
14 documentation or information; or

15 (C) call for and conduct a fact-finding hearing in accordance with
16 K.S.A. 40-281, and amendments thereto, for purposes of obtaining
17 additional documentation, data, information and testimony.

18 (3) All orders entered as a result of revelations contained in the final
19 examination report shall be accompanied by findings and conclusions
20 resulting from the commissioner's consideration and review of the
21 examination report, relevant examiner work papers and any written
22 submissions or rebuttals. Within 30 days of the issuance of the adopted
23 report, the company shall file affidavits executed by each of its directors
24 stating under oath that they have received a copy of the adopted report and
25 related orders.

26 (4) Upon the adoption of the examination report of an association
27 captive insurance company, the commissioner shall hold the content of the
28 examination report as private and confidential as to the pure captive
29 insurance company. Nothing contained in this act shall be construed to
30 limit the commissioner's authority to use and, if appropriate, to make
31 public any final or preliminary examination report in the furtherance of
32 any legal or regulatory action that the commissioner may, in the
33 commissioner's discretion, deem appropriate.

34 (i) Nothing contained in this act shall be construed to limit the
35 commissioner's authority to terminate or suspend any examination in order
36 to pursue other legal or regulatory action pursuant to the insurance laws of
37 this state.

38 (j) All examination reports, preliminary examination reports or
39 results, working papers, recorded information, documents and copies
40 thereof produced by, obtained by or disclosed to the commissioner or any
41 other person in the course of an examination made under this section are
42 confidential and are not subject to subpoena and may not be made public
43 by the commissioner or an employee or agent of the commissioner without

1 the written consent of the company, except to the extent provided in this
2 subsection. Nothing in this subsection shall prevent the commissioner
3 from using such information in furtherance of the commissioner's
4 regulatory authority under this act. The commissioner may grant access to
5 such information to public officers having jurisdiction over the regulation
6 of insurance in any other state or country or to law enforcement officers of
7 Kansas or any other state or agency of the federal government at any time.
8 Access may also be granted to the national association of insurance
9 commissioners and its affiliates and the international association of
10 insurance supervisors and its affiliates. Persons receiving such information
11 must agree in writing prior to receiving the information to provide to it the
12 same confidential treatment as required by this section, unless the prior
13 written consent of the company to which it pertains has been obtained.

14 (k) The commissioner may receive documents, materials or
15 information, including otherwise confidential and privileged documents,
16 materials or information, from the national association of insurance
17 commissioners, and its affiliates and subsidiaries, and from regulatory and
18 law enforcement officials of other foreign or domestic jurisdictions and
19 shall maintain as confidential or privileged any document, material or
20 information received with notice or the understanding that it is confidential
21 or privileged under the laws of the jurisdiction that is the source of the
22 document, material or information. Documents received pursuant to this
23 section shall not be subject to disclosure pursuant to the open records act,
24 K.S.A. 45-215 et seq., and amendments thereto.

25 Sec. 14. K.S.A. 40-4312 is hereby amended to read as follows: 40-
26 4312. No captive insurance company shall be required to join a rating
27 organization *or a policy form organization*.

28 Sec. 15. K.S.A. 40-4314 is hereby amended to read as follows: 40-
29 4314. (a) Each captive insurance company shall, at the time it files the
30 report required by K.S.A. 40-4307, and amendments thereto, pay a tax on
31 all premiums received on risks located in this state.

32 (b) Each captive insurance company shall pay the commissioner a tax
33 at the rate of $\frac{2}{10}$ of 1% on each dollar of direct premiums collected or
34 contracted for, during the year ending December 31 next preceding, on
35 policies or contracts of insurance written by the captive insurance
36 company, after deducting from the direct premiums subject to the tax
37 amounts paid to policyholders as return premiums with respect to such
38 preceding year only, which amounts shall include only dividends or
39 distributions of unabsorbed premiums or premium deposits returned or
40 credited to policyholders, up to a maximum tax for such year of \$500,000,
41 except that no tax shall be due or payable as a consideration received for
42 annuity contracts.

43 (c) Each captive insurance company shall pay to the commissioner no

1 later than March 1 of each year a tax at the rate of $\frac{1}{10}$ of 1% on each dollar
2 assumed reinsurance premiums collected or contracted for, during the year
3 end December 31 next preceding, on policies or contracts of insurance
4 written by the captive insurance company, up to a maximum tax for such
5 year of \$300,000. However, no such tax applies to premiums for risks or
6 portion of risks that are subject to taxation on a direct basis pursuant to
7 subsection (b), and no such tax shall be payable in connection with the
8 receipt of assets in exchange for the assumption of loss reserves and other
9 liabilities of another insurer under common ownership and control if such
10 transaction is part of a plan to discontinue the operations of such other
11 insurer and if the intent of the company by the state or any county, city or
12 municipality within Kansas, except ad valorem taxes on real and personal
13 property used in the production of income.

14 (d) The tax provided in this section shall be calculated on an annual
15 basis, notwithstanding that policies or contracts of insurance or contracts
16 of reinsurance are issued on a multi-year basis. In the case of multi-year
17 policies or contracts, the premium shall be prorated for purposes of
18 determining the tax under this section.

19 (e) *The tax provided for in this section shall constitute all taxes*
20 *collectible under the laws of the state of Kansas from any captive*
21 *insurance company, and no other occupation tax or any other tax shall be*
22 *levied or collected from any captive insurance company by the state or*
23 *any political subdivision thereof.*

24 Sec. 16. K.S.A. 40-4304, 40-4312 and 40-4314 and K.S.A. 2024
25 Supp. 40-4302 and 40-4308 are hereby repealed.

26 Sec. 17. This act shall take effect and be in force from and after its
27 publication in the statute book.