

Amendments to Insurance Laws Regarding Calculations and Instructions, Self-funded Health Plans, Risk-based Capital, Licensing, Captive Insurance Companies, Public Adjusters, Travel Insurance, Premium Tax; HB 2334

HB 2334 amends the Insurance Holding Company Act, Uniform Insurance Agents Licensing Act, Public Adjusters Licensing Act, Captive Insurance Act, and other insurance-related law. The bill establishes the Protected Cell Captive Insurance Company Act.

The bill requires the Commissioner of Insurance (Commissioner) to select and announce insurance calculations, instructions promulgated by the National Association of Insurance Commissioners (NAIC), or other documents required by the NAIC. It adds certain self-funded health plans to the list of plans to which the Insurance Code of the State of Kansas (Insurance Code) does not apply. It provides authority to the Commissioner to take disciplinary actions and establish criteria to review when considering disciplinary action against a public adjuster's license.

The bill addresses classification of travel insurance. It also reduces insurance company premium tax rates and discontinues the remittance and crediting of a portion of the premium tax to the Insurance Department Service Regulation Fund.

Effective Dates

All provisions of the bill take effect upon publication in statute book with the exception of the provisions pertaining to the reduction of insurance premium tax rates, the discontinuance of the remittance and crediting of such tax, and the preservation of reports and returns, all of which take effect on January 1, 2026, and upon publication in the statute book.

Selections of Insurance Calculations; NAIC-promulgated Instructions and Documents; Application of Insurance Code to Self-funded Health Plans; Risk-based Capital; Insurance Holding Company Act

The bill makes certain selections of calculations, instructions promulgated by the NAIC, or other documents required by the NAIC; adds certain self-funded health plans to the list of plans to which the Insurance Code does not apply; clarifies law regarding health organization risk-based capital (RBC); amends the Insurance Holding Company Act; and makes other clarifying amendments.

Insurance Calculations

The bill requires the Commissioner to select and announce the version of insurance calculations, instructions promulgated by NAIC, or other documents that may be required by NAIC for the next calendar year by publishing the announcement in the *Kansas Register* no later than December 1.

Calculations and instructions include, but are not limited to, RBC instructions, RBC managed care instructions, and group capital calculation instructions.

Self-funded Health Plans Excluded from Insurance Code Applicability

The bill adds the following to the list of those entities or plans to which the Insurance Code does not apply:

- A self-funded health plan established or maintained for its employees by the State or subdivision of the State, a school district, any public authority, or by a county or city government or any political subdivision, agency, or instrumentality thereof; and
- A self-funded health plan established or maintained for its employees by a church or by a convention or association of churches that is exempt from tax under Section 501 of the federal Internal Revenue Code.

Definitions Pertaining to RBC and Health Organization RBC Requirements

The bill amends definitions pertaining to RBC requirements and health organization RBC requirements.

RBC Requirements

- “RBC instructions” means the RBC instructions promulgated by the NAIC that are in effect as announced and noticed by the Commissioner.

Health Organization RBC Requirements

- “Health organization” means a health maintenance organization, limited health service organization; dental or vision plan; hospital, medical, and dental indemnity or service corporation; or other managed care organization licensed under articles of the Insurance Code relating to non-profit dental services corporations, non-profit medical and hospital service corporations, or health maintenance organizations and Medicare provider organizations, or an organization that is licensed as a life and health insurer under the Insurance Code general provisions relating to life insurance companies, and determined by the Commissioner to report predominantly health lines of business in accordance with a health statement test; and
- “RBC instructions” means the RBC instructions for managed care organizations promulgated by the NAIC that are in effect as announced and noticed by the Commissioner.

Insurance Holding Company Act

The bill adds the following definitions to the Insurance Holding Company Act, in addition to adding the NAIC acronym to the defined terms:

- “Financial analysis handbook” means the version of the NAIC financial analysis handbook adopted by the NAIC and in effect that is selected and noticed by the Commissioner;
- “Group capital calculation instructions” means the group capital calculation instructions selected and announced by the Commissioner;
- “NAIC Liquidity Stress Test Framework” means the separate NAIC publication that includes the history of the NAIC’s development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year and such scope criteria, instructions, and reporting templates as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC and as selected and announced by the Commissioner; and
- “Scope criteria” means, as detailed in the NAIC Liquidity Stress Test Framework, the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for such specified data year.

Insurance Holding Company Act Amendments

The bill amends the Insurance Holding Company Act to adopt provisions for group capital calculations and liquidity stress testing requirements and aligns the Act with NAIC accreditation standards. The bill requires the Commissioner to maintain confidentiality of the information reported.

Annual group capital calculation. The bill requires the ultimate controlling person of every insurer subject to registration to concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The calculation report is to be completed in accordance with the NAIC Group Capital Calculation Instructions, which may allow a controlling person who is not the ultimate controlling person to file such report, and according to the procedures within the financial analysis handbook. The report is to be filed with the lead state commissioner of the insurance holding company system as determined by the Commissioner in accordance with the procedures within the financial analysis handbook.

The bill provides exemptions for an insurer holding company system from filing the group capital calculations if certain requirements are met.

The bill grants a lead state commissioner discretion in determining whether to require, exempt, or extend the filing of a group capital calculation report or to accept a limited group capital calculation report under certain conditions.

Liquidity stress test. The bill requires the ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework to file the results of a specific year’s liquidity stress test. The filing is to be made to the lead state insurance commissioner of the insurance holding company system as determined by procedures within the financial analysis handbook. The NAIC Liquidity Stress Test Framework

includes scope criteria applicable to a specific data year. The bill provides for the frequency of the scope criteria review, the effective date of any changes to the NAIC Liquidity Stress Test Framework, and the criteria for scoping an insurer in or out of the NAIC Liquidity Stress Test Framework.

The bill requires that the performance and filing of the results of a specific year's liquidity stress test comply with the NAIC Liquidity Stress Test Framework instructions and reporting template for that year and any lead state insurance commissioner determinations, in consultation with the NAIC Financial Stability Task Force.

Deposit or bond requirement for insurer in hazardous financial condition. If an insurer subject to the Insurance Holding Company Act is deemed by the Commissioner to be in a hazardous financial condition or a condition that is grounds for supervision, conservation, or a delinquency proceeding, the bill authorizes the Commissioner to require the insurer to secure and maintain either a deposit, held by the Commissioner, or a bond, as determined by the insurer at the insurer's discretion. Such bond or deposit is for the protection of the insurer for the duration of the contract or agreement or the existence of the condition for which the Commissioner requires the deposit or bond.

The bill provides criteria for the Commissioner to consider in determining whether a deposit or bond will be required. The Commissioner has discretion in determining the amount of the deposit or bond, not to exceed the value of the contract or agreement in any one year, and whether such deposit or bond is required for a single contract, multiple contracts, or a contract only with a specific person.

Records and data held by an affiliate. The bill maintains that all records and data of the insurer held by an affiliate, in whatever form maintained, are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation at no additional cost to the insurer. The bill provides a non-exhaustive list of the types of records and data within the possession, custody, or control of the affiliate that remain the property of the insurer. The bill also provides that premiums or other funds belonging to the insurer that are collected or held by an affiliate are deemed the exclusive property of and subject to the control of the insurer.

Examination of financial condition by the Commissioner. The bill authorizes the Commissioner to examine any registered insurer and the insurer's affiliate to ascertain the financial condition of such insurer, including the enterprise risk to the insurer by the ultimate controlling party or by any entity or combination of entities within the insurance holding company system or by the insurance holding company system on a consolidated basis.

Confidentiality of data and records. Continuing law provides that certain documents obtained by or disclosed to the Commissioner are not subject to the legislative review of exceptions to disclosure under the Kansas Open Records Act.

The bill requires the Commissioner to maintain the confidentiality of information reported or provided to the Commissioner, including the:

- Group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company

supervised by the Federal Reserve Board or any U.S. group-wide supervisor;
and

- Liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group-wide supervisors.

The bill adds that the written agreements the Commissioner is required to enter into with the NAIC governing the sharing and use of information pursuant to the Insurance Holding Company Act must:

- Exclude documents, materials, or information reported by insurance holding companies as part of the registration process;
- Prohibit the NAIC and its affiliates and subsidiaries from storing the information shared pursuant to the Insurance Holding Company Act in a permanent database after the underlying analysis is completed; and
- Provide for notification of the identity of the third-party consultant to the applicable insurers for documents, materials, or information reported by insurance holding companies as part of the registration process, in the case of an agreement involving a third-party consultant.

The bill deems the group capital calculation and resulting group capital ratio and the liquidity stress test with its results and supporting disclosures, as regulatory tools for assessing group risks, capital adequacy, and group liquidity risks. The bill prohibits construing such documents as a means to rank insurers or insurance holding company systems.

Unless otherwise required under the Act, the bill provides that the following actions regarding a representation or statement of the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures of an insurer or insurer group, or of any component derived in the calculation by an insurer, broker, or other person engaged in the insurance business may be misleading and is therefore prohibited:

- Making, publishing, disseminating, circulating, placing before the public, or directly or indirectly causing such actions through any of the following means of communication:
 - A newspaper, magazine, or other publication;
 - A notice, circular, pamphlet, letter, or poster;
 - Radio or television broadcast or by any electronic means of communication available to the public; or
 - In any other way as an advertisement, announcement, or statement.

The bill authorizes an insurer to publish announcements in a written publication for the sole purpose of rebutting a materially false statement if the insurer is able to demonstrate to the

Commissioner with substantial proof of the falsity or inappropriateness of a materially false statement published in any written publication regarding the:

- Group capital calculation or resulting group capital ratio;
- Liquidity stress test result or supporting disclosures for such test; or
- Inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation, resulting group capital ratio, or liquidity stress test result or supporting disclosures.

Health Benefit Plan Definition in the Patient Protection Act

The bill excludes the following from the definition of "health benefit plan" in the Patient Protection Act:

- A self-funded health plan established or maintained for its employees by the State or subdivision of the State, a school district, or any public authority, or by a county or city government or any political subdivision, agency, or instrumentality thereof; and
- A self-funded health plan established or maintained for its employees by a church or by a convention or association of churches that is exempt from tax under Section 501 of the federal Internal Revenue Code.

Statutes Repealed

In addition to the statutes repealed as a result of amendments made by the bill, the bill also repeals the following statutes in the Insurance Code:

- KSA 40-249, pertaining to the expiration of the corporate powers of an insurance company organized under Kansas law for failure to issue policies within two years from the granting of its charter; and
- KSA 40-2c29, authorizing the Commissioner to adopt by rules and regulations any later versions of the RBC instructions promulgated by the NAIC.

Actions on Licensure of Public Adjusters and Insurance Agents

The bill amends the Uniform Insurance Agents Licensing Act and the Public Adjusters Licensing Act to provide the Commissioner with the authority to consult the status of certain licenses or registrations in reviewing applications or renewals for insurance agents and public adjusters.

The bill adds Commissioner authority to suspend, revoke, or refuse to issue or renew a public adjuster's license for failing to respond to an inquiry from the Commissioner within 15 business days.

Additionally, the bill establishes criteria for the Commissioner to review when considering whether to deny, suspend, revoke, or refuse to renew the application for a public adjuster's license of an individual who has been convicted of a misdemeanor or felony.

Review of Licenses and Registrations

The bill authorizes the Commissioner to evaluate the status of public adjuster licenses and securities registrations when reviewing insurance agent licenses or applications for insurance agent licenses. Similarly, the bill authorizes the Commissioner to evaluate the status of public adjuster licenses and securities registrations when reviewing public adjuster licenses or applications for public adjuster's licenses.

The bill adds Commissioner authority to suspend, revoke, or refuse to issue or renew a public adjuster's license for failing to respond to an inquiry from the Commissioner within 15 business days.

Criteria for Review for Public Adjuster License Applicants Convicted of a Misdemeanor or Felony

The bill establishes criteria for the Commissioner to review when considering whether to deny, suspend, revoke, or refuse to renew the application for a public adjuster license of an individual who has been convicted of a misdemeanor or felony:

- Applicant's age at the time of conduct;
- Recency of the conduct;
- Reliability of the information concerning the conduct;
- Seriousness of the conduct;
- Factors underlying the conduct;
- Cumulative effect of the conduct or the information;
- Evidence of rehabilitation;
- Applicant's social contributions since the conduct;
- Applicant's candor in the application process; and
- Materiality of any omissions or misrepresentations.

The bill requires the Commissioner to consider the following when determining whether to reinstate or grant to an applicant a public adjuster license that has been revoked:

- Present moral fitness of the applicant;
- Demonstrated consciousness by the applicant of the wrongful conduct and disrepute that the conduct has brought to the insurance profession;

- Extent of the applicant's rehabilitation;
- Seriousness of the original conduct;
- Applicant's conduct subsequent to discipline;
- Amount of time that has elapsed since the original discipline;
- Applicant's character, maturity, and experience at the time of revocation; and
- Applicant's present competence and skills in the insurance industry.

[*Note:* These criteria are the same as in law for the Commissioner's review of insurance agent licensure or application for licensure (KSA 40-4909).]

The bill states that any action taken as a result of such review that affects any license or imposes any administrative penalty requires prior notice and an opportunity for a hearing conducted in accordance with the Kansas Administrative Procedure Act.

The bill specifies that any costs incurred as a result of conducting an administrative hearing are assessed against the person who is the subject of the hearing or any business entity represented by such person who is the party to the matters giving rise to the hearing. "Costs" means witness fees, mileage allowances, any costs associated with the reproduction of documents that become a part of the hearing record, and the expense of making a record of the hearing.

Suspensions, Revocations, and Reapplication for Public Adjuster Licensure

Under the bill, no person whose license as a public adjuster has been suspended or revoked can be employed by any insurance company doing business in the state either directly, indirectly, as an independent contractor, or otherwise to negotiate or effect contracts of insurance, suretyship, or indemnity or perform any act toward the solicitation or transaction of any business of insurance during the period of suspension or revocation.

An applicant to whom a public adjuster license is denied after a hearing is prohibited from applying again for a public adjuster license until after a period of one year from the date of the Commissioner's order. A public adjuster licensee whose license is revoked cannot apply again for a public adjuster license for two years after the Commissioner's order.

[*Note:* These terms are the same as in law for insurance agent licensure (KSA 40-4909).]

Protected Cell Captive Insurance Company Act and Captive Insurance Act

The bill establishes the Protected Cell Captive Insurance Company Act and amends the Captive Insurance Act.

Protected Cell Captive Insurance Company Formation

The Protected Cell Captive Insurance Company Act (Protected Cell Captive Act) permits one or more sponsors to form a protected cell captive insurance company (company). A company is incorporated as a stock insurer with the capital divided into shares and held by stockholders as either a mutual corporation, a non-profit corporation with one or more members, or as a limited liability company (LLC).

Definitions

The Protected Cell Captive Act defines various terms, including the following:

- “Protected cell” means a separate account that is established by a company formed or licensed pursuant to the Act and in which an identified pool of assets and liabilities are segregated and insulated by means of the Act from the remainder of the company’s assets and liabilities in accordance with the terms of one or more participant contracts to fund the liability of the company with respect to the participants as set forth in the participant contracts;
- “Protected cell captive insurance company” means any captive insurance company:
 - In which the minimum capital and surplus required by the chapter are provided by one or more sponsors;
 - Is formed or licensed under the Protected Cell Captive Act;
 - Insures the risks of separate participants through participant contracts; and
 - Funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the company’s general account; and
- “Sponsor” means any person or entity that is approved by the Commissioner to provide all or part of the capital and surplus required by the Protected Cell Captive Act and organize and operate a company.

Application Process

The bill lists the materials that must be filed with the Commissioner to apply to become a company, which include the following:

- Materials that demonstrate how the applicant will account for loss and expense experience at a level of detail found to be sufficient by the Commissioner, and how it will report this experience;

- A statement acknowledging that financial records of the applicant, including records pertaining to any protected cells, will be made available for inspection or examination by the Commissioner or their designated agent;
- All contracts or sample contracts between the applicant and any participants; and
- Evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

Establishment and Maintenance of Protected Cells

The Protected Cell Captive Act states that a company formed or licensed pursuant to the Act may establish and maintain one or more incorporated or unincorporated protected cells to insure risks of one or more participants with the following conditions:

- A company may establish one or more protected cells if the Commissioner has approved in writing a plan of operation (plan) or amendments to a plan submitted by the company with respect to each protected cell. A plan includes, but is not limited to, the specific business objectives and investment guidelines of the protected cell, except that the Commissioner may require additional information in the plan. The Commissioner may put into effect a plan or amendments to a plan on or before the date that the approval is signed if the effective date is not earlier than the date that the plan or amendments to the plan were filed with the Kansas Department of Insurance (Department);
- Upon the Commissioner's written approval of the plan, the company, in accordance with the approved plan, may attribute insurance obligations with respect to its insurance business to the protected cell;
- A protected cell has its own distinct name or designation that includes the words "protected cell" or "incorporated cell." An incorporated cell formed as a series of an LLC bears a distinct name or designation as reflected in its formation documents and includes the words "series cell." Such names or designations may also be reasonably abbreviated;
- A company transfers all assets attributable to a protected cell to one or more separately established and identified named accounts for the protected cell. Protected cell assets are held in the named accounts for the purpose of satisfying the obligations of such protected cell;
- An incorporated protected cell may be organized and operated in any form of business organization authorized by the Commissioner, including, but not limited to, an individual series of an LLC as permitted under the Kansas Revised Limited Liability Company Act. Each incorporated protected cell of a protected cell captive insurer (insurer) is treated as a captive insurer under the Protected Cell Captive Act and has the power to enter into contracts, including an individual series of an LLC. Unless otherwise permitted by the organizational documents of

an insurer, each incorporated protected cell of the insurer has the same directors, secretary, and registered office as the protected cell captive insurer; and

- All attributions of assets and liabilities between a protected cell and the general account are in accordance with the plan and participant contracts approved by the Commissioner. No other attribution of assets or liabilities may be made by a company between the company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell must be in cash or in readily marketable securities with established market values.

The Protected Cell Captive Act does not create a legal person separate from a company unless the protected cell is an incorporated cell. The assets are owned by the protected cell. A company cannot represent itself as a trustee regarding the assets of a protected cell. A company may allow for a security interest to attach to the assets of account when in favor of a creditor of a protected cell and otherwise allowed under applicable laws.

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

Administrative and accounting procedure requirements. The Protected Cell Captive Act requires that the company have administrative and accounting procedures in place that properly identify each protected cell's assets and liabilities while keeping them separate and separately identifiable from the company's general accounts and attributable to one protected cell that is also separately identifiable from any other protected cell's assets and liabilities. The Protected Cell Captive Act requires that the remedy of tracing be available in the event of a violation of this provision, but tracing is not the exclusive remedy.

When establishing a protected cell, the Protected Cell Captive Act requires a company to attribute to the protected cell assets a value that is at least equal to the reserves and other insurance liabilities attributed to the protected cell. Each protected cell is accounted for separately in the records of the company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors as may be provided in the participant contract or required by the Commissioner.

No asset of a protected cell may be chargeable with liabilities arising from other insurance business that the company may conduct. Additionally, no sale, exchange, or transfer of assets may occur between or among protected cells without the consent of affected protected cells.

The Commissioner is required to approve the sale, exchange, transfer of assets, dividend, or distribution from one protected cell to another company or participant. The Commissioner is prohibited from any approval if it results in an insolvency or impairment of a protected cell.

Combining cell assets. The Protected Cell Captive Act allows the combination of the assets of two or more protected cells for the purposes of investment, and such combination is not to be construed as defeating the segregation of such assets for accounting or other purposes.

The Commissioner is allowed to approve the use of alternative reliable methods of valuation and rating.

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

The Protected Cell Captive Act clarifies no other attribution of assets or liabilities is to be made by a company between its general account and any protected cell or between any protected cells.

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

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

Annual reporting. The Protected Cell Captive Act requires annual filings with the Commissioner of such financial reports as required by the Commissioner. Reports must include accounting statements detailing the financial experience of each protected cell.

Insolvency notice. The Protected Cell Captive Act requires written notification to the Commissioner of any protected cell's insolvency within ten business days of such insolvency or inability to meet its claim or expense obligations.

Changes within a protected cell. The Protected Cell Captive Act requires the Commissioner to approve each participant contract in writing prior to the contract taking effect. The Protected Cell Captive Act also requires that the addition of each new protected cell as well as the withdrawal or termination of an existing protected cell is considered a change in the plan and requires the Commissioner's written approval before the change may occur.

Business written by a company. The Protected Cell Captive Act allows each company for each protected cell to write business that meets the following conditions:

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

Separation of protected cells due to a company's insolvency. The Protected Cell Captive Act provides a methodology for the Commissioner to separate solvent protected cells from an insolvent company pursuant to an acceptable plan of operation.

Unincorporated and incorporated protected cells. The Protected Cell Captive Act permits the companies formed or licensed under such Act to establish and operate both incorporated and unincorporated protected cells. The Protected Cell Captive Act requires biographical affidavits for owners of incorporated cells, including series members of a series LLC. Biographical affidavits are not required for participants in unincorporated cells.

Participants in a Company

The Protected Cell Captive Act allows a sponsor to be a participant in a company as well as associations, corporations, LLCs, partnerships, trusts, and other business entities.

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

Application of Insurers Supervision, Rehabilitation, and Liquidation Act

The Protected Cell Captive Act clarifies that the Insurers Supervision, Rehabilitation and Liquidation Act is applicable to a company. Upon any order of supervision, rehabilitation, or liquidation of a company, the bill states the receiver manages the assets and liabilities of the company.

Notwithstanding the provisions of the Insurers Supervision, Rehabilitation and Liquidation Act, the bill requires that:

- No assets of a protected cell may be used to pay any expenses or claims other than those attributable to the protected cell; and
- A company's capital and surplus must be available at all times to pay any expenses of or claims against the company.

Legal Action

The Protected Cell Captive Act requires pleadings in any legal action brought by or against a company to specify the protected cell or cells to be named as a party to the suit. If the general account is party to the suit, it must be separately identified in the pleadings as if it were a protected cell. A legal action brought against a company that does not specify one or more protected cells is deemed to be brought against the general account only. A protected cell that is not named in the pleadings is not party to the legal action, and a protected cell named erroneously or without proper cause is entitled to prompt dismissal.

Unless specified by the plan, participant contract, or other prior contractual agreement, the assets of one protected cell may not be encumbered or seized to satisfy the obligations of or a judgment against any other protected cell. No protected cell is required to defend the rights and obligations of another protected cell.

In any legal action involving a company or a protected cell, any papers, documents, or property of a non-party protected cell is afforded the same status during discovery as those of an unrelated third party. A non-party protected cell has standing to appear and petition for any appropriate relief to protect the confidentiality of its papers or documents.

Captive Insurance Company Conversion

The Protected Cell Captive Act provides a procedure for a company or a protected cell of a company to be converted to any form of captive insurance company that is allowed in Kansas Insurance Law with consent of the Commissioner. The Commissioner may issue to the converting protected cell a certificate of authority with an effective date of its original date of formation as a protected cell.

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

- A series of an LLC files organizational documents with the Secretary of State that comply with Kansas law and include the date of formation as a series. Any new entity possesses all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor;
- Any other type of incorporated protected cell entity files amended organizational documents with the Secretary of State that comply with Kansas law; or
- Other entities file organizational documents with the Secretary of State that comply with Kansas law or any other applicable provision governing formation of

that type of entity, including the date of formation as a cell. The new entity possesses all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor cell.

Revised certificate of authority. The Protected Cell Captive Act permits a captive insurance company to apply to the Commissioner for conversion to become a protected cell captive insurance company. Upon approval by the Commissioner and the filing of amended organizational documents with the Secretary of State, the captive insurance company is issued a revised certificate of authority. The effective date of the revised certificate of authority remains the same as the effective date of the prior captive insurance company.

Redomestication of Captive Insurance Companies

The bill provides for a foreign or alien insurer to become a domestic company by complying with all of the requirements of the bill relating to the organization and licensing of a domestic company of the same type with the approval of the Commissioner. A company redomesticating to Kansas may be organized under any lawful corporate form permitted by the bill.

For insurance companies domiciled in foreign or alien jurisdictions that allow for the redomestication of insurance companies, the bill authorizes redomestication to Kansas and states that the company is no longer a domestic legal entity of foreign or alien jurisdiction. A company wishing to redomesticate is required to file organizational documents with the Secretary of State that comply with state law regarding corporations, the Captive Insurance Act (CI Act), and the Kansas Uniform Partnership Act, or any other applicable provision.

The company is required to file a copy of the Secretary of State's acknowledgment letter with the Commissioner, who then is required to issue a certificate of authority, pursuant to the CI Act.

Upon the completion of a redomestication, the captive insurance company is considered to be domiciled in this state and subject to Kansas law. The captive insurance company is deemed to have a formation date corresponding to its original formation date in the foreign or alien domicile.

For the purposes of the financial examination required by the CI Act, any examination conducted by the foreign or alien domicile substantially similar to an examination completed for companies domiciled in Kansas is recognized for the purposes of establishing a period of time when the next examination is due.

Amendments to the Captive Insurance Act

The bill also amends the CI Act. The CI Act permits a captive insurance company (CIC) to continue to apply to the Commissioner for a certificate of authority but clarifies exceptions as follows:

- A pure CIC may not insure any risks other than those of its parent and affiliated companies, any controlled unaffiliated business, or combination thereof; and

- A CIC may provide workers' compensation insurance, insurance in the nature of workers' compensation insurance, and the reinsurance of such policies unless prohibited by federal law, the Kansas Insurance Law, or any other state having jurisdiction over the transaction.

The bill also adds the following exceptions:

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

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

Before the provisional certificate is issued, the applicant must file a completed application and pay all necessary fees. The Commissioner is required to make a preliminary finding of acceptability regarding the expertise, experience, and character of the person who will control and manage the applicant captive.

The Commissioner may place limits of authority on any provisional certificate holder as well as revoke a provisional certificate if the interests of the insureds or the public are endangered. If the applicant fails to complete the regular application for a certificate of authority, the provisional certificate terminates by operation of law.

The bill authorizes the Commissioner to enact any necessary rules and regulations for a program regarding the issuance of provisional certificates of authority.

Application and renewal fees. Each CIC pays a non-refundable fee of up to \$2,500 to the Commissioner for each application and an annual renewal fee of up to \$2,500, payable to the Commissioner.

Unimpaired paid-in capital and surplus requirements. The bill amends the CI Act to reflect the following unimpaired paid-in capital and surplus requirements of not less than:

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

Frequency of examinations. Continuing law requires the Commissioner to make or direct to be made a financial examination of any CIC in the process of organization or applying

for admission or doing business in Kansas. The bill amends the frequency of the examination from at least every three years to at least every five years.

Requirement to join a policy form organization. The bill amends the CI Act to clarify that a CIC is required to join a policy form organization.

Premium tax for redomesticated companies and one-year exemption. The bill provides for a company redomesticating under the CI Act to only be liable for taxes paid on direct premiums and assumed reinsurance premiums paid to the company after redomestication. If a company redomesticated under the CI Act after July 1 of any year, the company is only subject to 50 percent of the minimum premium tax.

Any redomesticated foreign or alien company is required to report all premium taxes due, but may, either in its first or second year of operations after redomesticating into Kansas, elect to forgo the payment of premium taxes. A company choosing to forgo payment of premium taxes that surrenders its certificate of authority or redomesticates to another jurisdiction within five years of redomestication in Kansas is required to immediately pay an amount equal to the foregone premium tax plus 10 percent per annum from the date of the foregone premium.

Taxation of CIC. The bill clarifies that the tax provided for in the CI Act constitutes all taxes collectible under the laws of Kansas from any CIC, and no other occupation tax or any other tax is to be levied or collected from any CIC by the state or any political subdivision.

Classification and Filing of Travel Insurance Coverage

The bill amends law to allow travel insurance coverage for sickness, accident, disability, or death occurring during travel as either a separate policy or along with related coverages of emergency evacuation or repatriation of remains, to be classified and filed under either an accident and health or inland marine line of insurance.

Insurance Company Premium Tax Rates; Preservation of Documents

The bill reduces insurance company premium tax rates from 2.0 percent to 1.98 percent per year for tax year 2026 and subsequent years. Beginning January 1, 2026, the bill removes the requirement that the 1.0 percent of insurance company premium taxes received by the Commissioner be transferred to the State Treasurer to the credit of the Insurance Department Service Regulation Fund.

The bill requires all reports and returns required by the Insurance Code, and rules and regulations adopted pursuant to the Insurance Code, to be preserved for a minimum of three years or until the Commissioner orders such documents destroyed.

Entities Eligible for Reduced Premium Tax Rates

The premium tax rate reduction applies to the following entities organized under Kansas law or the laws of any other state, territory, or country:

- Capital stock insurance companies;
- Mutual legal reserve life insurance companies;
- Mutual life, accident, and health associations;
- Mutual fire, hail, casualty, and multiple line insurers [Note: Hail is not included in this line of insurers for entities organized under the laws of any other state, territory, or country.];
- Reciprocal or interinsurance exchanges;
- Mutual non-profit hospital service corporations;
- Non-profit medical service corporations;
- Non-profit dental service corporations;
- Non-profit optometric service corporations; and
- Non-profit pharmacy service corporations.