

SESSION OF 2025

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2334**

As Amended by House Committee on Insurance

**Brief\***

HB 2334, as amended, would establish the Protected Cell Captive Insurance Company Act and amend the Captive Insurance Act.

***Protected Cell Captive Insurance Company Formation;  
Definitions (New Sections 2-3)***

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

The Act would define various terms, including the following:

- “Protected cell” means a a separate account that is established by a company formed or licensed pursuant to this Act and in which an identified pool of assets and liabilities are segregated and insulated by means of this Act from the remainder of the company’s assets and liabilities in accordance with the terms of one or more participant contracts to fund the liability of the company with respect to the participants as set forth in the participant contracts;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <https://klrd.gov/>

- “Protected cell captive insurance company” means any captive insurance company:
  - In which the minimum capital and surplus required by the chapter are provided by one or more sponsors;
  - Formed or licensed under this Act;
  - Insures the risks of separate participants through participant contracts; and
  - Funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the company’s general account; and
- “Sponsor” means any person or entity that is approved by the Insurance Commissioner (Commissioner) to provide all or part of the capital and surplus required by this Act and organize and operate a company.

***Application Process (New Section 4)***

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

- Materials that demonstrate how each applicant will account for loss and expenses at each level with detail found to be sufficient by the Commissioner and the reporting process;
- A statement regarding the availability of financial records of the applicant, including records pertaining to any protected cells, for inspection or examination by the Commissioner or their designated agent;

- All contracts or sample contracts between the applicant and any participants; and
- Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

***Establishment and Maintenance of Protected Cells (New Section 5)***

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

- A company could establish one or more protected cells if the Commissioner has approved in writing a plan of operation (plan) or amendments to a plan submitted by the company with respect to each protected cell. A plan includes, but is not limited to, the specific business objectives and investment guidelines of the protected cell, except that the Commissioner may require additional information in the plan. The Commissioner may put into effect a plan or amendments to a plan on or before the date that the approval is signed if the effective date is not earlier than the date that the plan or amendments to the plan were filed with the Department of Insurance (Department);
- Upon the Commissioner's written approval of the plan, the company, in accordance with the approved plan, may attribute insurance obligations with respect to its insurance business to the protected cell;
- A protected cell would have its own distinct name or designation that would include the words "protected cell" or "incorporated cell." An incorporated cell formed as a series of a limited

liability company would bear a distinct name or designation as reflected in its formation documents and include the words "series cell." Such names or designations could also be reasonably abbreviated.

- The company would transfer all assets attributable to a protected cell to one or more separately established and identified named accounts for the protected cell. Protected cell assets would be held in the named accounts for the purpose of satisfying the obligations of such protected cell;
- An incorporated protected cell could be organized and operated in any form of business organization authorized by the Commissioner, including, but not limited to, an individual series of a limited liability company as permitted under the Kansas Revised Limited Liability Company Act. Each incorporated protected cell of a protected cell captive insurer (insurer) would be treated as a captive insurer under this Act and would have the power to enter into contracts, including an individual series of a limited liability company. Unless otherwise permitted by the organizational documents of a insurer, each incorporated protected cell of the insurer would have the same directors, secretary, and registered office as the insurer; and
- All attributions of assets and liabilities between a protected cell and the general account would be in accordance with the plan and participant contracts approved by the Commissioner. No other attribution of assets or liabilities would be made by a company between the company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell would be required to be in cash or in readily marketable securities with established market values.

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

#### *Investment Management*

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

The Act would allow the combination of the assets of two or more protected cells for the purposes of investment and such combination would not be construed as defeating the segregation of such assets for accounting or other purposes (New Section 7).

#### *Administrative and Accounting Procedure Requirements*

The Act would require that the company have administrative and accounting procedures in place that would properly identify each protected cell's assets and liabilities while keeping them separate and separately identifiable from the company's general accounts and attributable to one protected cell that is also separately identifiable from any other protected cell's assets and liabilities. The Act would require that the remedy of tracing be available in the event of any commingling but would not be the exclusive remedy.

The Act would require the valuing of assets and liabilities of each protected cell, identify that liabilities could not be charged to the protected cell from other company business,

nor that the sale, exchange, or transfer of assets could occur without the consent of affected protected cells.

The Commissioner would be allowed to approve the use of alternative reliable methods of valuation and rating (New Section 7).

The Commissioner would be required to approve the sale, exchange, transfer of assets, dividend, or distribution from one protected cell to another protected cell. The Commissioner would not be prohibited from any approval if it would result in an insolvency or impairment to a protected cell.

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

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

#### *Reinsurance Contract*

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

### *Conservation, Rehabilitation, and Liquidation of a Company*

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

### *Annual Reporting*

The Act would require annual filings with the Commissioner of such financial reports as required by the Commissioner.

### *Insolvency Notice*

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

### *Changes within Protected Cell*

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

### *Business Written by the Company*

The Act would allow each company for each protected cell to write business that would meet the following conditions:

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

#### *Separation of Protected Cells due to Company's Insolvency*

The Act would provide a methodology for the Commissioner to separate solvent protected cells from a insolvent company pursuant to an acceptable plan of operation.



### *Unincorporated and Incorporated Protected Cells*

The Act would permit the companies formed or licensed under the Act to establish and operate both incorporated and unincorporated protected cells. The Act would require biographical affidavits for owners of incorporated cells, including series members of a series LLC.

### ***Participants in a Company (New Section 6)***

The Act would allow a sponsor to be a participant in a company as well as associations, corporations, limited liability companies, partnerships, trusts, and other business entities.

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

### ***Application of Insurers Supervision, Rehabilitation, and Liquidation Act (New Section 8)***

The Act would clarify that the Insurers Supervision, Rehabilitation and Liquidation Act would be applicable to a company and provides the methodology for how it would be utilized under the Act.

### ***Legal Action (New Section 9)***

The Act would provide the methodology for bringing legal action against a company and provide for dismissal, discovery, standing to appear, and other appropriate relief in legal actions.

***Captive Insurance Company Conversion (New Section 10)***

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

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

- For a series of a limited liability company: Organizational documents filed with the Secretary of State (SOS) that are in compliance with Kansas law and include the date of formation as a series. Any new entity would possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor;
- Any other incorporated protected cell entity: Amended organizational documents filed with the SOS that are in compliance with Kansas Law; or
- Other entities would file organization documents with the SOS that are in compliance with Kansas Law or any other applicable provision governing formation of that type of entity and would need to include the date of formation of the new entity. The new entity would possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor.

***Revised Certificate of Authority***

The Act would permit a captive insurance company to apply to the Commissioner to become a company. Upon

approval by the Commissioner and the filing of amended organizational documents with the SOS, the captive insurance company would be issued a revised certificate of authority. The effective date of the revised certificate of authority would remain the same as the effective date of the prior captive insurance company.

***Amendments to the Captive Insurance Company Act  
(Sections 11–15)***

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

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

The bill would also add the following exceptions:

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

of the State of Kansas or any other state having jurisdiction over the transaction.

***Provisional Certificate of Authority (Section 11)***

The bill would amend the CIC Act to permit the Commissioner to issue a provisional certificate of authority to any applicant CIC if the Commissioner deems that the public interest will be served by the issuance of the provisional certificate.

Before issuing the provisional certificate, the applicant would have to have filed a completed application and paid all necessary fees. The Commissioner would also have made a preliminary finding of acceptability regarding the expertise, experience, and character of the person who would control and manage the applicant captive.

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

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

***Application and Renewal Fees (Section 11)***

Each CIC would pay a nonrefundable fee of up to \$2,500 to the Commissioner for each application. There would also be an annual renewal fee of up to \$2,500 payable to the Commissioner.

***Unimpaired Paid-In Capital and Surplus Requirements  
(Section 12)***

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

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

***Frequency of Examinations (Section 13)***

The bill would amend the CIC Act to require the Commissioner to make or direct to be made at least every five years a financial examination of any CIC in the process of organization or applying for admission or doing business in Kansas.

***o Requirement to Join a Policy Form Organization  
(Section 14)***

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

***Taxation of CIC (Section 15)***

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

## **Background**

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

### ***House Committee on Insurance***

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

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

No other testimony was provided.

The House Committee amended the bill to make the fee a ceiling amount for the Commissioner.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Insurance Department (Department) states that the bill has the potential to increase or decrease revenues to its fee funds starting in FY 2026. The reduction to the captive application and renewal fees could reduce revenues into its Captive Insurance Regulation and Supervision Fund. However, the fee reduction and other changes in the bill could result in additional CICs being licensed, thus increasing revenues from application and renewal fees. If there are additional CICs as a result of the enactment of the bill, then there would also be an increase in premium taxes collected and deposited

into the State General Fund (SGF). However, the Department cannot estimate the fiscal effect of the bill.

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

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

Insurance; Protected Cell Captive Insurance Company Act; Captive Insurance Act