

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 410

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 410 would create the Captive Insurance Act (Act) under the Insurance Code by amending law and creating law related to captive insurance companies. The bill would create two new captive insurance types—branch captive insurance company and special purpose insurance captive—and specify the regulatory structure for each.

Descriptions of specific bill provisions follow.

Creation of the Act [New Section 1]

Specifically, the bill would establish the Act by creating 35 new sections of law, updating 14 statutes from the original set of statutes regulating captive insurance companies, integrating 2 statutes into the Act without amendments (related to trade practices and specifying no requirement to join a rating organization), and repealing 2 statutes (related to certain surplus and product liability requirements).

Captive Insurance Companies

Definitions Under the Act [Section 36]

The bill would amend the definition of “captive insurance company” to mean any pure captive insurance company or association captive insurance company; for purposes of the

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

Act, a branch captive insurance company would be a pure captive insurance company with respect to operations in Kansas, unless otherwise permitted by the Commissioner of Insurance (Commissioner) of the Kansas Insurance Department (Department).

The bill would also amend various definitions, specify definitions for additional terms, remove certain definitions, and integrate the amended statute into the Act.

Certificate of Authority, Requirements, Application, Fees
[Section 37]

The bill would amend law related to the certificate of authority for captive insurance companies, requirements in order to do business and prohibitions, the application process, fees for the application and annual renewal fee, and provisions for confidentiality and disclosure of materials.

The bill would authorize any captive insurance company, when permitted by its organizational documents, to apply to the Commissioner for a certificate of authority to do any and all insurance related to the issuance of life or accident and health insurance policies, when certain requirements are met. The bill would authorize a pure captive insurance company to insure any controlled unaffiliated business up to 5.0 percent of total written premium, upon prior approval of the Commissioner.

The bill would remove certain references; specify insurance and exposure to risk; specify captive insurance companies are prohibited from providing personal lines of insurance, long-term care coverage, critical care coverage, surety, title insurance, and credit insurance; prohibit a captive insurance company from providing accident and health, life insurance, or annuities on a direct basis; state no captive insurance company authorized as a life insurance company would be able to transact business other than life insurance; and prohibit a captive insurance company authorized to

transact business related to fire insurance or casualty, surety, and fidelity from engaging in the business of life insurance.

The bill would amend the requirements for meetings and specify the materials the applicant captive insurance company would be required to file with the Commissioner before receiving a certificate of authority.

Further, the bill would specify each captive insurance company not in existence on January 1, 2018, would be required to pay a nonrefundable fee of \$10,000 for examining, investigating, and processing its application for a certificate of authority and authorize the Commissioner to retain certain services from outside the Department. The bill would set the renewal fee for each year thereafter at \$10,000. [Note: Current law specifies the initial application fee to be \$500 and the renewal fee to be \$110]. The bill would further state each captive insurance company already in existence on January 1, 2018, would pay an annual renewal fee of \$110 until January 1, 2028, after which the fee would raise to \$10,000.

Additionally, the bill would change the end date of each year of the certificate of authority to March 1 and specify confidential treatment for materials submitted to the Commissioner and exceptions for disclosure.

Name of Company [Section 38]

The bill would amend law related to the name of a captive insurance company to remove reference to an aircraft captive insurance company.

Capital Requirements [Section 39]

The bill would amend the capital requirements for captive insurance companies.

The bill would specify the requirements for maintaining capital and surplus; change the amount, from \$100,000 to \$250,000, for the amount a pure captive insurance company must possess and maintain; change the amount, from \$200,000 to \$500,000, for the amount an association captive insurance company must possess and maintain (the bill would change “industrial insured” to “association”); authorize the Commissioner to prescribe additional minimum capital surplus based upon the type, volume, and nature of the insurance business transacted; prohibit loans of minimum capital and surplus funds; and prohibit a pure captive insurance company from making a loan or an investment in its parent company or affiliates without prior written approval of the Commissioner, and such loan or investment would need evidence of Commissioner-approved documentation.

Incorporation or Formation and Membership [Section 40]

The bill would amend the formation possibilities of a pure captive insurance company to include incorporation as a nonstock corporation or formation as a limited liability company, partnership, or limited partnership; state an association captive insurance company could be incorporated as a stock corporation or nonstock corporation, or formed as a limited liability company, partnership, or limited partnership; specify incorporator and organizer requirements for a captive insurance company; state member, manager, or partner requirements for a captive insurance company formed as a corporation, limited liability company, partnership, or limited partnership; describe the quorum for a captive insurance company formed as a corporation; and specify the applicability of laws.

Reports of Financial Condition [Section 41]

The bill would amend law related to the annual report of financial condition of captive insurance companies to describe the requirements for the report and filing deadlines, require the filing of a report of financial condition on a

quarterly basis to be designated by the Commissioner, specify confidential treatment for all reports, and require the Commissioner to adopt rules and regulations related to forms.

Financial Examination [Section 42]

The bill would amend law related to the financial examination of captive insurance companies.

The bill would update language related to the timing of such examination; permit the Commissioner to engage in continuous analysis for the preparation of examination; specify the considerations for scheduling and determining the nature, scope, and frequency of examinations of financial condition; specify the Commissioner's ability to access information from books, records, reports, and other documents; authorize the Commissioner to examine or investigate any person, or the business of any person, related to and necessary or material to the examination or investigation; specify appointment of examiners under provided guidelines; and specify the Commissioner may retain certain groups to make such examination.

The bill would also state the time line for the examiner to file a verified written report of examination with the Department, specify transmission of the report to the examined company and provide opportunity for rebuttal, provide the circumstances for the Commissioner to enter an order and discuss the requirements for all orders, describe the terms of privacy and confidentiality for such reports, and specify the bill would not limit the Commissioner's authority to terminate or suspend any examination to pursue other legal or regulatory action pursuant to Kansas insurance laws.

Additionally, the bill would specify confidential treatment of documents, access of information, and provide a sunset of July 1, 2023, for certain documents.

*Suspension or Revocation of the Certificate of Authority
[Section 43]*

The bill would specify additional reasons why the certificate of authority of a captive insurance company would be suspended or revoked. These reasons would include the captive insurance company is financially impaired, insolvent, or otherwise deemed to be in a hazardous financial condition, failure to comply with the provisions of its organizational documents, and failure to pay any tax or fee or submit to pay the cost of an examination or any legal obligation.

Further, the bill would require a procedure for notice and hearing before the captive insurance company's suspension or revocation of the certificate of authority; require the delivery of the suspended, revoked, or terminated certificate to the Commissioner; specify the period of time for suspension; and prohibit the captive insurance company from soliciting or writing new business during the suspension period, but the company would still be required to file annual statements, pay fees and taxes, and service its business already in force.

Investments [Section 44]

The bill would amend law related to allowable investments and limitations on such investment. The bill would specify investments of association captive insurance companies would be valued in accordance with the valuation procedures established by the National Association of Insurance Commissioners (NAIC), except for those procedures inconsistent with the accounting standards in use by the company and approved by the Commissioner.

Assumption of Risks [Section 45]

The bill would amend law related to the assumption of risk by captive insurance companies to specify the captive insurance company would be permitted to assume all or any

part of an individual risk or all or any part of a particular class of risks by affiliated insurers; authorize the company to take a credit or reduction from liability for reinsurance of risks or portions of risks ceded to a reinsurer; and remove reference to aircraft captive insurance companies.

Guaranty or Insolvency Fund [Section 46]

The bill would specify, prior to insuring a risk or hazard of an association member, the association captive insurance company would be required to notify the association member it does not participate in any guaranty or insolvency fund in Kansas.

Premium Tax [Section 47]

The bill would amend the law related to companies subject to premium taxes. The bill would specify the tax rate for direct premiums and assumed reinsurance premiums, the maximum tax for each year, and require the tax to be calculated on an annual basis unless prorated for multi-year policies or contracts.

*Exemption from Provisions or Rules and Regulations
[Section 48]*

The bill would authorize the Commissioner to issue an order exempting a captive insurance company from provisions of the bill or rule or regulation adopted by the Commissioner under certain circumstances.

*Applicability of Law Related to Insurance Holding Companies
and Impaired or Insolvent Insurers [Section 49]*

The bill would specify provisions related to insurance holding companies continue to apply to insurers, as applicable, and provisions related to impaired or insolvent insurers would apply to captive insurance companies.

Rules and Regulations [New Section 2]

The bill would permit the Commissioner to adopt rules and regulations establishing standards to ensure a pure captive insurance company's parent or any of its affiliated companies is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company. However, the Commissioner may approve the coverage of risks by a pure captive insurance company on a case-by-case basis until such time as rules and regulations are adopted.

Prior Approval Required for Certain Acts [New Section 3]

The bill would specify certain acts cannot be taken regarding a captive insurance company without the prior approval of the Commissioner. These acts include dissolution; sale, exchange, lease, mortgage, assignment, pledge, or other transfer of or granting of a security interest; making of a loan, investment, or extension of credit exceeding 3.0 percent of assets; distributions or dividends out of the capital and surplus; merger or consolidation; conversion to another business form; transfer to or domestication in any jurisdiction; and any amendment of the organizational documents.

Inspection of Records and Civil Penalties [New Section 4]

The bill would require a captive insurance company to maintain its books, records, documents, accounts, vouchers, and agreements in Kansas. The bill would specify these items must be available for inspection by the Commissioner; must be kept in such manner that its financial condition, affairs, and operations can be readily ascertained and the Commissioner can readily verify financial statements; and all originals must be preserved and kept available in Kansas for examination and inspection until the Commissioner approves of destruction or other disposition. The bill would specify the

accessibility of electronic documents and the storage and reproduction of electronic documents.

Additionally, the bill would specify civil penalties under this section. Upon notice and opportunity for hearing, the bill would authorize the Commissioner to impose a civil penalty of up to \$5,000 for each violation or act, along with a penalty of up to \$1,000 for each week that such report or document is not provided. A violation of this section would be grounds for suspension, refusal, or non-renewal of a certificate of authority held by the captive insurance company. The bill would specify any proceeding for suspension, refusal, or revocation would be made in accordance with the Kansas Administrative Procedure Act (KAPA).

Captive Insurance Regulatory and Supervision Fund [New Section 5]

The bill would create the Captive Insurance Regulatory and Supervision Fund (Fund) within the State Treasury, to be administered by the Commissioner. The bill would require all moneys credited to the Fund to be expended only for the purpose of providing administration of the Act. The bill would specify the process for receipt, remittance, and deposit of fees in the State Treasury to the credit of the Fund.

The bill would further specify all expenditures from the Fund would be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Commissioner. The bill would require all amounts received by the Department pursuant to the Act to be credited to the Fund.

Dormant Captive Insurance Company [New Section 6]

The bill would specify a “dormant captive insurance company” (dormant captive) is a captive insurance company that has ceased transacting the business of insurance, including the issuance of insurance policies, and there are no

remaining liabilities associated with insurance business transactions or insurance policies issued prior to the filing of its application for a certificate of dormancy. A certificate would be revoked if the dormant captive no longer meets this criteria.

A captive insurance company domiciled in Kansas meeting the aforementioned criteria could apply to the Commissioner for a certificate of dormancy. The certificate would be subject to renewal every five years. The bill would require a dormant captive that has been issued a certificate of dormancy to possess and maintain unimpaired, paid-in capital and surplus of not less than \$25,000, submit to the Commissioner a report on its financial condition prior to March 15 of each year, and pay a \$500 license renewal fee.

Additionally, a dormant captive would not be liable for payment of certain premium tax; a dormant captive would be required to apply to the Commissioner for approval to surrender its certificate of dormancy and resume conducting insurance business prior to issuing any insurance policies; and the Commissioner would be authorized to promulgate rules and regulations related to dormant captives.

Material Change to Financial Condition [New Section 7]

The bill would require the captive insurance company to notify the Commissioner in writing within ten days of any material change in financial condition or management. The Commissioner would be required to designate material changes through rules and regulations.

Branch Captive Insurance Companies [New Sections 8-14]

The bill would establish a branch captive insurance company (branch captive) as a new type of captive insurance company and would specify the regulatory scheme for such company.

Establishment of Branch Captives [New Section 8]

The bill would authorize the establishment of branch captives, specify applicability of the Insurance Code, and state the Act takes precedence over the Insurance Code. The bill would further describe the requirements of maintaining a principal place of business and appointing a Kansas resident as principal representative in order to conduct insurance business in Kansas.

Definitions [New Section 9]

The bill would establish definitions applicable to New Sections 8-14 of the bill related to branch captives. The bill would define “branch captive insurance company” to mean any alien captive insurance company that has been issued a certificate of authority by the Commissioner to transact the business of insurance in Kansas through a business unit with a principal place of business in Kansas, and has not otherwise been issued a certificate of authority by the Commissioner to transact insurance under the Act; and would define additional terms.

Securities [New Section 10]

The bill would specify no branch captive would be issued a certificate of authority unless it possesses and maintains, as security for the payment of liabilities attributable to the branch operations, the following:

- Minimum capital and surplus of an amount equal to the amount set forth in KSA 40-4304 as the minimum capital requirement for a pure captive insurance company; and
- Reserves on such insurance policies or reinsurance contracts as may be issued or assumed by the branch captive through its branch operations, including reserves for losses, allocated

loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations, unless the Commissioner permits a branch captive to credit against reserve equipment under KSA 40-221a.

The bill would specify the form of holding for such security and authorize the Commissioner to issue an order exempting a branch captive from any or all of these requirements, provided the Commissioner finds satisfactory evidence of the branch captive's financial stability.

*Captive Insurance Company Authorized as Branch Captive
[New Section 11]*

The bill would outline the requirements of a captive insurance company authorized as a branch captive for petitioning the Commissioner for a certificate and the issuance of such a certificate by the Commissioner. Upon issuance of the certificate, the bill would permit the branch captive to register to do business in the state.

Required Filing of Reports and Statements [New Section 12]

The bill would specify the requirements of a branch captive to file reports and statements with the Commissioner, authorize the Commissioner to waive the requirement of an annual report, and provide for confidentiality treatment for reports.

Examination of a Branch Captive [New Section 13]

The bill would state the examination of a branch captive would be of the branch business and branch operations only, as long as the branch captive insurance company provides an annual certificate of compliance to the Commissioner or its equivalent and demonstrates it is operating in sound financial condition. Further, a branch captive would be required to

grant authority to the Commissioner for examination of affairs of a branch captive in a specified jurisdiction, as a condition of the issuance of a certificate of authority, and all reports would be given confidential treatment.

Premium Tax [New Section 14]

The bill would specify a premium tax would apply only to the branch business of a branch captive insurance company.

Special Purpose Insurance Captive [New Sections 15-35]

The bill would establish a special purpose insurance captive (special captive) as a new type of captive insurance company and would specify the regulatory scheme for such company.

Definitions [New Section 15]

The bill would establish definitions applicable to New Sections 15-35 of the bill related to special captives. A “special purpose insurance captive” would mean a captive insurance company that has received a certificate of authority from the Commissioner for the limited purposes specified in New Section 17.

Applicability of Laws [New Section 16]

The bill would state no provision of Kansas insurance laws, other than New Sections 15-35, are applicable to a special captive. However, the bill would specify Chapter 40, Article 33, of the *Kansas Statutes Annotated* (relating to insurance holding companies) would continue to apply, as applicable.

Further, the bill would state New Sections 15-35 take precedence over the Insurance Code. The bill would authorize the Commissioner to exempt a special captive from

rules and regulations and orders, under certain circumstances.

Transacting Business [New Section 17]

The bill would specify the requirements a special captive must meet to transact business in Kansas. The special captive would be required to obtain a certificate of authority from the Commissioner authorizing the special captive to conduct reinsurance business in Kansas; hold at least one meeting of its board of directors each year in Kansas; maintain its principal place of business in Kansas; authorize the Commissioner to accept service of process on its behalf; maintain unimpaired paid-in capital and surplus of not less than \$5,000,000; maintain a risk-based capital of at least 200.0 percent; and pay all applicable fees as required by the Act.

The bill would also permit a special captive to apply to the Commissioner for a certificate of authority to conduct reinsurance and would describe reinsurance and ceded reinsurance agreements.

Further, the bill would specify the requirements a special captive must meet to obtain a certificate of authority to transact business in Kansas. These requirements include filing an application, including certain documents, descriptions, statements, and affidavits; depositing specified securities with the Commissioner; demonstrating the minimum surplus required is established and held in Kansas; providing copies of any filings made by the ceding company with the ceding company's domiciliary insurance regulator and any letters of approval or disapproval received from the insurance regulator (but this requirement would not apply to a ceding company that is not required to make filings with its domiciliary insurance regulator, provided the applicant provides certification of such); revising plan of operation and meeting requirements imposed by a revised plan of

operation, as may be required by the Commissioner; and paying a nonrefundable application fee of \$10,000.

Further, the bill would specify the timeline for the Department to act on the completed application and state a certificate of authority under this section would continue until March 1 of each year, and could be renewed at the discretion of the Commissioner.

Requirements of a Plan of Operation [New Section 18]

The bill would require a special captive to file a plan of operation as part of its application. The plan of operation would include a description of the contemplated financing transaction and a detailed description of transaction documents to which the special captive would be a party, including the special captive contract, and specify other required documents, including *pro forma* balance sheets.

The bill would specify *pro forma* balance sheets and income statements filed must be updated by the special captive and filed with the Commissioner in the event of material deviation from the original or most recently filed plan of operation. The plan of operation would be required to specify which deviations are to be considered material and any other documents or descriptions the Commissioner deems appropriate to explain such material deviation.

Findings by the Commissioner Prior to Issuing a Certificate of Authority to a Special Captive [New Section 19]

The bill would describe the required findings of the Commissioner before approving an application and issuing a certificate of authority to a special captive. The Commissioner would be required to find the proposed plan of operation provides a reasonable and expected successful operation; the terms of the transactions proposed in the plan of operation to which the special captive is a party comply with the Act; and the Commissioner of the domiciliary state of

each ceding company has notified the Commissioner in writing or the applicant has provided satisfactory assurance to the Commissioner that the regulator has approved or granted a disapproval of the special captive contract. The bill would also specify considerations by the Commissioner in evaluating the expectation of a successful operation of a special captive.

Incorporation or Formation [New Section 20]

The bill would permit a special captive to be incorporated as a stock insurer or nonstock corporation, or formed as a limited liability company, partnership, or limited partnership.

Activities, Name, Number of Incorporators, and Capital Stock [New Section 21]

The bill would specify activities of a special captive would be limited to those necessary to accomplish its purpose, as outlined in the plan of operation; the name of the special captive cannot be deceptively similar or likely to be confused with another business name registered in the state; the special captive must have at least three incorporators or organizers, at least one being a Kansas resident; and would require the issuance of capital stock not less than par value for a special captive incorporated as a stock.

Entering into a Contract with a Ceding Company [New Section 22]

The bill would specify the requirements for a special captive to enter into a special captive contract with a ceding company. The special captive must have been granted a certificate of authority to transact business as a special captive, and the special captive must provide the Commissioner with approval or disapproval from the ceding company's regulatory official, but would provide an alternative

if the ceding company's regulatory official does not customarily provide evidence of such approval or disapproval.

Securities and Surplus Notes [New Section 23]

The bill would authorize a special captive to issue approved securities, subject to and in accordance with applicable law, the approved plan of operation, and organizational documents. Further, the special captive would be permitted to enter into and perform all of its obligations under any required contract to facilitate the issuance of the securities.

Additionally, the bill would authorize the Commissioner to approve the use of surplus notes. If the Commissioner approves of such use, the special captive would be required to account for proceeds of surplus notes as a surplus and not a debt and submit, for prior approval of the Commissioner, periodic written requests for payments of interest on and repayments of principal of surplus notes. The bill would note the obligation to repay principal, interest, or both, on the securities issued by the special captive would be required to reflect the risk associated with the reinsurance obligations assumed by the special captive.

Investment Management Agreement [New Section 24]

The bill would require the special captive's assets to be managed in accordance with an investment management agreement filed with and approved by the Commissioner. The special captive would be authorized to invest its assets only in cash and securities that are investment grade at the time of acquisition.

*Recognition of Permitted Investments and Letters of Credit
[New Section 25]*

The bill would permit the special captive to recognize permitted investments, letters of credit, or both, as an

admitted asset on financial statements filed with the Commissioner, if approved by the Commissioner.

Prohibitions [New Section 26]

The bill would prohibit a special captive from entering into a special captive contract with a person that is not authorized to transact insurance or reinsurance in at least its state or country of domicile, or to lend, invest, place assets, or borrow money or receive a loan, other than according to the plan of operation.

Dividends and Distributions [New Section 27]

The bill would prohibit a special captive from declaring or paying dividends or distributions in any form to its owners other than in accordance with transaction agreements or the plan of operation. Further, the bill would specify dividends and distributions cannot decrease the capital of the special captive below the minimum capital requirements; all dividends and distributions must be approved by the Commissioner; and declaration of dividends and distributions be provided for by the management of the special captive under certain circumstances.

Material Change to a Plan of Operation [New Section 28]

The bill would require prior written approval of the Commissioner for any material changes to the plan of operation. The plan of operation would be required to specify which deviations are considered material.

Affiliated Agreements [New Section 29]

The bill would specify copies of all completed affiliated agreements to which the special captive is a party, including special captive contracts and reinsurance agreements, be filed with the Commissioner for prior approval.

Reporting of Financial Conditions [New Section 30]

The bill would require each captive insurance company to submit a report of its financial condition to the Commissioner prior to March 1 of each year. The bill would require the special captive to report using certain principals; require the Commissioner to establish the form and content of the annual report by rules and regulations; specify certain annual and biennial actuarial reports; provide for the filing of an annual report on a fiscal year basis, upon written application; require a special captive to maintain books, records, and other items in Kansas for inspection by the Commissioner; and outline the requirements for preservation of original books, records, and other items.

Financial Examinations and Reports [New Section 31]

The bill would specify a financial examination of a special captive would occur at least once every five years or whenever the Commissioner deems such examination necessary. The bill would authorize the Commissioner to engage in continuous analysis for the preparation of the examination; permit the Commissioner to make or direct to be made a market regulation examination of any insurance company doing business in the state; require the Commissioner to make certain considerations when scheduling and determining the nature, scope, and frequency of examinations of financial condition; authorize the Commissioner to have free access to books and paper relating to business for the purpose of making such examination or analysis; authorize the Commissioner to require reports and documents to be filed with the Commissioner; permit the Commissioner to examine or investigate any person or the business of any person if deemed by the Commissioner to be necessary or material to the financial examination; specify the appointment of examiners; and permit the Commissioner to retain certain persons when making an examination, to be paid for by the company subject to examination.

Additionally, the bill would require the examiner to file a verified written report of examination with the Department. The report would be filed no later than 30 days following the completion of the examination, or at an earlier time prescribed by the Commissioner. The Department would then be required to transmit the report to the examined company within 30 days of receipt of the verified report and a notice of opportunity for rebuttal.

The bill would give the examined company a reasonable opportunity of not more than 30 days to make a written submission or rebuttal. Then, within 30 days of the end of the period for written submissions and rebuttals, the Commissioner would be required to fully consider and review the report and any written submissions or rebuttals.

Upon review, the Commissioner would enter an order either adopting or rejecting the examination report, or call for and conduct a fact-finding hearing for purposes of obtaining additional information. The bill would specify the requirements for all orders; describe the terms of privacy and confidentiality for such reports; and specify the bill would not limit the Commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to Kansas insurance laws.

Reinsurance Premium Tax [New Section 32]

The bill would require each special captive to pay the Commissioner, on or before May 1 of each year, a premium tax at the rate of 0.214 of 1 percent on the first \$20,000,000 of the assumed reinsurance premium; 0.143 of 1 percent on the next \$20,000,000; 0.048 of 1 percent on the next \$20,000,000; and 0.024 of 1 percent of each dollar thereafter.

Additionally, the bill would specify no reinsurance premium tax would be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities in certain circumstances; specify the

premium tax would constitute all taxes collectible under Kansas law from any special captive, except *ad valorem* taxes on real and personal property used in the production of income could be collected; specify the requirements of the special captive submitting a return by February 1 of each year stating the amount of all direct premiums and assumed reinsurance premiums received; specify the requirements of the Commissioner to notify the company of taxes due; and specify a special captive failing to make returns as required or failing to pay within the time required would subject the special captive to the interests and penalties prescribed in KSA 40-2806.

Confidentiality of Documents [New Section 33]

The bill would specify all documents, materials, or other information obtained by or disclosed to the Commissioner related to special captive would be confidential and privileged, but exceptions would apply; and such information would not be subject to disclosure under the Kansas Open Records Act, but would sunset on July 1, 2023, unless the Legislature reviews and reenacts the provision prior to that date. The bill would further describe requirements of prior written consent and circumstances requiring notice and opportunity to be heard under KAPA; and specify the Commissioner or other persons receiving such documents are not permitted or required to testify in any private civil action regarding confidential materials.

The bill would outline the authority of the Commissioner to share and receive documents and materials with federal and international regulatory agencies and the NAIC and its affiliates; and include a sunset provision of July 1, 2023, for receiving documents. The bill would outline the requirements for sharing agreements, including specifying procedures and protocols for confidentiality and security, specifying ownership of information shared with NAIC remains with the Commissioner; require prompt notice to the insurer and affiliates; and require the NAIC to consent to intervention by

an insurer under certain circumstances and specify a sunset provision of July 1, 2023.

The bill would state the sharing of information by the Commissioner is not a delegation of regulatory authority and no waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information would occur as a result of disclosure to the Commissioner or under a sharing agreement.

Conservation, Rehabilitation, or Liquidation [New Section 34]

The bill would authorize the Commissioner, after notice and hearing, to issue an order, subject to KAPA, to conserve, rehabilitate, or liquidate a special captive domiciled in the state on one or more of the following grounds: embezzlement, wrongful sequestration, dissipation, or diversion the special captive's assets; the special captive is financially impaired, insolvent, or otherwise deemed to be in a hazardous financial condition; or the holders of a majority in outstanding principal amount of each class of special captive securities or surplus notes request or consent to conservation, rehabilitation, or liquidation.

The bill would also describe the requirements of the receiver to manage assets and liability and specify the amount recoverable under the special captive contract by the receiver could not be reduced or diminished as a result of the entry of an order with respect to the ceding company, unless provided for in the contract or other governing document.

Rules and Regulations [New Section 35]

The bill would authorize the Commissioner to promulgate rules and regulations related to special captives.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Department. In the Senate Committee hearing, the Commissioner testified in support of the bill. The Commissioner stated many other states have already updated or are currently updating their captive laws, including Missouri, Oklahoma, and Texas, and the bill would provide economic development benefits to Kansas because captives would remain in Kansas instead of moving their business to another state or offshore jurisdiction with updated captive laws. No other testimony was provided.

The Senate Committee amended the bill to make technical amendments updating internal references.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department estimates enactment of the bill would increase the Department's expenditures by \$35,000 in FY 2019, which would be used for actuarial fees to assist with regulating an increased level of captive activity in Kansas. The Department indicates the increased expenditures would be eventually offset by additional revenues from fees assessed to register and maintain the captive insurance companies. Any additional revenue would be credited to the newly created Fund beginning in FY 2020. However, the Department indicates an estimate of new revenues cannot be determined because the number of companies that may establish captives in Kansas is unknown. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.