

As Amended by House Committee

As Amended by Senate Committee

Session of 2018

SENATE BILL No. 410

By Committee on Financial Institutions and Insurance

2-8

1 AN ACT concerning insurance; relating to captive insurance companies;
2 providing for association captive insurance companies, branch captive
3 insurance companies and special purpose insurance captives; rules and
4 regulations; amending K.S.A. 40-4301, 40-4302, 40-4303, 40-4304,
5 40-4306, 40-4307, 40-4308, 40-4309, 40-4310, 40-4311, 40-4313, 40-
6 4314, 40-4317 and 40-4318 and repealing the existing sections; also
7 repealing K.S.A. 40-4305 *and 40-4316*.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 New Section 1. K.S.A. 40-4301 through 40-4304, 40-4306 through
11 **40-4315, 40-4317 and** 40-4318 and sections 1 through 35, and
12 amendments thereto, shall be known and may be cited as the captive
13 insurance act.

14 New Sec. 2. The commissioner may adopt rules and regulations
15 establishing standards to ensure that a pure captive insurance company's
16 parent or any of its affiliated companies is able to exercise control of the
17 risk management function of any controlled unaffiliated business to be
18 insured by the pure captive insurance company, except that, until such time
19 as rules and regulations under this section are adopted, the commissioner
20 may approve the coverage of such risks by a pure captive insurance
21 company on a case-by-case basis.

22 New Sec. 3. The following actions shall not be taken without the
23 prior approval of the commissioner:

- 24 (a) The dissolution of a captive insurance company;
25 (b) the sale, exchange, lease, mortgage, assignment, pledge or other
26 transfer of or granting of a security interest in all or substantially all of the
27 assets of a captive insurance company;
28 (c) the making of a loan, investment or extension of credit by a
29 captive insurance company, provided each such transaction is equal to or
30 exceeds 3% of the captive insurance company's admitted assets, except as
31 provided in K.S.A. 40-430, and amendments thereto;
32 (d) any distribution or dividend out of the capital and surplus, or
33 otherwise;
34 (e) any merger or consolidation to which a captive insurance

1 company is a party;

2 (f) any conversion of a captive insurance company to another
3 business form;

4 (g) any transfer to or domestication in any jurisdiction by a captive
5 insurance company; or

6 (h) any amendment of the organizational documents of a captive
7 insurance company.

8 New Sec. 4. (a) Unless otherwise approved by the commissioner, a
9 captive insurance company shall maintain its books, records, documents,
10 accounts, vouchers and agreements in Kansas. Notwithstanding the
11 foregoing, all electronic documents shall be accessible within the state. A
12 captive insurance company shall make its books, records, documents,
13 accounts, vouchers and agreements available for inspection by the
14 commissioner at any time. A captive insurance company shall keep its
15 books, records, documents, accounts, vouchers and agreements in such
16 manner that its financial condition, affairs and operations can be readily
17 ascertained and in such manner that the commissioner may readily verify
18 its financial statements and determine its compliance with all relevant
19 statutes.

20 (b) Unless otherwise approved by the commissioner, all original
21 books, records, documents, accounts, vouchers and agreements of a
22 captive insurance company must be preserved and kept available in
23 Kansas for the purpose of examination and inspection until the
24 commissioner approves their destruction or other disposition. If the
25 commissioner approves the preservation and keeping of the foregoing
26 outside of Kansas, the captive insurance company shall maintain a
27 complete and true copy of each such original within the state. Books,
28 records, documents, accounts, vouchers and agreements may be
29 photographed, reproduced on film or stored and reproduced electronically.

30 (c) If any company, by its officers, directors, employees or agents,
31 fails to comply with subsections (a) and (b), the commissioner, after notice
32 and opportunity for hearing, may impose a civil penalty of up to \$5,000 for
33 each violation or act, along with a penalty of up to \$1,000 for each week
34 thereafter that such report or document is not provided. A violation of
35 subsection (a) or (b) shall also be grounds for suspension or refusal of, or
36 nonrenewal of, the certificate of authority held by the captive insurance
37 company. Any proceeding for suspension, revocation or refusal of any
38 certificate of authority shall be conducted in accordance with the
39 provisions of the Kansas administrative procedure act.

40 New Sec. 5. There is hereby created a fund in the state treasury to be
41 known as the captive insurance regulatory and supervision fund to be
42 administered by the commissioner. All moneys credited to such fund shall
43 be expended only for the purpose of providing for the administration of

1 this act. All fees received by the commissioner under the captive insurance
2 act shall be remitted to the state treasurer in accordance with the
3 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
4 each such remittance, the state treasurer shall deposit the entire amount in
5 the state treasury to the credit of the captive insurance regulatory and
6 supervision fund. All expenditures from the fund shall be made in
7 accordance with appropriation acts upon warrants of the director of
8 accounts and reports issued pursuant to vouchers approved by the
9 commissioner. All amounts received by the department pursuant to this act
10 shall be credited to this fund.

11 New Sec. 6. (a) As used in this section, unless the context requires
12 otherwise, "dormant captive insurance company" means a captive
13 insurance company that has:

14 (1) Ceased transacting the business of insurance, including the
15 issuance of insurance policies; and

16 (2) no remaining liabilities associated with insurance business
17 transactions or insurance policies issued prior to the filing of its
18 application for a certificate of dormancy under this section.

19 (b) A captive insurance company domiciled in Kansas that meets the
20 criteria of subsection (a) may apply to the commissioner for a certificate of
21 dormancy. The certificate of dormancy shall be subject to renewal every
22 five years and shall be forfeited if not renewed within such time.

23 (c) A dormant captive insurance company that has been issued a
24 certificate of dormancy shall:

25 (1) Possess and thereafter maintain unimpaired, paid-in capital and
26 surplus of not less than \$25,000;

27 (2) prior to March 15 of each year, submit to the commissioner a
28 report of its financial condition, verified by oath by two of its executive
29 officers, in a form as may be prescribed by the commissioner; and

30 (3) pay a license renewal fee of \$500.

31 (d) A dormant captive insurance company shall not be subject to or
32 liable for the payment of any tax under K.S.A. 40-4314, and amendments
33 thereto, or as provided in article 28 of chapter 40 of the Kansas Statutes
34 Annotated, and amendments thereto.

35 (e) A dormant captive insurance company shall apply to the
36 commissioner for approval to surrender its certificate of dormancy and
37 resume conducting the business of insurance prior to issuing any insurance
38 policies.

39 (f) A certificate of dormancy shall be revoked if a dormant captive
40 insurance company no longer meets the criteria of subsection (a).

41 (g) The commissioner may promulgate rules and regulations as
42 necessary to carry out the provisions of this section.

43 New Sec. 7. The captive insurance company shall notify the

1 commissioner in writing within 10 days of any material change in the
2 financial condition or management of the captive insurance company. The
3 commissioner shall designate material changes through rules and
4 regulations.

5 New Sec. 8. (a) A branch captive insurance company, as defined in
6 section 9, and amendments thereto, may be established in Kansas in
7 accordance with the provisions of the captive insurance act. In addition to
8 the general provisions of chapter 40 of the Kansas Statutes Annotated, and
9 amendments thereto, the provisions of the captive insurance act shall apply
10 to branch captive insurance companies. In the event of conflict between
11 the provisions of chapter 40 of the Kansas Statutes Annotated, and
12 amendments thereto, and the provisions of the captive insurance act, the
13 latter shall control.

14 (b) No branch captive insurance company shall do any insurance
15 business in Kansas unless it maintains the principal place of business for
16 its branch operations, as defined in section 9, and amendments thereto, in
17 Kansas and it appoints a principal representative in Kansas who is a
18 resident of Kansas.

19 New Sec. 9. As used in sections 8 through 14, and amendments
20 thereto:

21 (a) "Alien" means formed under the laws of any country or
22 jurisdiction other than the United States of America or any of its states,
23 districts, commonwealths or possessions.

24 (b) "Alien captive insurance company" means any insurance
25 company formed to write insurance business of a nature that the
26 commissioner determines is otherwise permissible under this act and is
27 licensed or authorized pursuant to the laws of an alien jurisdiction that
28 imposes statutory or regulatory standards in a form acceptable to the
29 commissioner on companies transacting business of insurance in such
30 jurisdiction.

31 (c) "Branch business" means any insurance business transacted by a
32 branch captive insurance company in Kansas.

33 (d) "Branch captive insurance company" means any alien captive
34 insurance company that has been issued a certificate of authority by the
35 commissioner to transact the business of insurance in Kansas through a
36 business unit with a principal place of business in Kansas, and has not
37 otherwise been issued a certificate of authority by the commissioner to
38 transact insurance under this act.

39 (5) "Branch operations" means any business operations of a branch
40 captive insurance company in Kansas.

41 (6) "Principal representative" shall mean a person designated as such
42 by the branch captive insurance company as its principal representative on
43 such forms and with such information as required by the commissioner.

1 New Sec. 10. (a) No branch captive insurance company shall be
2 issued a certificate of authority unless it shall possess and thereafter
3 maintain, as security for the payment of liabilities attributable to the
4 branch operations:

5 (1) Minimum capital and surplus of an amount equal to the amount
6 set forth in K.S.A. 40-4304, and amendments thereto, as the minimum
7 capital requirement for a pure captive insurance company; and

8 (2) reserves on such insurance policies or such reinsurance contracts
9 as may be issued or assumed by the branch captive insurance company
10 through its branch operations, including reserves for losses, allocated loss
11 adjustment expenses, incurred but not reported losses, and unearned
12 premiums with regard to business written through the branch operations,
13 except that, the commissioner may permit a branch captive insurance
14 company to credit against any such reserve requirement in accordance
15 with K.S.A. 40-221a, and amendments thereto.

16 (b) Subject to the prior approval of the commissioner, the amounts
17 required in subsection (a) may be held in the form of:

18 (1) A trust formed under a trust agreement and funded by assets
19 acceptable to the commissioner;

20 (2) an irrevocable letter of credit issued or confirmed by a bank
21 approved by the commissioner; or

22 (3) any combination thereof.

23 (c) The commissioner may, on a case-by-case basis, exempt a branch
24 captive insurance company from any or all of the requirements of this
25 section, provided the commissioner finds satisfactory evidence of the
26 branch captive insurer's financial stability.

27 New Sec. 11. (a) In the case of a captive insurance company
28 authorized as a branch captive, the branch captive insurance company shall
29 petition the commissioner to issue a certificate setting forth the
30 commissioner's finding that, after considering the character, reputation,
31 financial responsibility, insurance experience and business qualifications
32 of the officers and directors of the branch captive insurance company, the
33 licensing and maintenance of the branch operations will promote the
34 general good of Kansas. The branch captive insurance company may
35 register to do business in Kansas after the commissioner's certificate is
36 issued.

37 (b) In making this determination, the commissioner or the
38 commissioner's designee shall have free access to the books and papers of
39 any such company that relate to its business and to the books and papers
40 kept by any of its agents and may examine under oath, which the
41 commissioner is empowered to administer, the directors, officers, agents or
42 employees of any such company in relation to its affairs, transactions and
43 condition.

1 New Sec. 12. (a) A branch captive insurance company shall file with
2 the commissioner a copy of all reports and statements required to be filed
3 under the laws of the jurisdiction in which the alien captive insurance
4 company is formed, verified by oath of two of its executive officers. Such
5 reports and statements shall be filed with the commissioner on the same
6 day that such reports and statements are due in the domiciliary jurisdiction
7 of the alien captive insurance company.

8 (b) If the commissioner is satisfied that the annual report filed in
9 accordance with subsection (a) provides adequate information concerning
10 the financial condition of the branch captive insurance company, the
11 commissioner may waive the requirement for completion of the annual
12 report required under K.S.A. ~~40-4315~~ **40-4307**, and amendments thereto.
13 If the commissioner is not satisfied with the reports and statements filed
14 pursuant to subsection (a), a report that meets the requirements of K.S.A.
15 ~~40-4315~~ **40-4307**, and amendments thereto, shall be filed with the
16 commissioner at such date as the commissioner shall establish.

17 (c) If the branch captive insurance company is not required to file
18 reports or statements in its domiciliary jurisdiction, the requirements of
19 K.S.A. ~~40-4315~~ **40-4307**, and amendments thereto, shall apply.

20 (d) All reports shall be provided the same confidential treatment as
21 provided in K.S.A. ~~40-4316~~ **40-4308**, and amendments thereto.

22 New Sec. 13. (a) The examination of a branch captive insurance
23 company pursuant to K.S.A. ~~40-4316~~ **40-4308**, and amendments thereto,
24 shall be of branch business and branch operations only, so long as the
25 branch captive insurance company provides annually to the commissioner
26 a certificate of compliance, or its equivalent, issued by or filed with the
27 licensing authority of the domiciliary jurisdiction of the branch captive
28 insurance company, and demonstrates to the commissioner's satisfaction
29 that it is operating in sound financial condition in accordance with all
30 applicable laws and regulations of such jurisdiction.

31 (b) As a condition of the issuance of a certificate of authority under
32 this act, a branch captive insurance company shall grant authority to the
33 commissioner for examination of the affairs of a branch captive insurance
34 company in the jurisdiction in which the branch captive insurance
35 company is formed, operates or maintains books and records.

36 (c) All reports shall be given the same confidential treatment as
37 provided in K.S.A. ~~40-4316~~ **40-4308**, and amendments thereto.

38 New Sec. 14. In the case of a branch captive insurance company, the
39 tax provided for in K.S.A. ~~40-4319~~ **40-4314**, and amendments thereto, shall
40 apply only to the branch business of such company.

41 New Sec. 15. As used in sections 15 through 35, and amendments
42 thereto:

43 (a) "Affiliate" means a company that controls, is controlled by or

1 under common control with a special purpose insurance captive.

2 (b) "Affiliated agreements" means written agreements, including a
3 special purpose insurance captive contract, between a special purpose
4 insurance captive and its affiliate.

5 (c) "Ceded reinsurance agreements" means reinsurance agreements
6 entered into by the special purpose insurance captive with affiliates or
7 unaffiliated parties for the purpose of obtaining reinsurance for all or some
8 portion of the risks assumed by the special purpose insurance captive
9 under special purpose insurance captive contracts.

10 (d) "Ceding company" means the insurer ceding business to the
11 special purpose insurance captive under the special purpose insurance
12 captive contract.

13 (e) "Commissioner" means the commissioner of insurance, or the
14 commissioner's designee.

15 (f) "Department" means the Kansas insurance department.

16 (g) "Letter of credit" means a letter issued by a qualified United
17 States financial institution to serve as a guarantee of payment. The letter of
18 credit shall be clean and irrevocable.

19 (h) "NAIC" means the national association of insurance
20 commissioners.

21 (i) "Organizational documents" means the special purpose insurance
22 captive's articles of organization, bylaws, operating agreement or other
23 foundational document that establishes the special purpose insurance
24 captive as a legal entity or prescribes its existence.

25 (j) "Permitted investments" means investments authorized by articles
26 2a and 2b of chapter 40 of the Kansas Statutes Annotated, and
27 amendments thereto, or as specifically authorized by the commissioner by
28 order.

29 (k) "Risk-based capital" or "RBC" has the same meaning the term is
30 defined in K.S.A. 40-2d01, and amendments thereto.

31 (l) **"Securitization" means a transaction or a group of related**
32 **transactions, which may include capital market offerings, that are**
33 **effected through related risk transfer instruments and facilitating**
34 **administrative agreements where all or part of the result of such**
35 **transactions is used to fund a special purpose insurance captive's**
36 **obligations under a reinsurance contract with a ceding insurer and by**
37 **which proceeds are: (1) Obtained by a special purpose insurance**
38 **captive, directly or indirectly, through the issuance of securities by the**
39 **special purpose insurance captive or any other person; or (2) provided**
40 **through one or more letters of credit or other assets for the benefit of**
41 **the special purpose insurance captive that the commissioner**
42 **authorizes to treat as admitted assets for purposes of the special**
43 **purpose insurance captive's annual statement, where all or any part of**

1 **such proceeds, letters of credit, or assets, as applicable, are used to**
2 **fund the special purpose insurance captive's obligations under a**
3 **reinsurance contract with a ceding insurer. The term "securitization"**
4 **does not include the issuance of a letter of credit for the benefit of the**
5 **commissioner to satisfy all or part of the special purpose insurance**
6 **captive's capital and surplus requirements under the captive**
7 **insurance act.**

8 (m) "Special purpose insurance captive" means a captive insurance
9 company that has received a certificate of authority from the commissioner
10 for the limited purposes provided for in section ~~16~~ 17, and amendments
11 thereto.

12 ~~(m)~~(n) "Special purpose insurance captive contract" means a written
13 contract between the special purpose insurance captive and the ceding
14 company under which the special purpose insurance captive agrees to
15 provide reinsurance protection to the ceding company for risks associated
16 with the ceding company's written or assumed annuity, life insurance or
17 accident and health insurance business.

18 ~~(n)~~(o) "State" means the state of Kansas.

19 ~~(o)~~(p) "Surplus note" means an unsecured subordinated debt
20 obligation, including any contingent obligation for the repayment of a sum
21 of money upon a written agreement that the loan or advance with interest
22 shall be repaid only out of funds as specified in the approved plan of
23 operation, or any approved amendment thereto.

24 ~~(p)~~(q) "Valuation manual" means the manual of valuation instructions
25 adopted by the NAIC.

26 New Sec. 16. (a) No provision of the Kansas insurance laws, other
27 than those specifically referenced in sections 15 through 35, and
28 amendments thereto, apply to a special purpose insurance captive, its
29 operations, assets, investments and special purpose insurance captive
30 contracts. Notwithstanding the foregoing, article 33 of chapter 40 of the
31 Kansas Statutes Annotated, and amendments thereto, shall continue to
32 apply as applicable.

33 (b) In the event of a conflict between any provision of chapter 40 of
34 the Kansas Statutes Annotated, and amendments thereto, and sections 15
35 through 35, and amendments thereto, the latter shall control as to the
36 special purpose insurance captive and its operations, assets, dividends,
37 special purpose insurance captive contracts, and surplus notes and
38 investments. The commissioner may exempt all, or any one, special
39 purpose insurance captive by rules and regulations or order from the
40 provisions of sections 15 through 35, and amendments thereto, that the
41 commissioner determines to be inappropriate, but may not expand the
42 application of these sections.

43 New Sec. 17. (a) To transact business in Kansas, a special purpose

1 insurance captive shall:

2 (1) Obtain from the commissioner a certificate of authority
3 authorizing it to conduct reinsurance business in Kansas;

4 (2) hold at least one meeting of its board of directors each year within
5 Kansas;

6 (3) maintain its principal place of business in Kansas;

7 (4) authorize the commissioner to accept service of process on its
8 behalf in accordance with K.S.A. 40-218, and amendments thereto;

9 (5) maintain unimpaired paid-in capital and surplus of not less than
10 \$5,000,000;

11 (6) maintain a risk-based capital of at least 200%; and

12 (7) pay all applicable fees as required by this act.

13 (b) A special purpose insurance captive, when permitted by its
14 organizational documents, may apply to the commissioner for a certificate
15 of authority to conduct reinsurance in Kansas as authorized by this section.

16 (1) An authorized special purpose insurance captive may only
17 reinsure the risks of its ceding company. A special purpose insurance
18 captive may reinsure risks of more than one ceding company, provided all
19 ceding companies from which a special purpose insurance captive assumes
20 risks shall be affiliated with one another.

21 (2) An authorized special purpose insurance captive may cede all or a
22 portion of its assumed risks under ceded reinsurance agreements.

23 (3) An authorized special purpose insurance captive may take credit
24 or a reduction from liability for the reinsurance of risks or portions of risks
25 ceded to a reinsurer in accordance with K.S.A. 40-221a, and amendments
26 thereto, or as otherwise approved by the commissioner.

27 (c) To obtain a certificate of authority to transact business as a special
28 purpose insurance captive in Kansas, the special purpose insurance captive
29 shall:

30 (1) File an application, which shall include the following:

31 (A) Certified copies of its organizational documents;

32 (B) a statement under oath from any of the applicant's officers as to
33 the financial condition of the applicant as of the time the application is
34 filed;

35 (C) evidence of the applicant's assets as of the time of the application;

36 (D) complete biographical sketches for each officer and director on
37 forms created by the NAIC;

38 (E) a plan of operation as described in section 18, and amendments
39 thereto;

40 (F) an affidavit signed by the applicant that the special purpose
41 insurance captive will operate only in accordance with the provisions of
42 this section and its plan of operation;

43 (G) a description of the investment strategy the special purpose

1 insurance captive will follow; and

2 (H) a description of the source and form of the initial minimum
3 capital proposed in the plan of operation; and

4 (2) have deposited with the commissioner of insurance pursuant to
5 K.S.A. 40-229a, and amendments thereto, securities authorized by K.S.A.
6 40-2a01 et seq., and amendments thereto, in an amount equal to not less
7 than the minimum capital stock required of such company for the
8 protection of its policyholders or creditors, or both;

9 (3) demonstrate that the minimum surplus required is established and
10 held in Kansas; and

11 (4) provide copies of any filings made by the ceding company with
12 the ceding company's domiciliary insurance regulator to obtain approval
13 for the ceding company to enter into the special purpose insurance captive
14 contract and copies of any filings made by any affiliate of the special
15 purpose insurance captive to obtain regulatory approval to contribute
16 capital to the special purpose insurance captive or to acquire direct or
17 indirect ownership of the special purpose insurance captive. The special
18 purpose insurance captive shall provide copies of any letters of approval or
19 disapproval received from the insurance regulator responding to such
20 filing.

21 (d) The commissioner may require the special purpose insurance
22 captive to revise its plan of operation under section 18, and amendments
23 thereto, and meet all requirements imposed by a revised plan of operation
24 as approved by the commissioner thereunder.

25 (e) The department shall act upon a complete application within 30
26 days of its filing. Upon good cause shown, the commissioner may extend
27 the time to act on the application by 30 days.

28 (f) In the event the ceding company is not required to make filings
29 with its domiciliary insurance regulator as described in subsection (c)(4),
30 no such filing shall be required under subsection (c)(4) in Kansas,
31 provided the applicant provides the commissioner with a certification
32 signed by one of its officers attesting that no such filing is required with
33 the ceding company's domiciliary regulator.

34 (g) Once granted, a certificate of authority under this section shall
35 continue until March 1 of each year. At such time, the certificate of
36 authority may be renewed at the discretion of the commissioner.

37 (h) A special purpose insurance captive shall pay to the commissioner
38 a nonrefundable application fee of \$10,000 for examining, investigating
39 and processing its application for certificate of authority, and the
40 commissioner is authorized to retain legal, financial, actuarial and
41 examination services from outside the department, the reasonable costs of
42 which may be additionally charged against the applicant. In addition, each
43 special purpose insurance captive shall pay a renewal fee for each year

1 thereafter of \$10,000.

2 New Sec. 18. (a) A special purpose insurance captive must file, as
3 part of its application, a plan of operation to consist of a description of the
4 contemplated financing transaction or transactions and a detailed
5 description of transaction documents to which the special purpose
6 insurance captive will be a party, including, but not limited to, the special
7 purpose insurance captive contract and related transactions to which the
8 special purpose insurance captive will be a party that must include:

9 (1) Draft documentation or, at the commissioner's discretion, a
10 written summary of all material agreements to which the special purpose
11 insurance captive is to be a party that are to be entered into to effectuate
12 the special purpose insurance captive contract and the financing
13 transaction;

14 (2) the purpose of the transaction;

15 (3) maximum amounts;

16 (4) interrelationships of the various transactions, to which the special
17 purpose insurance captive will be a party, required to effectuate the
18 financing;

19 (5) the investment strategy and plan for the special purpose insurance
20 captive;

21 (6) a description of the underwriting, reporting and claims payment
22 methods by which losses covered by the special purpose insurance captive
23 contract will be reported, accounted for and settled;

24 (7) the initial minimum capital to be held by the special purpose
25 insurance captive; and

26 (8) a pro forma balance sheet and income statements illustrating the
27 performance of the special purpose insurance captive, the special purpose
28 insurance captive contract, and any ceded reinsurance agreements under
29 scenarios reasonably requested by the commissioner or specified by rules
30 and regulations.

31 (b) The pro forma balance sheets and income statements filed under
32 this section must be updated by the special purpose insurance captive and
33 filed with the commissioner in the event of a material deviation from the
34 original or most recently filed plan of operation.

35 (1) The plan of operation must specify which deviations are to be
36 considered material; and

37 (2) any other documents or descriptions the commissioner deems
38 appropriate to explain such material deviation.

39 New Sec. 19. (a) In order to approve an application and issue a
40 certificate of authority to a special purpose insurance captive, the
41 commissioner must find that:

42 (1) The proposed plan of operation provides a reasonable and
43 expected successful operation;

1 (2) the terms of the transactions proposed in the plan of operation to
2 which the special purpose insurance captive is a party comply with
3 sections 15 through 35, and amendments thereto; and

4 (3) the commissioner of the domiciliary state of each ceding company
5 has notified the commissioner in writing or the applicant has otherwise
6 provided assurance satisfactory to the commissioner that such regulator
7 has either approved or granted a disapproval of the special purpose
8 insurance captive contract.

9 (b) In evaluating the expectation of a successful operation, the
10 commissioner shall consider whether the proposed special purpose
11 insurance captive and its management are of known good character and
12 reasonably believed not to be affiliated, directly or indirectly, with a
13 person known to have been involved with the improper manipulation of
14 assets, accounts or reinsurance. In the event the commissioner of the state
15 of domicile of any ceding company is not required to review the special
16 purpose insurance captive contract, then the approval described in
17 subsection (a)(3) shall not be required for licensing of the special purpose
18 insurance captive hereunder.

19 New Sec. 20. A special purpose insurance captive may be
20 incorporated as a stock insurer subject to the provisions in K.S.A. 40-205,
21 and amendments thereto, or as a nonstock corporation, or may be formed
22 as a limited liability company, partnership or limited partnership.

23 New Sec. 21. (a) Activities of a special purpose insurance captive
24 shall be limited to those necessary to accomplish its purpose as outlined in
25 its plan of operation.

26 (b) The name of a special purpose insurance captive shall not be
27 deceptively similar to or likely to be confused with another existing
28 business name registered in the state.

29 (c) A special purpose insurance captive must have at least three
30 incorporators or organizers, at least one of whom shall be a resident of the
31 state.

32 (d) The capital stock of a special purpose insurance captive
33 incorporated as a stock company shall be issued at not less than par value.

34 New Sec. 22. A special purpose insurance captive may enter into a
35 special purpose insurance captive contract with a ceding company,
36 provided:

37 (a) The special purpose insurance captive has been granted a
38 certificate of authority to transact business as a special purpose insurance
39 captive under this section; and

40 (b) the special purpose insurance captive provides the commissioner
41 with evidence of approval or disapproval from the insurance regulatory
42 official of the ceding company's state or country of domicile to enter into
43 the special purpose insurance captive contract. If the ceding company's

1 domiciliary insurance regulatory official does not customarily provide
2 evidence of such approval or disapproval, the commissioner shall approve
3 the special purpose insurance captive's execution of such special purpose
4 insurance captive contract, if such special purpose insurance captive
5 contract would be acceptable and if an assuming insurer domiciled in
6 Kansas were to propose execution of the same with its ceding company for
7 the purpose of assuming such reinsurance and an officer of the special
8 purpose insurance captive provides the commissioner with a certification
9 that terms of the special purpose insurance captive contract meet the
10 requirements for the ceding company to obtain credit in its state of
11 domicile for reinsurance ceded under the special purpose insurance captive
12 contract.

13 New Sec. 23. (a) A special purpose insurance captive may issue
14 approved securities, subject to and in accordance with applicable law, its
15 approved plan of operation and its organizational documents. A special
16 purpose insurance captive may enter into and perform all its obligations
17 under any required contract to facilitate the issuance of these securities.

18 (b) The commissioner may approve the use of surplus notes. If the
19 commissioner so approves, the special purpose insurance captive shall:

20 (1) Account for the proceeds of surplus notes as surplus and not debt
21 for purposes of statutory accounting; and

22 (2) submit for prior approval of the commissioner periodic written
23 requests for payments of interest on and repayments of principal of surplus
24 notes.

25 (c) The obligation to repay principal or interest, or both, on the
26 securities issued by the special purpose insurance captive shall reflect the
27 risk associated with the reinsurance obligations assumed by the special
28 purpose insurance captive.

29 New Sec. 24. A special purpose insurance captive's assets shall be
30 managed in accordance with an investment management agreement filed
31 with and approved by order of the commissioner. A special purpose
32 insurance captive shall ~~only~~ invest **at least 90% of** its assets in cash and
33 securities that are investment grade at the time of the acquisition. **The**
34 **balance may be invested in cash, securities or other assets otherwise**
35 **permitted in chapter 40 of the Kansas Statutes Annotated, and**
36 **amendments thereto.**

37 ~~New Sec. 25. A special purpose insurance captive may, if approved~~
38 ~~by the commissioner, recognize permitted investments, letters of credit, or~~
39 ~~both, as an admitted asset on its financial statements filed with the~~
40 ~~commissioner. Admitted assets of the special purpose insurance captive~~
41 **shall include permitted investments, proceeds from a securitization,**
42 **premium and other amounts payable by a ceding insurer to the special**
43 **purpose insurance captive, and any other assets approved by the**

1 commissioner. Additionally, letters of credit and guarantees of a
2 parent may be recognized as an admitted asset on the special purpose
3 insurance captive's financial statements with prior approval of the
4 commissioner. The commissioner may, by order, reduce the amount of
5 admitted assets previously approved if the commissioner determines
6 that the value of those assets has decreased. At least 30 days prior to
7 issuing any such order, the commissioner shall notify the special
8 purpose insurance captive and provide it with an opportunity to
9 remedy the issues identified by the commissioner. If the issues
10 identified by the commissioner have not been resolved to the
11 commissioner's satisfaction at the end of the 30-day period, the
12 commissioner shall issue the order. The special purpose insurance
13 captive shall have the right to a hearing, at which the insurer may
14 challenge any determination or action by the commissioner. The
15 special purpose insurance captive shall notify the commissioner of its
16 request for hearing within 15 days after the issuance of the order.
17 Hearings under this section shall be conducted in accordance with the
18 provisions of the Kansas administrative procedure act.

19 New Sec. 26. A special purpose insurance captive shall not:

20 (a) Enter into a special purpose insurance captive contract with a
21 person that is not authorized to transact the business of insurance or
22 reinsurance in at least its state or country of domicile; or

23 (b) lend or otherwise invest or place in custody, trust or under
24 management any of its assets with, or to borrow money or receive a loan,
25 other than according to the plan of operation filed with and approved by
26 the commissioner.

27 New Sec. 27. (a) A special purpose insurance captive shall not declare
28 or pay dividends or distributions in any form to its owners other than in
29 accordance with the transaction agreements or plan of operation.

30 (b) Dividends and distributions may not decrease the capital of the
31 special purpose insurance captive below the minimum capital
32 requirements.

33 (c) All dividends and distributions shall be approved by the
34 commissioner. After giving effect to the dividends, the assets of the special
35 purpose insurance captive, including assets held in trust and letters of
36 credit issued for the exclusive benefit of the special purpose insurance
37 captive, must be sufficient to satisfy the commissioner so that it can meet
38 its obligations, in order to be approved.

39 (d) Dividends and distributions may be declared by the management
40 of the special purpose insurance captive, provided that the dividend
41 amount or form does not violate the provisions of this section or
42 jeopardize the fulfillment of the obligations of the special purpose
43 insurance captive.

1 New Sec. 28. Any material changes to a special purpose insurance
2 captive's plan of operation shall require the prior written approval of the
3 commissioner. The plan of operation must specify which deviations shall
4 be considered material.

5 New Sec. 29. Copies of all completed affiliated agreements to which
6 the special purpose insurance captive is a party, including, but not limited
7 to, the special purpose insurance captive contract or contracts and any
8 reinsurance agreements to which the special purpose insurance captive is a
9 party must be filed with the commissioner for prior approval.

10 New Sec. 30. (a) Prior to March 1 of each year, each captive
11 insurance company shall submit to the commissioner a report of its
12 financial condition, verified by oath by two of its executive officers or
13 other authorized persons.

14 (b) A special purpose insurance captive shall report using statutory
15 accounting principles, unless the commissioner requires, approves or
16 accepts the use of generally accepted accounting principles or another
17 comprehensive basis of accounting, in each case with any appropriate or
18 necessary modifications or adaptations required or approved or accepted
19 by the commissioner and as supplemented by additional information
20 required by the commissioner. The commissioner shall, by rules and
21 regulations or order, establish the form and content of the annual report to
22 be filed by a special purpose insurance captive.

23 (c) A special purpose insurance captive shall file a report of financial
24 condition on a quarterly basis to be designated by the commissioner. The
25 contents and form of the report shall be governed by subsection (b).

26 (d) A special purpose insurance captive shall file annually with the
27 commissioner an actuarial opinion on reserves for all risks assumed by the
28 special purpose insurance captive pursuant to its reinsurance contracts
29 provided by an internal actuary and may discount its reserves in
30 accordance with that actuarial opinion, subject to approval by the
31 commissioner. A special purpose insurance captive shall file biennially an
32 opinion of a qualified independent actuary acceptable to the commissioner
33 concerning the methods and assumptions used to set reserves. Each
34 opinion shall be governed by K.S.A. 40-409, and amendments thereto. The
35 opinion and memorandum shall be filed with the report of financial
36 condition required by subsection (a).

37 (e) A special purpose insurance captive may make written application
38 to file its annual report on a fiscal year basis. If an alternative reporting
39 date is granted, the commissioner shall establish the due date and content
40 of any filing required by the special purpose insurance captive in addition
41 to its annual report.

42 (f) Unless otherwise approved in advance by the commissioner, a
43 special purpose insurance captive company shall maintain its books,

1 records, documents, accounts, vouchers and agreements in Kansas. A
2 special purpose insurance captive shall make its books, records,
3 documents, accounts, vouchers and agreements available for inspection by
4 the commissioner at any time. A special purpose insurance captive shall
5 keep its books and records in such manner that its financial condition,
6 affairs and operations can be readily ascertained and so that the
7 commissioner may readily verify its financial statements and determine its
8 compliance with this act.

9 (g) Unless otherwise approved in advance by the commissioner, all
10 original books, records, documents, accounts, vouchers and agreements
11 shall be preserved and kept available in this state for the purpose of
12 examination and inspection and until such time as the commissioner
13 approves the destruction or other disposition of such books, records,
14 documents, accounts, vouchers and agreements. If the commissioner
15 approves the keeping of the items listed in this subsection outside this
16 state, the special purpose insurance captive shall maintain within this state
17 a complete and true copy of each such original. Books, records,
18 documents, accounts, vouchers and agreements may be photographed,
19 reproduced on film, or stored and reproduced electronically.

20 New Sec. 31. (a) Whenever the commissioner of insurance deems it
21 necessary, but at least once every five years, the commissioner may make,
22 or direct to be made, a financial examination of any special purpose
23 insurance captive. The commissioner may engage in continuous analysis
24 for the preparation of the examination. In addition, at the commissioner's
25 discretion, the commissioner may make, or direct to be made, a market
26 regulation examination of any insurance company doing business in this
27 state.

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

36 (c) The commissioner, for the purpose of making such examination or
37 analysis, shall have free access to the books and papers of any such
38 company that relate to its business and to the books and papers kept by any
39 of its agents and may examine under oath, which the commissioner is
40 empowered to administer, the directors, officers, agents or employees of
41 any such company in relation to its affairs, transactions and condition.

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

1 (e) The commissioner may also examine or investigate any person, or
2 the business of any person, insofar as such examination or investigation is,
3 in the sole discretion of the commissioner, necessary or material to the
4 examination of the company, but such examination or investigation shall
5 not infringe upon or extend to any communications or information
6 accorded privileged or confidential status under any other laws of this
7 state.

8 (f) Upon determining that an examination should be conducted, the
9 commissioner shall appoint one or more examiners to perform the
10 examination and instruct them as to the scope of the examination. The
11 commissioner may also employ such other guidelines or procedures as the
12 commissioner may deem appropriate.

13 (g) When making an examination under this act, the commissioner
14 may retain attorneys, appraisers, independent actuaries, independent
15 certified public accountants or other professionals and specialists as
16 examiners, the reasonable cost of which shall be borne by the company
17 that is the subject of the examination.

18 (h) (1) No later than 30 days following completion of the examination
19 or at such earlier time as the commissioner shall prescribe, the examiner in
20 charge shall file with the department a verified written report of
21 examination under oath. No later than 30 days following receipt of the
22 verified report, the department shall transmit the report to the company
23 examined, together with a notice that shall afford such company examined
24 a reasonable opportunity of not more than 30 days to make a written
25 submission or rebuttal with respect to any matters contained in the
26 examination report.

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

31 (A) Adopting the examination report as filed or with modification or
32 corrections. If the examination report reveals that the company is operating
33 in violation of any law, rules and regulations or prior order of the
34 commissioner, the commissioner may order the company to take any
35 action the commissioner considers necessary and appropriate to cure such
36 violations;

37 (B) rejecting the examination report with directions to the examiners
38 to reopen the examination for purposes of obtaining additional data,
39 documentation or information, and refile pursuant to subsection (k); or

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

43 (3) All orders entered as a result of revelations contained in the

1 examination report shall be accompanied by findings and conclusions
2 resulting from the commissioner's consideration and review of the
3 examination report, relevant examiner workpapers and any written
4 submissions or rebuttals. Within 30 days of the issuance of the adopted
5 report, the company shall file affidavits executed by each of its directors
6 stating under oath that they have received a copy of the adopted report and
7 related orders.

8 (4) Upon the adoption of the examination report, the commissioner
9 shall hold the content of the examination report as private and confidential
10 information for a period of 30 days. Thereafter, the commissioner may
11 open the report for public inspection, so long as no court of competent
12 jurisdiction has stayed its publication. Nothing contained in this act shall
13 be construed to limit the commissioner's authority to use and, if
14 appropriate, to make public any final or preliminary examination report in
15 the furtherance of any legal or regulatory action that the commissioner
16 may, in the commissioner's sole discretion, deem appropriate.

17 (i) Nothing contained in this act shall be construed to limit the
18 commissioner's authority to terminate or suspend any examination in order
19 to pursue other legal or regulatory action pursuant to the insurance laws of
20 Kansas.

21 (j) Section 33, and amendments thereto, shall apply to the
22 confidentiality of all working papers, recorded information, documents
23 and copies thereof produced by, obtained by or disclosed to the
24 commissioner or any other person in the course of an examination made
25 under this act, including analyses by the commissioner pertaining to either
26 the financial condition or the market regulation.

27 New Sec. 32. (a) Each special purpose insurance captive shall pay to
28 the commissioner on or before May 1 of each year a premium tax at the
29 rate of 0.214 of 1% on the first \$20,000,000 of the assumed reinsurance
30 premium, 0.143 of 1% on the next \$20,000,000, 0.048 of 1% on the next
31 \$20,000,000 and 0.024 of 1% of each dollar thereafter. No reinsurance
32 premium tax shall be payable in connection with the receipt of assets in
33 exchange for the assumption of loss reserves and other liabilities of
34 another insurer under common ownership and control if such transaction is
35 part of a plan to discontinue the operations of such other insurer, and if the
36 intent of the parties to such transaction is to renew or maintain such
37 business with the captive insurance company.

38 (b) The premium tax imposed by subsection (a) shall constitute all
39 taxes collectible under the laws of this state from any special purpose
40 insurance captive, and no other occupation tax or other taxes shall be
41 levied or collected from any captive insurance company by the state or any
42 county, city or municipality within this state, except ad valorem taxes on
43 real and personal property used in the production of income.

1 (c) Every special purpose insurance captive shall, on or before
2 February 1 of each year, make a return on a form provided by the
3 commissioner, verified by the affidavit of the company's president and
4 secretary or other authorized officers, to the commissioner stating the
5 amount of all direct premiums received and assumed reinsurance
6 premiums received, whether in cash or in notes, during the year ending on
7 December 31 next preceding. Upon receipt of such returns, the
8 commissioner shall verify the same and certify the amount of tax due from
9 the various companies on the basis and at the rate provided in this section,
10 on or before March 31 of each year. The commissioner shall immediately
11 thereafter notify and assess each company the amount of tax due.

12 (d) A special purpose insurance captive failing to make returns as
13 required by subsection (c), or failing to pay within the time required all
14 taxes assessed by this section, shall be subject to the provisions of K.S.A.
15 40-2806, and amendments thereto.

16 New Sec. 33. (a) Documents, materials or other information obtained
17 by or disclosed to the commissioner pursuant to sections 15 through 35,
18 and amendments thereto, shall:

19 (1) Be confidential and privileged, except as provided in section 30,
20 and amendments thereto; and

21 (2) not be subject to disclosure under the Kansas open records act,
22 K.S.A. 45-215 et seq., and amendments thereto. The provisions of this
23 subsection shall expire on July 1, 2023, unless the legislature reviews and
24 reenacts this provision pursuant to K.S.A. 45-229, and amendments
25 thereto, prior to July 1, 2023.

26 (b) The commissioner shall not otherwise make the documents,
27 materials or other information public without the prior written consent of
28 the insurer to which it pertains unless the commissioner, after giving the
29 insurer and its affiliates that would be affected thereby notice and
30 opportunity to be heard in accordance with the provisions of the Kansas
31 administrative procedure act, determines that the interests of
32 policyholders, shareholders or the public would be served by the
33 publication thereof, in which event, the commissioner may publish all or
34 any part thereof in such a manner as the commissioner may deem
35 appropriate. In making such determination, the commissioner of insurance
36 also shall take into consideration any potential adverse consequences of
37 the disclosure thereof.

38 (c) Neither the commissioner of insurance nor any person who
39 received documents, materials or other information while acting under the
40 authority of the commissioner of insurance or with whom such documents,
41 materials or other information are shared pursuant to this section shall be
42 permitted or required to testify in any private civil action concerning any
43 confidential documents, materials or information subject to subsection (a).

1 (d) In order to assist in the performance of the commissioner's duties,
2 the commissioner of insurance may:

3 (1) Share documents, materials or other information, including the
4 confidential and privileged documents, materials or information subject to
5 subsection (a), with federal and international regulatory agencies, and the
6 NAIC and its affiliates, provided that the recipient agrees in writing to
7 maintain the confidentiality and privileged status of the document,
8 material or other information, and has verified in writing the legal
9 authority to maintain confidentiality;

10 (2) receive documents, materials or information, including otherwise
11 confidential and privileged documents, materials or information from the
12 national association of insurance commissioners, and its affiliates and
13 subsidiaries, and from regulatory and law enforcement officials of other
14 foreign or domestic jurisdictions, and shall maintain as confidential or
15 privileged any document, material or information received with notice or
16 the understanding that it is confidential or privileged under the laws of the
17 jurisdiction that is the source of the document, material or information.
18 Documents received pursuant to this section shall not be subject to
19 disclosure pursuant to the open records act, K.S.A. 45-215 et seq., and
20 amendments thereto. The provisions of this paragraph shall expire on July
21 1, 2023, unless the legislature reviews and reenacts this provision pursuant
22 to K.S.A. 45-229, and amendments thereto, prior to July 1, 2023; and

23 (3) Sharing agreements provided for in subsection (d) shall:

24 (A) Specify procedures and protocols regarding the confidentiality
25 and security of information shared with the national association of
26 insurance commissioners and its affiliates and subsidiaries pursuant to this
27 act, including procedures and protocols for sharing by the national
28 association of insurance commissioners with other state, federal or
29 international regulators;

30 (B) specify that ownership of information shared with the NAIC and
31 its affiliates and subsidiaries pursuant to this act remains with the
32 commissioner, and the NAIC's use of the information is subject to the
33 direction of the commissioner;

34 (C) require prompt notice to be given to an insurer and its affiliates
35 whose confidential information in the possession of the NAIC, pursuant to
36 this act, is subject to a request or subpoena to the NAIC for disclosure or
37 production; and

38 (D) require the NAIC and its affiliates and subsidiaries to consent to
39 intervention by an insurer in any judicial or administrative action in which
40 the NAIC and its affiliates and subsidiaries may be required to disclose
41 confidential information about the insurer and its affiliates shared with the
42 NAIC and its affiliates and subsidiaries pursuant to this act. Documents,
43 materials or other information in the possession or control of the national

1 association of insurance commissioners shall be confidential by law and
2 privileged, shall not be subject to the open records act, K.S.A. 45-215 et
3 seq., and amendments thereto, shall not be subject to subpoena, and shall
4 not be subject to discovery or admissible in evidence in any private civil
5 action. The provisions of this paragraph shall expire on July 1, 2023,
6 unless the legislature reviews and reenacts this provision pursuant to
7 K.S.A. 45-229, and amendments thereto, prior to July 1, 2023.

8 (e) The sharing of information by the commissioner of insurance,
9 pursuant to this act, shall not constitute a delegation of regulatory authority
10 or rulemaking authority, and the commissioner of insurance is solely
11 responsible for the administration, execution and enforcement of the
12 provisions of this act.

13 (f) No waiver of any applicable privilege or claim of confidentiality
14 in the documents, materials or information shall occur as a result of
15 disclosure to the commissioner of insurance under this act or as a result of
16 sharing as authorized in subsection (d).

17 New Sec. 34. (a) The commissioner may, after notice and hearing,
18 issue an order, subject to the Kansas administrative procedure act, to
19 conserve, rehabilitate or liquidate a special purpose insurance captive
20 domiciled in this state on one or more of the following grounds:

21 (1) There has been embezzlement, wrongful sequestration, dissipation
22 or diversion of the assets of the special purpose insurance captive;

23 (2) the special purpose insurance captive is financially impaired,
24 insolvent or otherwise deemed to be in a hazardous financial condition
25 pursuant to K.S.A. 40-222b, and amendments thereto; or

26 (3) the holders of a majority in outstanding principal amount of each
27 class of special purpose insurance captive securities or surplus notes
28 request or consent to conservation, rehabilitation or liquidation under the
29 provisions of this section.

30 (b) Upon any order of conservation, rehabilitation or liquidation of a
31 special purpose insurance captive, the receiver shall manage the assets and
32 liabilities of the special purpose insurance captive under the provisions of
33 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

34 (c) With respect to amounts recoverable under a special purpose
35 insurance captive contract, the amount recoverable by the receiver must
36 not be reduced or diminished as a result of the entry of an order of
37 conservation, rehabilitation or liquidation with respect to the ceding
38 company, notwithstanding another provision in the special purpose
39 insurance captive contract or other documentation governing the special
40 purpose insurance captive's transactions.

41 New Sec. 35. The commissioner may promulgate all rules and
42 regulations necessary to effectuate the provisions of sections 15 through
43 35, and amendments thereto.

1 Sec. 36. K.S.A. 40-4301 is hereby amended to read as follows: 40-
2 4301. As used in ~~this~~ *the captive insurance* act, unless the context requires
3 otherwise:

4 (a) "Affiliated company" means any ~~company~~ *person, other than a*
5 *natural person in that person's individual capacity*, in the same corporate
6 system as a parent, ~~an industrial insured, or a member organization by~~
7 ~~virtue of~~ *or an associate member* by common ownership, control,
8 operation or management.

9 (b) ~~"Aircraft captive insurance company" means any pure captive~~
10 ~~insurance company which is formed under the provisions of this act by a~~
11 ~~corporation or an affiliated company of a corporation engaged in the~~
12 ~~manufacture of aircraft and having its principal place of business within~~
13 ~~the state of Kansas and which insures only risks in the same corporate~~
14 ~~system~~

15 *"Association" means any legal association of persons, corporations,*
16 *limited liability companies, partnerships, associations or other entities*
17 *that have been in continuous existence for at least one year or such lesser*
18 *period of time approved by the commissioner; whether or not in*
19 *conjunction with some or all of the member organizations that:*

20 (1) *Own, control or hold power to vote all of the outstanding*
21 *voting securities of an association captive insurance company*
22 *incorporated as a stock insurer;*

23 (2) *have complete voting control over an association captive*
24 *insurance company incorporated as a mutual insurer;*

25 (3) *constitute all of the subscribers of an association captive*
26 *insurance company formed as a limited liability company; or*

27 (4) *have complete voting control over an association captive*
28 *insurance company formed as a limited liability company.*

29 (c) *"Association captive insurance company" means any captive*
30 *insurance company that insures risks of association members.*

31 (d) *"Association member" means any person that belongs to an*
32 *association.*

33 (e) *"Capital and surplus" means the amount by which the value of all*
34 *of the assets exceeds all of the liabilities of the captive insurance company,*
35 *as determined under the method of accounting utilized by the captive*
36 *insurance company in accordance with the applicable provisions of this*
37 *act.*

38 (f) *"Captive insurance company" means any pure captive insurance*
39 *company or industrial insured or association captive insurance company*
40 *formed under the provisions of this act. For purposes of this act, a branch*
41 *captive insurance company shall be a pure captive insurance company*
42 *with respect to operations in this state, unless otherwise permitted by the*
43 *commissioner.*

1 ~~(d) (g) "Commissioner" means the commissioner of insurance.~~

2 ~~(e) "Industrial insured" means an insured:~~

3 ~~(1) Who procures the insurance of any risk or risks by use of the~~
4 ~~services of a full-time employee acting as an insurance manager or buyer;~~

5 ~~(2) whose aggregate annual premiums for the kinds of insurance total~~
6 ~~at least \$50,000;~~

7 ~~(3) who has at least 25 full-time employees;~~

8 ~~(4) whose principal activity consists of the manufacture of a product~~
9 ~~or products; and~~

10 ~~(5) who contributes not less than \$10,000 to the capital or surplus of~~
11 ~~the industrial insured captive insurance company that insures its risks.~~
12 ~~Such contribution shall be in the form of cash which may be returned at~~
13 ~~such time as the risks of the industrial insured cease to be insured by the~~
14 ~~captive insurance company.~~

15 ~~(f) "Industrial insured captive insurance company" means any~~
16 ~~company that insures risks of the industrial insureds that comprise the~~
17 ~~industrial insured group, and their affiliated companies.~~

18 ~~(g) "Industrial insured group" means any group of not more than 10~~
19 ~~industrial insureds in the same or similar line of business that:~~

20 ~~(1) Collectively owns, controls or holds with power to vote all of the~~
21 ~~outstanding voting securities of an industrial insured captive insurance~~
22 ~~company incorporated as a stock insurer; or~~

23 ~~(2) collectively has complete voting control over an industrial insured~~
24 ~~captive insurance company incorporated as a mutual insurer; or~~

25 ~~(3) is created under the product liability risk retention act of 1981~~
26 ~~(U.S. Public Law 97-45), as amended by the risk retention act of 1986, as~~
27 ~~a corporation or other limited liability association taxable as a stock~~
28 ~~insurance company or a mutual insurer under the laws of the state of~~
29 ~~Kansas:~~

30 ~~(A) Whose primary activity consists of assuming and spreading all, or~~
31 ~~any portion, of the product liability or completed operations liability risk~~
32 ~~exposure of its group members;~~

33 ~~(B) which is organized for the primary purpose of conducting the~~
34 ~~activity described in subdivision (g)(3)(A) of this section;~~

35 ~~(C) which does not exclude any person from membership in the~~
36 ~~group solely to provide for members of such group a competitive~~
37 ~~advantage over such a person; and~~

38 ~~(D) which is composed of members each of whose principal activity~~
39 ~~consists of the manufacture, design, importation, distribution, packaging,~~
40 ~~labeling, lease or sale of a product or products.~~

41 ~~(h) "Controlled unaffiliated business" means any person other than a~~
42 ~~natural person in that natural person's individual capacity:~~

43 ~~(1) That is not a part of the corporate system of a parent and its~~

1 *affiliated companies;*

2 (2) *that has an existing contractual relationship with such parent or*
3 *any such affiliated company; and*

4 (3) *whose risks are managed by a pure captive insurance company.*

5 (i) *"Department" means the Kansas insurance department.*

6 (j) *"Domestic" means any insurance company formed under the laws*
7 *of the state of Kansas.*

8 (k) *"Insurer" means the same as "insurance company" as that term is*
9 *defined in K.S.A. 40-222c, and amendments thereto.*

10 (l) *"Member organization" means any individual, corporation,*
11 *limited liability company, partnership, association or other entity that*
12 *belongs to an association.*

13 (m) *"Natural person" means a human being.*

14 (n) *"Organizational documents" means the captive insurance*
15 *company's articles of organization, bylaws, operating agreement or other*
16 *foundational document that establishes the captive insurance company as*
17 *a legal entity or prescribes its existence.*

18 (o) *"Parent" means a corporation, partnership or individual that*
19 *directly or indirectly owns, controls or holds with power to vote more than*
20 *50% of the outstanding voting securities or other voting interest of a pure*
21 *captive insurance company, or as assigned in the plan of operation.*

22 (†) (p) *"Person" means a natural person, partnership, trust, estate,*
23 *association, corporation, limited liability company, custodian, nominee or*
24 *other individual or entity in its own or any representative capacity, in each*
25 *case whether domestic, foreign or alien.*

26 (q) *"Personal lines of insurance" means personal motor vehicle,*
27 *homeowner's insurance coverage, residential fire insurance or any*
28 *component thereof.*

29 (r) *"Pure captive insurance company" means any company that*
30 *insures risks of its parent and affiliated companies and controlled*
31 *unaffiliated business.*

32 (s) *"Risk retention group" means a captive insurance company*
33 *organized under the laws of the state of Kansas pursuant to the liability*
34 *risk retention act of 1986, 15 U.S.C. § 3901 et seq., as amended, as a stock*
35 *or mutual corporation, a reciprocal or other limited liability entity.*

36 Sec. 37. K.S.A. 40-4302 is hereby amended to read as follows: 40-
37 4302. (a) Any captive insurance company, when permitted by its ~~articles of~~
38 ~~incorporation or charter~~ *organizational documents*, may apply to the
39 commissioner for a certificate of authority to do any and all insurance
40 comprised in ~~articles 9 and 11 of chapter 40 of the Kansas Statutes~~
41 ~~Annotated, except~~ *K.S.A. 40-901 et seq., 40-1102 (1)(a), 1(c) through 1(n),*
42 *and amendments thereto, and to issue life, accident and health insurance*
43 *policies provided that:*

1 (1) No pure captive insurance company ~~may~~ shall insure any risks
2 other than those of its parent and affiliated companies *and, upon prior*
3 *approval of the commissioner, any controlled unaffiliated business up to*
4 *5% of total direct written premium;*

5 (2) ~~no industrial insured captive insurance company may insure any~~
6 ~~risks other than those of the industrial insureds that comprise the industrial~~
7 ~~insured group, and their affiliated companies~~ *association captive*
8 *insurance company shall insure any risks other than those of its*
9 *association and those of the member organizations of its association. No*
10 *association captive insurance company shall expose itself to loss on any*
11 *one risk or hazard in an amount exceeding 10% of its paid-up capital and*
12 *surplus;*

13 (3) ~~no captive insurance company may~~ shall provide ~~homeowner's~~
14 ~~personal lines of insurance, workers' compensation or, employers' liability~~
15 ~~insurance coverage, long-term care coverage, critical care coverage,~~
16 ~~surety, title insurance, credit insurance or any component thereof; and~~

17 (4) ~~no captive insurance company may~~ shall accept or cede
18 reinsurance except as provided in K.S.A. 40-4311, *and amendments*
19 *thereto;*

20 (5) *no captive insurance company shall provide accident and health,*
21 *life insurance or annuities on a direct basis;*

22 (6) *no captive insurance company authorized as a life insurance*
23 *company shall transact business other than life insurance; and*

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

27 ~~Any captive insurance company that provides motor vehicle liability~~
28 ~~insurance coverage on motor vehicles of its industrial insureds or parent or~~
29 ~~affiliated companies shall be required to insure all of the motor vehicles of~~
30 ~~such industrial insureds or parent or affiliated companies, and when such~~
31 ~~insurance coverage is provided by the captive insurance company, no~~
32 ~~motor vehicle of an industrial insured or parent or affiliated company shall~~
33 ~~be eligible for insurance coverage under any automobile insurance plan~~
34 ~~provided for in K.S.A. 40-2101 and 40-2102, and amendments thereto.~~

35 (b) No captive insurance company organized under the laws of this
36 state shall do any insurance business in this state unless:

37 (1) It first obtains from the commissioner a certificate of authority
38 authorizing it to do insurance business in this state;

39 (2) its board of directors, *members, partners, managers, committee of*
40 *managers or other governing body* holds at least one meeting each year in
41 this state;

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

43 (4) it authorizes the commissioner to accept service of process on its

1 behalf in accordance with K.S.A. 40-218, and amendments thereto.

2 (c) ~~(H)~~ Before receiving a certificate of authority, ~~a~~ *an applicant*
3 captive insurance company shall file with the commissioner ~~a certified~~
4 ~~copy of its articles of incorporation and bylaws, a statement under oath of~~
5 ~~its president and secretary showing its financial condition, and any other~~
6 ~~statements or documents required by the commissioner.:~~

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

9 (2) ~~In addition to the information required by subdivision (1) of this~~
10 ~~subsection (c), each applicant captive insurance company shall file with~~
11 ~~the commissioner evidence of the following a plan of operation or a~~
12 ~~feasibility study describing the anticipated activities and results of the~~
13 ~~applicant captive insurance company that shall include:~~

14 (A) ~~The amount and liquidity of its assets relative to the risks to be~~
15 ~~assumed company's loss prevention program of its parent and insureds, as~~
16 ~~applicable;~~

17 (B) ~~the adequacy of the expertise, experience and character of the~~
18 ~~person or persons who will manage it historical and expected loss~~
19 ~~experience of the risks to be insured or reinsured by the applicant captive~~
20 ~~insurance company;~~

21 (C) ~~the overall soundness of its plan of operation pro forma financial~~
22 ~~statements and projections of the proposed business operations of the~~
23 ~~applicant captive insurance company;~~

24 (D) ~~the adequacy of the loss prevention programs of its parent or~~
25 ~~industrial insureds as applicable; and an analysis of the adequacy of the~~
26 ~~applicant captive insurance company's proposed premiums, assets and~~
27 ~~capital and surplus levels relative to the risks to be insured or reinsured by~~
28 ~~the captive insurance company;~~

29 (E) ~~such other factors deemed relevant by the commissioner in~~
30 ~~ascertaining whether the proposed captive insurance company will be able~~
31 ~~to meet its policy obligations a statement of the applicant captive~~
32 ~~insurance company's net retained limited liability on any contract of~~
33 ~~insurance or reinsurance it intends to issue and the nature of any~~
34 ~~reinsurance it intends to cede;~~

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

38 (G) *a statement identifying the geographic areas in which the*
39 *applicant captive insurance company intends to operate;*

40 (H) *a statement identifying the persons or organizations that will*
41 *perform the applicant captive insurance company's major operational*
42 *functions, including management, underwriting, accounting, asset*
43 *investment, claims adjusting and loss control and the adequacy of the*

1 expertise, experience and character of such persons or organizations; and

2 (1) whenever required by the commissioner, an appropriate opinion
3 by a qualified independent actuary regarding the adequacy of the
4 applicant captive insurance company's proposed capital, surplus and
5 premium levels;

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

9 (4) such other items deemed relevant by the commissioner in
10 ascertaining whether the proposed captive insurance company will be able
11 to meet its obligations; and

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

14 (d) Each captive insurance company not in existence on January 1,
15 2018, shall pay to the commissioner a nonrefundable fee of ~~\$500~~ \$10,000
16 for examining, investigating and processing its application for a certificate
17 of authority. The commissioner is authorized to retain legal, financial,
18 actuarial, analysis and examination services from outside the department,
19 the reasonable costs of which shall be charged against the applicant. In
20 addition, it shall pay a fee for the year of registration and a renewal fee for
21 each year thereafter of ~~\$110~~ \$10,000.

22 (e) Each captive insurance company already in existence on January
23 1, 2018, shall pay an annual renewal fee of \$110 until January 1, 2028,
24 after which date the provisions of subsection (d) shall apply.

25 (f) If the commissioner is satisfied that the documents and statements
26 that such captive insurance company has filed comply with the provisions
27 of this act, the commissioner may grant a certificate of authority
28 authorizing it to do insurance business in this state until ~~April~~ March 1
29 thereafter, which certificate of authority may be renewed.

30 (g) Information submitted under this section shall be and remain
31 confidential, and shall not be made public by the commissioner or any
32 employee or agent of the commissioner without the written consent of the
33 company, except that:

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

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

40 (B) the information sought is unavailable from other non-confidential
41 sources; and

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

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

4 (A) *Such public official shall agree in writing to maintain the*
5 *confidentiality of such information; and*

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

8 (3) *access may also be granted to the national association of*
9 *insurance commissioners and its affiliates, and the international*
10 *association of supervisors and its affiliates. Such parties must agree in*
11 *writing prior to receiving the information to provide to it the same*
12 *confidential treatment as required by this section, unless the company*
13 *gives prior written consent.*

14 Sec. 38. K.S.A. 40-4303 is hereby amended to read as follows: 40-
15 4303. The word "captive" shall be incorporated into the name of every
16 captive insurance company organized under the laws of this state, ~~except~~
17 ~~that an aircraft captive insurance company incorporating the word "air" or~~
18 ~~"aircraft" into its name shall not be required to incorporate the word~~
19 ~~"captive" into its name.~~ No captive insurance company shall adopt a name
20 that is the same, deceptively similar or likely to be confused with or
21 mistaken for any other existing business name registered in the state of
22 Kansas.

23 Sec. 39. K.S.A. 40-4304 is hereby amended to read as follows: 40-
24 4304. (a) ~~No pure captive insurance company or industrial insured captive~~
25 ~~insurance company incorporated as a stock insurer shall be issued a~~
26 ~~certificate of authority unless it shall possess and thereafter maintain~~
27 ~~unimpaired paid-in capital and surplus of:~~

28 (1) In the case of a pure captive insurance company, not less than
29 ~~\$100,000~~ \$250,000; and

30 (2) in the case of an ~~industrial insured~~ *association* captive insurance
31 company incorporated as a stock insurer, not less than ~~\$200,000~~ \$500,000.

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

36 (c) *In connection with the issuance of a certificate of authority, the*
37 *commissioner may prescribe additional minimum capital and surplus*
38 *based upon the type, volume and nature of the insurance business*
39 *transacted.*

40 (d) *Loans of minimum capital and surplus funds shall be prohibited.*
41 *Notwithstanding the foregoing, the minimum capital and surplus funds*
42 *may be received by the issuance of a surplus note as approved by the*
43 *commissioner.*

1 (e) *No pure captive insurance company shall make a loan or an*
2 *investment in its parent company or affiliates without prior written*
3 *approval of the commissioner; and any such loan or investment shall be*
4 *evidenced by documentation approved by the commissioner.*

5 Sec. 40. K.S.A. 40-4306 is hereby amended to read as follows: 40-
6 4306. (a) *A pure captive insurance company shall be incorporated as a*
7 *stock insurer with its capital divided into shares and held by the*
8 *stockholders, as a nonstock corporation, or may be formed as a limited*
9 *liability company, partnership or limited partnership.*

10 (b) ~~An industrial insured captive insurance company may be~~
11 ~~incorporated:~~ *An association captive insurance company may be*
12 *incorporated as a stock corporation or as a nonstock corporation, or may*
13 *be formed as a limited liability company, partnership or limited*
14 *partnership.*

15 ~~(1) As a stock insurer with its capital divided into shares and held by~~
16 ~~the stockholders; or~~

17 ~~(2) as a mutual insurer without capital stock.~~

18 (c) ~~A captive insurance company shall have not less than three~~
19 ~~incorporators of whom not less than two shall be residents of this state~~
20 ~~incorporated or organized in Kansas shall have one or more~~
21 ~~incorporators or organizers, as applicable, at least one of whom shall be a~~
22 ~~resident of Kansas.~~

23 (d) ~~Before the articles of incorporation are transmitted to the secretary~~
24 ~~of state, the incorporators shall petition the commissioner to issue a~~
25 ~~certificate setting forth such commissioner's finding that the establishment~~
26 ~~and maintenance of the proposed corporation will promote the general~~
27 ~~good of the state. In arriving at such finding the commissioner shall~~
28 ~~consider~~ *In the case of a captive insurance company:*

29 (1) ~~The character, reputation, financial standing and purposes of the~~
30 ~~incorporators~~ *Formed as a corporation, with at least one of the members*
31 *of the board of directors who shall be a resident of Kansas, or have that*
32 *member's personal place of business in Kansas;*

33 (2) ~~the character, reputation, financial responsibility, insurance~~
34 ~~experience and business qualifications of the officers and directors; and~~
35 ~~formed as a limited liability company, with at least one of the managers~~
36 ~~who shall be a resident of, or have its principal place of business in~~
37 ~~Kansas;~~

38 (3) ~~such other aspects as the commissioner shall deem advisable~~
39 ~~formed as a partnership, with at least one member or person in whom~~
40 ~~management of the partnership is vested or to whom rights and powers to~~
41 ~~manage and control the business and affairs of the partnership have been~~
42 ~~delegated, shall be a resident of, or have such member's or person's~~
43 ~~principal place of business in Kansas; or~~

1 (4) *formed as a limited partnership, with at least one general partner*
2 *or person in whom management of the limited partnership is vested or to*
3 *whom rights and powers to manage and control the business and affairs of*
4 *the limited partnership have been delegated, shall be a resident of, or have*
5 *such partner's or person's principal place of business in Kansas.*

6 (e) *The articles of incorporation or bylaws of a captive insurance*
7 *company formed as a corporation may authorize a quorum of its board of*
8 *directors to consist of no less than $\frac{1}{3}$ of the full board of directors,*
9 *provided that a quorum shall not consist of fewer than two directors.*

10 (f) *The articles of incorporation, such certificate and the organization*
11 *fee shall be transmitted to the secretary of state, who shall thereupon*
12 *record both the articles of incorporation and the certificate. Before the*
13 *articles of incorporation are transmitted to the secretary of state, the*
14 *incorporators shall petition the commissioner to issue a certificate setting*
15 *forth such commissioner's findings that the establishment and*
16 *maintenance of the proposed corporation will promote the general good of*
17 *the state.*

18 (1) *In arriving at such finding the commissioner shall consider:*

19 (A) *The character, reputation, financial standing and purpose of the*
20 *incorporators;*

21 (B) *the character, reputation, financial responsibility, insurance*
22 *experience and business qualifications of the officers and directors; and*

23 (C) *such other aspects as the commissioner shall deem advisable.*

24 (2) *The articles of incorporation, certificate of general good and the*
25 *filing fee shall be transmitted to the secretary of state, who shall thereupon*
26 *record both the articles of incorporation and the certificate.*

27 (†) (g) *The capital stock of a captive insurance company incorporated*
28 *as a stock insurer shall be issued at not less than par value.*

29 (‡) (h) ~~*At least one of the members of the board of directors of a*~~
30 ~~*captive insurance company incorporated in this state shall be a resident of*~~
31 ~~*this state*~~ *A captive insurance company incorporated, formed or organized*
32 *under the laws of Kansas or under the laws of another jurisdiction that is*
33 *authorized under the provisions of this act shall have the privileges and be*
34 *subject to the provisions of the laws of Kansas or the laws of such other*
35 *jurisdiction, as applicable, under which such captive insurance company*
36 *is incorporated, formed or organized as well as the applicable provisions*
37 *contained in this act.*

38 (†) (i) *Captive insurance companies formed under the provisions of*
39 *this chapter shall have the privileges and be subject to the provisions of the*
40 *general corporation code as well as the applicable provisions contained in*
41 *this act. In the event of conflict between the provisions of the general*
42 *corporation code and the provisions of this act, the latter shall control.*

43 Sec. 41. K.S.A. 40-4307 is hereby amended to read as follows: 40-

1 4307. (a) Prior to March 1 of each year, each captive insurance company
2 shall submit to the commissioner a report of its financial condition,
3 verified by oath of two of its executive officers. ~~Each captive insurance~~
4 ~~company shall file its report in the form required by K.S.A. 40-225, and~~
5 ~~amendments thereto~~

6 (b) *The report may be filed using generally accepted accounting*
7 *principles, unless the commissioner approves the use of statutory*
8 *accounting principles, with any appropriate or necessary modifications or*
9 *adaptions thereof required or approved or accepted by the commissioner*
10 *for the type of insurance and kinds of insurers to be reported upon, and as*
11 *supplemented by additional information required by the commissioner.*
12 *The commissioner shall by rules and regulations prescribe the forms by*
13 *which captive insurance companies shall report.*

14 (c) *Any captive insurance company may make written application to*
15 *the commissioner for filing the report required by subsection (a) on a*
16 *fiscal year end. If an alternative reporting date is granted by the*
17 *commissioner:*

18 (1) *The annual report shall be due 60 days after the fiscal year end;*
19 *and*

20 (2) *in order to provide sufficient detail to support the premium tax*
21 *return, the captive insurance company shall file prior to March 1 of each*
22 *year for each calendar year end such form or information as the*
23 *commissioner shall by rules and regulations prescribe, verified by the oath*
24 *by two of its executive officers or other authorized persons.*

25 (d) *The captive insurance company shall file a report of financial*
26 *condition on a quarterly basis to be designated by the commissioner. The*
27 *contents and form of the report shall be governed by subsection (b).*

28 (e) *All reports shall be given the same confidential treatment as*
29 *provided in K.S.A. 40-4308, and amendments thereto.*

30 Sec. 42. K.S.A. 40-4308 is hereby amended to read as follows: 40-
31 4308. ~~At least once in three years, and whenever the commissioner~~
32 ~~determines it to be prudent, the commissioner shall personally, or by some~~
33 ~~competent person appointed by the commissioner, visit each captive~~
34 ~~insurance company and thoroughly inspect and examine its affairs to~~
35 ~~ascertain its financial condition, its ability to fulfill its obligations and~~
36 ~~whether it has complied with the provisions of this act. The commissioner~~
37 ~~upon application, in the exercise of discretion, may enlarge the aforesaid~~
38 ~~three-year period to five years, if such captive insurance company is~~
39 ~~subject to a comprehensive annual audit during such period of a scope~~
40 ~~satisfactory to the commissioner by independent auditors approved by~~
41 ~~such commissioner. The expenses and charges of the examination shall be~~
42 ~~paid to the state by the company or companies examined~~

43 (a) *Whenever the commissioner deems it necessary, but at least once*

1 every three years, the commissioner may make, or direct to be made, a
2 financial examination of any captive insurance company in the process of
3 organization, or applying for admission or doing business in Kansas. The
4 commissioner may engage in continuous analysis for the preparation of
5 the examination. In addition, at the commissioner's discretion, the
6 commissioner may make, or direct to be made, a market regulation
7 examination of any insurance company doing business in Kansas.

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

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

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

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

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

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

41 (h) (1) No later than 30 days following completion of the examination
42 or at such earlier time as the commissioner shall prescribe, the examiner
43 in charge shall file with the department a verified written report of

1 examination under oath. No later than 30 days following receipt of the
2 verified report, the department shall transmit the report to the company
3 examined, together with a notice that shall afford such company examined
4 a reasonable opportunity of not more than 30 days to make a written
5 submission or rebuttal with respect to any matters contained in the
6 examination report.

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

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

18 (B) rejecting the examination report with directions to the examiners
19 to reopen the examination for purposes of obtaining additional data,
20 documentation or information; or

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

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

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

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

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

21 (k) *The commissioner may receive documents, materials or*
22 *information, including otherwise confidential and privileged documents,*
23 *materials or information from the national association of insurance*
24 *commissioners, and its affiliates and subsidiaries, and from regulatory*
25 *and law enforcement officials of other foreign or domestic jurisdictions,*
26 *and shall maintain as confidential or privileged any document, material or*
27 *information received with notice or the understanding that it is*
28 *confidential or privileged under the laws of the jurisdiction that is the*
29 *source of the document, material or information. Documents received*
30 *pursuant to this section shall not be subject to disclosure pursuant to the*
31 *open records act, K.S.A. 45-215 et seq., and amendments thereto. The*
32 *provisions of this subsection shall expire on July 1, 2023, unless the*
33 *legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,*
34 *and amendments thereto, prior to July 1, 2023.*

35 Sec. 43. K.S.A. 40-4309 is hereby amended to read as follows: 40-
36 4309. (a) The certificate of authority of a captive insurance company to do
37 an insurance business in this state may be suspended or revoked by the
38 commissioner for any of the following reasons:

39 (1) ~~Insolvency or impairment of capital or surplus~~ *The captive*
40 *insurance company is financially impaired, insolvent or otherwise deemed*
41 *to be in a hazardous financial condition pursuant to K.S.A. 40-222b, and*
42 *amendments thereto;*

43 (2) failure to meet the requirements of K.S.A. 40-4304 ~~or 40-4305,~~

1 *and amendments thereto;*

2 (3) refusal or failure to submit the report, required by K.S.A. 40-
3 4307, *and amendments thereto*, or any other report or statement required
4 by law or by lawful order of the commissioner;

5 (4) failure to comply with the provisions of its own ~~articles of~~
6 ~~incorporation or bylaws~~ *organizational documents*;

7 (5) ~~failure to submit to examination or any legal obligation relative~~
8 ~~thereto, as required by K.S.A. 40-4308~~ *failure to pay any tax or fee, or to*
9 *submit to pay the cost of examination or any legal obligation relative*
10 *thereto, as required by Kansas law*;

11 (6) ~~refusal or failure to pay the cost of examination as required by~~
12 ~~K.S.A. 40-4308~~;

13 (7) (6) use of methods that, although not otherwise specifically
14 prohibited by law, nevertheless render its operation detrimental or its
15 condition unsound with respect to the public or to its policyholders;

16 (8) (7) failure otherwise to comply with the laws of this state.

17 (b) ~~If the commissioner finds, upon examination, hearing or other~~
18 ~~evidence, that any captive insurance company has committed any of the~~
19 ~~acts specified in subsection (a), such commissioner may suspend or revoke~~
20 ~~such license if such commissioner deems it in the best interest of the~~
21 ~~public and the policyholders of such captive insurance company,~~
22 ~~notwithstanding any other provision of this act~~ *Whenever it appears to the*
23 *commissioner that any captive insurance company has committed any of*
24 *the acts specified in subsection (a), the commissioner shall give the*
25 *company notice and an opportunity for hearing in accordance with the*
26 *provisions of the Kansas administrative procedure act. If the commissioner*
27 *finds, upon examination, hearing or other evidence, that any captive*
28 *insurance company has committed any of the acts specified in subsection*
29 *(a), the commissioner may suspend or revoke such certificate of authority*
30 *if the commissioner deems it in the best interests of the public and the*
31 *policyholders of such captive insurance company, notwithstanding any*
32 *other provisions of this act.*

33 (c) *Although issued and delivered to the captive insurance company,*
34 *the certificate of authority at all times shall be the property of this state.*
35 *Upon any expiration, suspension or termination thereof, the captive*
36 *insurance company shall promptly deliver the certificate of authority to*
37 *the commissioner.*

38 (d) *Suspension of a captive insurance company's certificate of*
39 *authority shall be for such period as the commissioner specifies in the*
40 *order of suspension. During the suspension period, the commissioner may*
41 *rescind or shorten the suspension by further order.*

42 (e) *During the suspension period, the captive insurance company*
43 *may not solicit or write any new business, but must file annual statements,*

1 *pay fees and taxes as required under this act, and unless otherwise*
2 *provided in the order of suspension, may service its business already in*
3 *force as if the certificate of authority had continued in full force.*

4 Sec. 44. K.S.A. 40-4310 is hereby amended to read as follows: 40-
5 4310. ~~No captive insurance company shall be subject to any restrictions on~~
6 ~~allowable investments whatever, including those limitations contained in~~
7 ~~sections K.S.A. 40-2a01 et seq., and amendments thereto, except that the~~
8 ~~commissioner may prohibit or limit any investment that threatens the~~
9 ~~solvency or liquidity of any such company (a) Captive insurance~~
10 ~~companies shall comply with:~~

11 (1) *The investment requirements contained in articles 2a and 2b of*
12 *chapter 40 of the Kansas Statutes Annotated, and amendments thereto, as*
13 *applicable; and*

14 (2) *such investment requirements as may otherwise be approved by*
15 *the commissioner upon application by any such captive insurance*
16 *company.*

17 (b) *Investments of association captive insurance companies shall be*
18 *valued in accordance with the valuation procedures established by the*
19 *national association of insurance commissioners, except to the extent it is*
20 *inconsistent with the accounting standards in use by the company and*
21 *approved by the commissioner.*

22 Sec. 45. K.S.A. 40-4311 is hereby amended to read as follows: 40-
23 4311. (a) ~~Any captive insurance company may provide reinsurance,~~
24 ~~comprised in articles 9 and 11 of chapter 40 of the Kansas Statutes~~
25 ~~Annotated as limited by subsection (a)(3) of K.S.A. 40-4302, and~~
26 ~~amendments thereto on risks ceded by any other captive insurance~~
27 ~~company organized under the laws of this state may, with the consent of~~
28 ~~the commissioner, assume all or any part of an individual risk or all or~~
29 ~~any part of a particular class of risks by affiliated insurers.~~

30 (b) ~~Any risks or portions of risks of any captive insurance company~~
31 ~~that is reinsured shall be ceded to an insurance company that is authorized~~
32 ~~to transact business in this state or that has been approved by the~~
33 ~~commissioner. A captive insurance company may take credit for reserves~~
34 ~~on risks or portions of risks ceded. The commissioner may require any~~
35 ~~other documents, financial information or other evidence that such a~~
36 ~~reinsurer will be able to provide adequate security for its financial~~
37 ~~obligations. The commissioner may deny authorization or impose any~~
38 ~~limitations on the activities of a reinsurer that, in such commissioner's~~
39 ~~judgment, are necessary and proper to provide adequate security for the~~
40 ~~ceding captive insurance company and for the protection and consequent~~
41 ~~benefit of the public at large Any captive insurance company may take a~~
42 ~~credit or reduction from liability for the reinsurance of risks or portions of~~
43 ~~risks ceded to a reinsurer in accordance with K.S.A. 40-221a, and~~

1 *amendments thereto, or as otherwise approved by the commissioner. The*
2 *commissioner may require any other documents, financial information or*
3 *other evidence that such reinsurer will be able to provide adequate*
4 *security for its financial obligations. The commissioner may deny*
5 *authorization or impose any limitation on the activities of a reinsurer that*
6 *in the commissioner's judgment are necessary and proper to provide*
7 *adequate security for the ceding captive insurance company and for the*
8 *protection and consequent benefit of the public at large.*

9 ~~(e) Any aircraft captive insurance company may provide reinsurance,~~
10 ~~comprised in articles 9 and 11 of chapter 40 of the Kansas Statutes~~
11 ~~Annotated as limited by subsection (a)(3) of K.S.A. 40-4302, and~~
12 ~~amendments thereto, on risks ceded by an insurance company which is an~~
13 ~~affiliated company and is authorized to transact business in the state of~~
14 ~~Kansas, if the requirements of either paragraph (1) or (2) of subsection (b)~~
15 ~~of K.S.A. 40-221a, and amendments thereto, are met by the ceding insurer~~
16 ~~with respect to the reinsurance provided by the aircraft captive.~~

17 Sec. 46. K.S.A. 40-4313 is hereby amended to read as follows: 40-
18 4313. No captive insurance company shall be permitted to join or
19 contribute financially to any plan, pool, association or guaranty or
20 insolvency fund in this state, nor shall any captive insurance company, or
21 its insured, or its parent or any affiliated company, receive any benefit
22 from any such plan, pool, association or guaranty or insolvency fund for
23 claims arising out of the operations of such captive insurance company.
24 *Prior to insuring a risk or hazard of an association member, the*
25 *association captive insurance company must notify the association*
26 *member that it does not participate in any guaranty or insolvency fund in*
27 *Kansas.*

28 Sec. 47. 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 ~~at the rate prescribed in~~
32 ~~K.S.A. 40-252 A, and amendments thereto. Such taxes shall be subject to~~
33 ~~the procedures and provisions of K.S.A. 40-252 G, 40-252b, 40-252e and~~
34 ~~40-253, and amendments thereto.~~

35 ~~The tax provided for in this section shall constitute all taxes collectible~~
36 ~~under the laws of this state from any captive insurance company, and no~~
37 ~~other occupation tax or other taxes shall be levied or collected from any~~
38 ~~captive insurance company by the state or any county, city or municipality~~
39 ~~within this state, except ad valorem taxes on real and personal property~~
40 ~~used in the production of income~~

41 (b) *Each captive insurance company shall pay the commissioner a*
42 *tax at the rate of $\frac{2}{10}$ of 1% on each dollar of direct premiums collected or*
43 *contracted for, during the year ending December 31 next preceding, on*

1 policies or contracts of insurance written by the captive insurance
2 company, after deducting from the direct premiums subject to the tax
3 amounts paid to policyholders as return premiums with respect to such
4 preceding year only, which amounts shall include only dividends or
5 distributions of unabsorbed premiums or premium deposits returned or
6 credited to policyholders, up to a maximum tax for such year of \$500,000,
7 except that no tax shall be due or payable as a consideration received for
8 annuity contracts.

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

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

28 Sec. 48. K.S.A. 40-4317 is hereby amended to read as follows: 40-
29 4317. The commissioner may adopt such rules and regulations relating to
30 captive insurance companies as are necessary to carry out the provisions of
31 this act. *The commissioner, on a case-by-case basis, may by order, exempt*
32 *a captive insurance company from the provisions of this act and any rule*
33 *or regulation adopted by the commissioner that, as reasonably determined*
34 *by the commissioner, based on such factors deemed relevant by the*
35 *commissioner, consistent with the purposes of this act, are inappropriate*
36 *to apply to such captive insurance company.*

37 Sec. 49. K.S.A. 40-4318 is hereby amended to read as follows: 40-
38 4318. (a) No provisions of chapter 40 of the Kansas Statutes Annotated,
39 and amendments thereto, other than those contained in this act or
40 contained in specific references contained in this act or specific references
41 contained in statutory sections cited in ~~subsection~~ subsections (b) and (c),
42 shall apply to captive insurance companies.

43 (b) The provisions of K.S.A. 40-2209 and 40-2215, and amendments

1 thereto, shall apply to captive insurance companies and to all contracts
2 issued under the act of which this section is a part.

3 *(c) The provisions of article 33 of chapter 40 of the Kansas Statutes*
4 *Annotated, and amendments thereto, shall continue to apply to insurers, as*
5 *applicable.*

6 *(d) To the extent not inconsistent with this act, the provisions of*
7 *article 36 of chapter 40 of the Kansas Statutes Annotated, and*
8 *amendments thereto, shall apply to captive insurance companies*
9 *authorized under this act.*

10 Sec. 50. K.S.A. 40-4301, 40-4302, 40-4303, 40-4304, 40-4305, 40-
11 4306, 40-4307, 40-4308, 40-4309, 40-4310, 40-4311, 40-4313, 40-4314,
12 **40-4316**, 40-4317 and 40-4318 are hereby repealed.

13 Sec. 51. This act shall take effect and be in force from and after its
14 publication in the statute book.