

**HOUSE BILL No. 2334**

By Committee on Insurance

Requested by Representative Tarwater

2-7

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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

1 losses of each such participant to its pro rata share of the assets of one or  
2 more protected cells identified in such participant contract;

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

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

14 (g) "protected cell captive insurance company" means any captive  
15 insurance company:

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

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

19 (3) that insures the risks of separate participants through participant  
20 contracts; and

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

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

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

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

35 New Sec. 4. In addition to the information required by K.S.A. 40-  
36 4302, and amendments thereto, each applicant-protected cell captive  
37 insurance company shall file with the commissioner the following:

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

42 (b) a statement acknowledging that all financial records of the  
43 applicant, including records pertaining to any protected cells, shall be

1 made available for inspection or examination by the commissioner or the  
2 commissioner's designated agent;

3 (c) all contracts or sample contracts between the applicant and any  
4 participants; and

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

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

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

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

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

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

41 (5) an incorporated protected cell may be organized and operated in  
42 any form of business organization authorized by the commissioner,  
43 including, but not limited to, an individual series of a limited liability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 payments made by or due to be made to the protected cell captive  
2 insurance company pursuant to the terms of such agreement, shall reflect  
3 the insurance obligations, assets and liabilities relating to the reinsurance  
4 contract that are attributed to such protected cell.

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

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

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

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

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

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

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

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

43 (p) Notwithstanding this act or other laws of Kansas, and in addition

1 to article 36 of chapter 40 of the Kansas Statutes Annotated, and  
2 amendments thereto, in the event of an insolvency of a protected cell  
3 captive insurance company in which the commissioner determines that one  
4 or more protected cells remain solvent, the commissioner may separate  
5 such cells from the protected cell captive insurance company and may  
6 allow, on application of the protected cell captive insurance company, for  
7 the conversion of such protected cells into one or more new or existing  
8 protected cell captive insurance companies or one or more other captive  
9 insurance companies, pursuant to such plan of operation as the  
10 commissioner deems acceptable.

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

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

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

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

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

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

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

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

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

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

43 (c) Notwithstanding the provisions of the insurers supervision,

1 rehabilitation and liquidation act:

2 (1) No assets of a protected cell shall be used to pay any expenses or  
3 claims other than those attributable to such protected cell; and

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

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

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

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

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

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

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

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

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



1 conversion, the formation date of the series shall be deemed as the  
2 formation date of the new entity. The new entity shall possess all assets  
3 and liabilities, including outstanding insurance liabilities, owned by the  
4 predecessor series;

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

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

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

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

36 (1) ~~No~~A pure captive insurance company shall *not* insure any risks  
37 other than those of its parent and affiliated companies ~~and, upon prior~~  
38 ~~approval of the commissioner, any controlled unaffiliated business up to~~  
39 ~~5% of total direct written premium or combination thereof;~~

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

1 paid-up capital and surplus;

2 (3) no captive insurance company shall provide personal lines of  
3 insurance, ~~workers' compensation~~, employers' liability insurance coverage,  
4 long-term care coverage, critical care coverage, surety, title insurance,  
5 credit insurance or any component thereof, except that a technology-  
6 enabled fiduciary financial institution insurance company shall be  
7 permitted to provide contracts of suretyship and credit insurance in  
8 accordance with K.S.A. 2024 Supp. 40-4354, and amendments thereto;

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

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

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

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

26 ~~(6)~~(8) no captive insurance company authorized as a life insurance  
27 company shall transact business other than life insurance; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 *(d) Notwithstanding any other provision of this act, the commissioner*  
42 *may issue a provisional certificate of authority to any applicant captive*  
43 *insurance company if the commissioner deems that the public interest will*

1 *be served by the issuance of such a provisional certificate.*

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

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

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

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

27 ~~(e)~~(f) Each captive insurance company ~~already in existence on~~  
28 ~~January 1, 2018,~~ shall pay an annual renewal fee of \$110 until January 1,  
29 2028, after which date, the provisions of subsection ~~(d)~~ (e) shall apply.

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

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

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

42 ~~(g)~~(h) Information submitted under this section shall be and remain  
43 confidential; and shall not be made public by the commissioner or any

1 employee or agent of the commissioner without the written consent of the  
2 company, except that:

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

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

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

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

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

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

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

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

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

42 (4) the privacy of those who have established an affiliated fidfin trust  
43 or alternative asset custody account shall be protected in any court

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

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

15 (1) ~~In the case of a pure captive insurance company, not less than~~  
16 *\$250,000, in the case of a pure captive insurance company; and*

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

21 (3) *\$100,000, in the case of a protected cell captive insurance*  
22 *company.*

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

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

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

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

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

1 Kansas. The commissioner may engage in continuous analysis for the  
2 preparation of the examination. In addition, at the commissioner's  
3 discretion, the commissioner may make, or direct to be made, a market  
4 regulation examination of any insurance company doing business in  
5 Kansas.

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

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

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

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

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

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

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

1 examined a reasonable opportunity of not more than 30 days to make a  
2 written submission or rebuttal with respect to any matters contained in the  
3 examination report.

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

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

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

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

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

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

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

40 (j) All examination reports, preliminary examination reports or  
41 results, working papers, recorded information, documents and copies  
42 thereof produced by, obtained by or disclosed to the commissioner or any  
43 other person in the course of an examination made under this section are



1 confidential and are not subject to subpoena and may not be made public  
2 by the commissioner or an employee or agent of the commissioner without  
3 the written consent of the company, except to the extent provided in this  
4 subsection. Nothing in this subsection shall prevent the commissioner  
5 from using such information in furtherance of the commissioner's  
6 regulatory authority under this act. The commissioner may grant access to  
7 such information to public officers having jurisdiction over the regulation  
8 of insurance in any other state or country or to law enforcement officers of  
9 Kansas or any other state or agency of the federal government at any time.  
10 Access may also be granted to the national association of insurance  
11 commissioners and its affiliates and the international association of  
12 insurance supervisors and its affiliates. Persons receiving such information  
13 must agree in writing prior to receiving the information to provide to it the  
14 same confidential treatment as required by this section, unless the prior  
15 written consent of the company to which it pertains has been obtained.

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

27 Sec. 14. K.S.A. 40-4312 is hereby amended to read as follows: 40-  
28 4312. No captive insurance company shall be required to join a rating  
29 organization *or a policy form organization*.

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

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

1 annuity contracts.

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

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

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

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

28 Sec. 17. This act shall take effect and be in force from and after its  
29 publication in the ~~statute book~~ **Kansas register**.