

SESSION OF 2025

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

As Amended by Senate Committee of the Whole

**Brief\***

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

The bill would be in effect upon publication in the *Kansas Register*.

***Protected Cell Captive Insurance Company Formation  
(New Section 2)***

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

***Definitions (New Section 3)***

The Act would define various terms, including the following:

- “Protected cell” would mean 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

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

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” would mean any captive insurance company:
  - In which the minimum capital and surplus required by the chapter are provided by one or more sponsors;
  - Formed or licensed under the 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” would mean any person or entity that is approved by the Insurance Commissioner (Commissioner) to provide all or part of the capital and surplus required by the Act and organize and operate a company.

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

The bill would list the materials that would be required to be filed with the Commissioner to apply to become a company, which would 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 (New Sections 5 and 7)***

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

- A company could establish one or more protected cells if the Commissioner has approved in writing a plan of operation (plan) or amendments to a plan submitted by the company with respect to each protected cell. A plan would include, but not be limited to, the specific business objectives and investment guidelines of the protected cell, except that the Commissioner could require additional information in the plan. The Commissioner could 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 Insurance Department (Department);
- Upon the Commissioner's written approval of the plan, the company, in accordance with the approved plan, could attribute insurance

obligations with respect to its insurance business to the protected cell;

- A protected cell would have its own distinct name or designation that would include the words “protected cell” or “incorporated cell.” An incorporated cell formed as a series of a LLC would bear a distinct name or designation as reflected in its formation documents and include the words “series cell.” Such names or designations could also be reasonably abbreviated;
- A company would transfer all assets attributable to a protected cell to one or more separately established and identified named accounts for the protected cell. Protected cell assets would be held in the named accounts for the purpose of satisfying the obligations of such protected cell;
- An incorporated protected cell could be organized and operated in any form of business organization authorized by the Commissioner, including, but not limited to, an individual series of a LLC as permitted under the Kansas Revised Limited Liability Company Act. Each incorporated protected cell of a protected cell captive insurer (insurer) would be treated as a captive insurer under the Act and would have the power to enter into contracts, including an individual series of a LLC. Unless otherwise permitted by the organizational documents of a insurer, each incorporated protected cell of the insurer would have the same directors, secretary, and registered office as the protected cell captive insurer; and
- All attributions of assets and liabilities between a protected cell and the general account would be in accordance with the plan and participant contracts approved by the Commissioner. No other attribution of assets or liabilities would be made by

a company between the company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell would be required to be in cash or in readily marketable securities with established market values.

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

#### *Investment Management*

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

When establishing a protected cell, the Act would require 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 would be 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 could be provided in the participant contract or required by the Commissioner.

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

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

#### *Prohibition on Combining Cells (New Section 7)*

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

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

#### *Attributions of Assets and Liabilities*

The Act would require that all attributions of assets and liabilities to the protected cells and the general account be in

accordance with the plan approved by the Commissioner, including the performance under a reinsurance contract.

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

#### *Reinsurance Contract*

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

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

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

### *Annual Reporting*

The Act would require annual filings with the Commissioner of such financial reports as required by the Commissioner. Reports would be required to include accounting statements detailing the financial experience of each protected cell.

### *Insolvency Notice*

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

### *Changes within a Protected Cell*

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

### *Business Written by a Company*

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

- Fronted by an insurance company licensed under the laws of any state;
- Reinsured by a reinsurer authorized or approved by the 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 could not 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 could 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 would be issued or confirmed by a bank approved by the Commissioner. A trust maintained pursuant to this subsection would be established in a form and upon such terms approved by the Commissioner.

#### *Separation of Protected Cells Due to a Company's Insolvency*

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

#### *Unincorporated and Incorporated Protected Cells*

The Act would permit the companies formed or licensed under the Act to establish and operate both incorporated and unincorporated protected cells. The Act would require biographical affidavits for owners of incorporated cells, including series members of a series LLC. Biographical affidavits would not be required for participants in unincorporated cells.

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

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

A participant would not be required to be a shareholder of a company. A participant would 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 (New Section 8)***

The Act would clarify that the Insurers Supervision, Rehabilitation and Liquidation Act would be applicable to a company. Upon any order of supervision, rehabilitation, or liquidation of a company, the bill would state the receiver would manage the assets and liabilities of the company.

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

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

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

The Act would require pleadings in any legal action brought by or against a company to specify which protected cell or cells should be named as a party to the suit. If the general account is party to the suit, it would 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 would be deemed to be brought against the general account only. A protected cell that is not named in the pleadings would not be party to the legal action, and a protected cell named erroneously or without proper cause would be entitled to prompt dismissal.

Unless specified by the plan, participant contract, or other prior contractual agreement, the assets of one protected cell could not be encumbered or seized to satisfy the obligations of or a judgment against any other protected cell. No protected cell would be 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 would be afforded the same status during discovery as those of an unrelated third party. A non-party protected cell would have standing to appear and petition for any appropriate relief to protect the confidentiality of its papers or documents.

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

The Act would provide 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 would be able to issue to the converting protected cell a certificate of authority with an effective date of its original date of formation as a protected cell.

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

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

#### *Revised Certificate of Authority*

The Act would permit 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 SOS, the captive insurance company would be issued a revised certificate of authority. The effective date of the revised certificate of authority would remain the same as the effective date of the prior captive insurance company.

#### ***Redomestication of Captive Insurance Companies (New Section 11)***

The bill would provide 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 could 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 would authorize redomestication to Kansas and would state that the company is no longer a domestic legal entity of foreign or alien jurisdiction. A company wishing to redomesticate would be required to file organizational documents with the Secretary of State that comply with state law regarding corporations, the Captive Insurance Act, and the Kansas Uniform Partnership Act, or any other applicable provision.

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

Upon the completion of a redomestication, the bill would consider the captive insurance company to be domiciled in this state and subject to Kansas law. The captive insurance company would be 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 Captive Insurance Act, any examination conducted by the foreign or alien domicile substantially similar to an examination completed for companies domiciled in Kansas would be recognized for the purposes of establishing a period of time when the next examination would be due.

***Amendments to the Captive Insurance Act (Sections 12–16)***

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

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

The bill would also add the following exceptions:

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

### *Provisional Certificate of Authority (Section 12)*

The bill would amend 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 issuing the provisional certificate, the applicant would be required to file a completed application and pay all necessary fees. The Commissioner would be required to make a preliminary finding of acceptability regarding the expertise, experience, and character of the person who would control and manage the applicant captive.

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

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

### *Application and Renewal Fees (Section 12)*

Each CIC would pay 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 (Section 13)*

The bill would amend 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 (Section 14)*

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

#### *Requirement to Join a Policy Form Organization (Section 15)*

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

#### *Premium Tax for Redomesticated Companies and One-year Exemption (Section 16)*

The bill would provide for a company redomesticating under the 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 Act after July 1 of any year, the company would only be subject to 50 percent of the minimum premium tax.

Any redomesticated foreign or alien company would be required to report all premium taxes due, but could, 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 would immediately pay an amount equal to the



forgone premium tax plus 10 percent per annum from the date of the forgone premium.

#### *Taxation of CIC (Section 16)*

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

#### **Background**

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

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

In the House Committee hearing on February 14, 2025, **proponent** testimony was provided by Representative Tarwater and industry experts from Dickinson Wright and Elevate Risk Solutions. The conferees stated generally that captive insurance is an alternative to self-insurance and the proposed reforms are a way to modernize and strengthen the insurance regulatory framework.

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

No other testimony was provided.

The House Committee amended the bill to set the maximum fee amount CICs would be required to pay to the Commissioner.

### ***Senate Committee on Financial Institutions and Insurance***

In the Senate Committee hearing on March 5, 2025, **proponent** testimony was provided by Representative Tarwater and industry experts from Dickinson Wright and Pinnacle. Representative Tarwater stated that modernizing the CI Act and allowing for protected cell captives to operate in Kansas would allow for many Kansas-based companies that utilize captive insurance to domicile in Kansas.

The Senate Committee hearing was continued on March 12, 2025. Representative Tarwater and an industry expert representing Elevate Risk Solutions provided additional informational testimony.

Written-only proponent testimony was provided by representatives of Elevate Risk Solutions and Kansas Employers for Affordable Healthcare.

No other testimony was provided.

The Senate Committee amended the bill to restore language regarding the ability for captive insurance companies to provide accident and health insurance and to make the bill effective upon publication in the *Kansas Register*.

### ***Senate Committee of the Whole***

The Senate Committee of the Whole amended the bill to provide for the redomestication of a foreign or alien captive insurance company and to provide for a redomesticated foreign or alien insurance company to be exempt from premium taxes for one year of operations.

## **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department states the bill has the potential to increase or decrease revenues to its fee funds starting in FY 2026. The reduction to the captive application and renewal fees could reduce revenues into its Captive Insurance Regulation and Supervision Fund. However, the fee reduction and other changes in the bill could result in additional CICs being licensed, thus increasing revenues from application and renewal fees. If there are additional CICs as a result of the enactment of the bill, then there would also be an increase in premium taxes collected and deposited into the State General Fund (SGF). However, the Department cannot estimate the fiscal effect of the bill.

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

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

Insurance; Protected Cell Captive Insurance Company Act; Captive Insurance Act; captive insurance; self-insurance; foreign captive insurance company