

**SENATE BILL No. 410**

By Committee on Financial Institutions and Insurance

2-8

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

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

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

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

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

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

1 business form;

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

4 (h) any amendment of the organizational documents of a captive  
5 insurance company.

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

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

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

38 New Sec. 5. There is hereby created a fund in the state treasury to be  
39 known as the captive insurance regulatory and supervision fund to be  
40 administered by the commissioner. All moneys credited to such fund shall  
41 be expended only for the purpose of providing for the administration of  
42 this act. All fees received by the commissioner under the captive insurance  
43 act shall be remitted to the state treasurer in accordance with the

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

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

12 (1) Ceased transacting the business of insurance, including the  
13 issuance of insurance policies; and

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

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

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

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

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

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

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

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

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

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

41 New Sec. 7. The captive insurance company shall notify the  
42 commissioner in writing within 10 days of any material change in the  
43 financial condition or management of the captive insurance company. The

1 commissioner shall designate material changes through rules and  
2 regulations.

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

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

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

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

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

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

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

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

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

42 New Sec. 10. (a) No branch captive insurance company shall be  
43 issued a certificate of authority unless it shall possess and thereafter

1 maintain, as security for the payment of liabilities attributable to the  
2 branch operations:

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

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

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

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

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

20 (3) any combination thereof.

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

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

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

42 New Sec. 12. (a) A branch captive insurance company shall file with  
43 the commissioner a copy of all reports and statements required to be filed

1 under the laws of the jurisdiction in which the alien captive insurance  
2 company is formed, verified by oath of two of its executive officers. Such  
3 reports and statements shall be filed with the commissioner on the same  
4 day that such reports and statements are due in the domiciliary jurisdiction  
5 of the alien captive insurance company.

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

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

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

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

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

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

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

39 New Sec. 15. As used in sections 15 through 35, and amendments  
40 thereto:

41 (a) "Affiliate" means a company that controls, is controlled by or  
42 under common control with a special purpose insurance captive.

43 (b) "Affiliated agreements" means written agreements, including a

1 special purpose insurance captive contract, between a special purpose  
2 insurance captive and its affiliate.

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

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

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

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

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

17 (h) "NAIC" means the national association of insurance  
18 commissioners.

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

23 (j) "Permitted investments" means investments authorized by articles  
24 2a and 2b of chapter 40 of the Kansas Statutes Annotated, and  
25 amendments thereto, or as specifically authorized by the commissioner by  
26 order.

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

29 (l) "Special purpose insurance captive" means a captive insurance  
30 company that has received a certificate of authority from the commissioner  
31 for the limited purposes provided for in section ~~16~~ 17, and amendments  
32 thereto.

33 (m) "Special purpose insurance captive contract" means a written  
34 contract between the special purpose insurance captive and the ceding  
35 company under which the special purpose insurance captive agrees to  
36 provide reinsurance protection to the ceding company for risks associated  
37 with the ceding company's written or assumed annuity, life insurance or  
38 accident and health insurance business.

39 (n) "State" means the state of Kansas.

40 (o) "Surplus note" means an unsecured subordinated debt obligation,  
41 including any contingent obligation for the repayment of a sum of money  
42 upon a written agreement that the loan or advance with interest shall be  
43 repaid only out of funds as specified in the approved plan of operation, or

1 any approved amendment thereto.

2 (p) "Valuation manual" means the manual of valuation instructions  
3 adopted by the NAIC.

4 New Sec. 16. (a) No provision of the Kansas insurance laws, other  
5 than those specifically referenced in sections 15 through 35, and  
6 amendments thereto, apply to a special purpose insurance captive, its  
7 operations, assets, investments and special purpose insurance captive  
8 contracts. Notwithstanding the foregoing, article 33 of chapter 40 of the  
9 Kansas Statutes Annotated, and amendments thereto, shall continue to  
10 apply as applicable.

11 (b) In the event of a conflict between any provision of chapter 40 of  
12 the Kansas Statutes Annotated, and amendments thereto, and sections 15  
13 through 35, and amendments thereto, the latter shall control as to the  
14 special purpose insurance captive and its operations, assets, dividends,  
15 special purpose insurance captive contracts, and surplus notes and  
16 investments. The commissioner may exempt all, or any one, special  
17 purpose insurance captive by rules and regulations or order from the  
18 provisions of sections 15 through 35, and amendments thereto, that the  
19 commissioner determines to be inappropriate, but may not expand the  
20 application of these sections.

21 New Sec. 17. (a) To transact business in Kansas, a special purpose  
22 insurance captive shall:

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

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

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

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

30 (5) maintain unimpaired paid-in capital and surplus of not less than  
31 \$5,000,000;

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

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

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

37 (1) An authorized special purpose insurance captive may only  
38 reinsure the risks of its ceding company. A special purpose insurance  
39 captive may reinsure risks of more than one ceding company, provided all  
40 ceding companies from which a special purpose insurance captive assumes  
41 risks shall be affiliated with one another.

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



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

5 (c) To obtain a certificate of authority to transact business as a special  
6 purpose insurance captive in Kansas, the special purpose insurance captive  
7 shall:

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

9 (A) Certified copies of its organizational documents;

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

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

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

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

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

21 (G) a description of the investment strategy the special purpose  
22 insurance captive will follow; and

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

25 (2) have deposited with the commissioner of insurance pursuant to  
26 K.S.A. 40-229a, and amendments thereto, securities authorized by K.S.A.  
27 40-2a01 et seq., and amendments thereto, in an amount equal to not less  
28 than the minimum capital stock required of such company for the  
29 protection of its policyholders or creditors, or both;

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

32 (4) provide copies of any filings made by the ceding company with  
33 the ceding company's domiciliary insurance regulator to obtain approval  
34 for the ceding company to enter into the special purpose insurance captive  
35 contract and copies of any filings made by any affiliate of the special  
36 purpose insurance captive to obtain regulatory approval to contribute  
37 capital to the special purpose insurance captive or to acquire direct or  
38 indirect ownership of the special purpose insurance captive. The special  
39 purpose insurance captive shall provide copies of any letters of approval or  
40 disapproval received from the insurance regulator responding to such  
41 filing.

42 (d) The commissioner may require the special purpose insurance  
43 captive to revise its plan of operation under section 18, and amendments

1 thereto, and meet all requirements imposed by a revised plan of operation  
2 as approved by the commissioner thereunder.

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

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

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

15 (h) A special purpose insurance captive shall pay to the commissioner  
16 a nonrefundable application fee of \$10,000 for examining, investigating  
17 and processing its application for certificate of authority, and the  
18 commissioner is authorized to retain legal, financial, actuarial and  
19 examination services from outside the department, the reasonable costs of  
20 which may be additionally charged against the applicant. In addition, each  
21 special purpose insurance captive shall pay a renewal fee for each year  
22 thereafter of \$10,000.

23 New Sec. 18. (a) A special purpose insurance captive must file, as  
24 part of its application, a plan of operation to consist of a description of the  
25 contemplated financing transaction or transactions and a detailed  
26 description of transaction documents to which the special purpose  
27 insurance captive will be a party, including, but not limited to, the special  
28 purpose insurance captive contract and related transactions to which the  
29 special purpose insurance captive will be a party that must include:

30 (1) Draft documentation or, at the commissioner's discretion, a  
31 written summary of all material agreements to which the special purpose  
32 insurance captive is to be a party that are to be entered into to effectuate  
33 the special purpose insurance captive contract and the financing  
34 transaction;

35 (2) the purpose of the transaction;

36 (3) maximum amounts;

37 (4) interrelationships of the various transactions, to which the special  
38 purpose insurance captive will be a party, required to effectuate the  
39 financing;

40 (5) the investment strategy and plan for the special purpose insurance  
41 captive;

42 (6) a description of the underwriting, reporting and claims payment  
43 methods by which losses covered by the special purpose insurance captive

1 contract will be reported, accounted for and settled;

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

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

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

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

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

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

20 (1) The proposed plan of operation provides a reasonable and  
21 expected successful operation;

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

25 (3) the commissioner of the domiciliary state of each ceding company  
26 has notified the commissioner in writing or the applicant has otherwise  
27 provided assurance satisfactory to the commissioner that such regulator  
28 has either approved or granted a disapproval of the special purpose  
29 insurance captive contract.

30 (b) In evaluating the expectation of a successful operation, the  
31 commissioner shall consider whether the proposed special purpose  
32 insurance captive and its management are of known good character and  
33 reasonably believed not to be affiliated, directly or indirectly, with a  
34 person known to have been involved with the improper manipulation of  
35 assets, accounts or reinsurance. In the event the commissioner of the state  
36 of domicile of any ceding company is not required to review the special  
37 purpose insurance captive contract, then the approval described in  
38 subsection (a)(3) shall not be required for licensing of the special purpose  
39 insurance captive hereunder.

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

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

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

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

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

12 New Sec. 22. A special purpose insurance captive may enter into a  
13 special purpose insurance captive contract with a ceding company,  
14 provided:

15 (a) The special purpose insurance captive has been granted a  
16 certificate of authority to transact business as a special purpose insurance  
17 captive under this section; and

18 (b) the special purpose insurance captive provides the commissioner  
19 with evidence of approval or disapproval from the insurance regulatory  
20 official of the ceding company's state or country of domicile to enter into  
21 the special purpose insurance captive contract. If the ceding company's  
22 domiciliary insurance regulatory official does not customarily provide  
23 evidence of such approval or disapproval, the commissioner shall approve  
24 the special purpose insurance captive's execution of such special purpose  
25 insurance captive contract, if such special purpose insurance captive  
26 contract would be acceptable and if an assuming insurer domiciled in  
27 Kansas were to propose execution of the same with its ceding company for  
28 the purpose of assuming such reinsurance and an officer of the special  
29 purpose insurance captive provides the commissioner with a certification  
30 that terms of the special purpose insurance captive contract meet the  
31 requirements for the ceding company to obtain credit in its state of  
32 domicile for reinsurance ceded under the special purpose insurance captive  
33 contract.

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

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

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

43 (2) submit for prior approval of the commissioner periodic written

1 requests for payments of interest on and repayments of principal of surplus  
2 notes.

3 (c) The obligation to repay principal or interest, or both, on the  
4 securities issued by the special purpose insurance captive shall reflect the  
5 risk associated with the reinsurance obligations assumed by the special  
6 purpose insurance captive.

7 New Sec. 24. A special purpose insurance captive's assets shall be  
8 managed in accordance with an investment management agreement filed  
9 with and approved by order of the commissioner. A special purpose  
10 insurance captive shall only invest its assets in cash and securities that are  
11 investment grade at the time of the acquisition.

12 New Sec. 25. A special purpose insurance captive may, if approved  
13 by the commissioner, recognize permitted investments, letters of credit, or  
14 both, as an admitted asset on its financial statements filed with the  
15 commissioner.

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

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

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

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

27 (b) Dividends and distributions may not decrease the capital of the  
28 special purpose insurance captive below the minimum capital  
29 requirements.

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

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

41 New Sec. 28. Any material changes to a special purpose insurance  
42 captive's plan of operation shall require the prior written approval of the  
43 commissioner. The plan of operation must specify which deviations shall

1 be considered material.

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

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

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

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

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

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

39 (f) Unless otherwise approved in advance by the commissioner, a  
40 special purpose insurance captive company shall maintain its books,  
41 records, documents, accounts, vouchers and agreements in Kansas. A  
42 special purpose insurance captive shall make its books, records,  
43 documents, accounts, vouchers and agreements available for inspection by

1 the commissioner at any time. A special purpose insurance captive shall  
2 keep its books and records in such manner that its financial condition,  
3 affairs and operations can be readily ascertained and so that the  
4 commissioner may readily verify its financial statements and determine its  
5 compliance with this act.

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

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

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

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

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

41 (e) The commissioner may also examine or investigate any person, or  
42 the business of any person, insofar as such examination or investigation is,  
43 in the sole discretion of the commissioner, necessary or material to the

1 examination of the company, but such examination or investigation shall  
2 not infringe upon or extend to any communications or information  
3 accorded privileged or confidential status under any other laws of this  
4 state.

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

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

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

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

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

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

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

40 (3) All orders entered as a result of revelations contained in the  
41 examination report shall be accompanied by findings and conclusions  
42 resulting from the commissioner's consideration and review of the  
43 examination report, relevant examiner workpapers and any written



1 submissions or rebuttals. Within 30 days of the issuance of the adopted  
2 report, the company shall file affidavits executed by each of its directors  
3 stating under oath that they have received a copy of the adopted report and  
4 related orders.

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

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

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

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

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

41 (c) Every special purpose insurance captive shall, on or before  
42 February 1 of each year, make a return on a form provided by the  
43 commissioner, verified by the affidavit of the company's president and

1 secretary or other authorized officers, to the commissioner stating the  
2 amount of all direct premiums received and assumed reinsurance  
3 premiums received, whether in cash or in notes, during the year ending on  
4 December 31 next preceding. Upon receipt of such returns, the  
5 commissioner shall verify the same and certify the amount of tax due from  
6 the various companies on the basis and at the rate provided in this section,  
7 on or before March 31 of each year. The commissioner shall immediately  
8 thereafter notify and assess each company the amount of tax due.

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

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

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

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

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

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

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

43 (1) Share documents, materials or other information, including the

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

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

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

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

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

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

35 (D) require the NAIC and its affiliates and subsidiaries to consent to  
36 intervention by an insurer in any judicial or administrative action in which  
37 the NAIC and its affiliates and subsidiaries may be required to disclose  
38 confidential information about the insurer and its affiliates shared with the  
39 NAIC and its affiliates and subsidiaries pursuant to this act. Documents,  
40 materials or other information in the possession or control of the national  
41 association of insurance commissioners shall be confidential by law and  
42 privileged, shall not be subject to the open records act, K.S.A. 45-215 et  
43 seq., and amendments thereto, shall not be subject to subpoena, and shall

1 not be subject to discovery or admissible in evidence in any private civil  
2 action. The provisions of this paragraph shall expire on July 1, 2023,  
3 unless the legislature reviews and reenacts this provision pursuant to  
4 K.S.A. 45-229, and amendments thereto, prior to July 1, 2023.

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

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

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

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

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

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

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

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

38 New Sec. 35. The commissioner may promulgate all rules and  
39 regulations necessary to effectuate the provisions of sections 15 through  
40 35, and amendments thereto.

41 Sec. 36. K.S.A. 40-4301 is hereby amended to read as follows: 40-  
42 4301. As used in ~~this~~ *the captive insurance* act, unless the context requires  
43 otherwise:

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

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

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

17 (1) Own, control or hold with power to vote all of the outstanding  
18 voting securities of an association captive insurance company  
19 incorporated as a stock insurer;

20 (2) have complete voting control over an association captive  
21 insurance company incorporated as a mutual insurer;

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

24 (4) have complete voting control over an association captive  
25 insurance company formed as a limited liability company.

26 (c) "Association captive insurance company" means any captive  
27 insurance company that insures risks of association members.

28 (d) "Association member" means any person that belongs to an  
29 association.

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

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

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

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

43 ~~(1) Who procures the insurance of any risk or risks by use of the-~~

1 services of a full-time employee acting as an insurance manager or buyer;

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

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

5 (4) whose principal activity consists of the manufacture of a product  
6 or products; and

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

12 (f) "Industrial insured captive insurance company" means any  
13 company that insures risks of the industrial insureds that comprise the  
14 industrial insured group, and their affiliated companies.

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

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

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

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

27 (A) Whose primary activity consists of assuming and spreading all, or  
28 any portion, of the product liability or completed operations liability risk  
29 exposure of its group members;

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

32 (C) which does not exclude any person from membership in the  
33 group solely to provide for members of such group a competitive  
34 advantage over such a person; and

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

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

40 (1) That is not a part of the corporate system of a parent and its  
41 affiliated companies;

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

- 1       (3) *whose risks are managed by a pure captive insurance company.*
- 2       (i) *"Department" means the Kansas insurance department.*
- 3       (j) *"Domestic" means any insurance company formed under the laws*  
4 *of the state of Kansas.*
- 5       (k) *"Insurer" means the same as "insurance company" as that term is*  
6 *defined in K.S.A. 40-222c, and amendments thereto.*
- 7       (l) *"Member organization" means any individual, corporation,*  
8 *limited liability company, partnership, association or other entity that*  
9 *belongs to an association.*
- 10      (m) *"Natural person" means a human being.*
- 11      (n) *"Organizational documents" means the captive insurance*  
12 *company's articles of organization, bylaws, operating agreement or other*  
13 *foundational document that establishes the captive insurance company as*  
14 *a legal entity or prescribes its existence.*
- 15      (o) *"Parent" means a corporation, partnership or individual that*  
16 *directly or indirectly owns, controls or holds with power to vote more than*  
17 *50% of the outstanding voting securities or other voting interest of a pure*  
18 *captive insurance company, or as assigned in the plan of operation.*
- 19      (†) (p) *"Person" means a natural person, partnership, trust, estate,*  
20 *association, corporation, limited liability company, custodian, nominee or*  
21 *other individual or entity in its own or any representative capacity, in each*  
22 *case whether domestic, foreign or alien.*
- 23      (q) *"Personal lines of insurance" means personal motor vehicle,*  
24 *homeowner's insurance coverage, residential fire insurance or any*  
25 *component thereof.*
- 26      (r) *"Pure captive insurance company" means any company that*  
27 *insures risks of its parent and affiliated companies and controlled*  
28 *unaffiliated business.*
- 29      (s) *"Risk retention group" means a captive insurance company*  
30 *organized under the laws of the state of Kansas pursuant to the liability*  
31 *risk retention act of 1986, 15 U.S.C. § 3901 et seq., as amended, as a stock*  
32 *or mutual corporation, a reciprocal or other limited liability entity.*
- 33      Sec. 37. K.S.A. 40-4302 is hereby amended to read as follows: 40-  
34 4302. (a) Any captive insurance company, when permitted by its ~~articles of~~  
35 ~~incorporation or charter~~ *organizational documents*, may apply to the  
36 commissioner for a certificate of authority to do any and all insurance  
37 comprised in ~~articles 9 and 11 of chapter 40 of the Kansas Statutes-~~  
38 ~~Annotated, except~~ *K.S.A. 40-901 et seq., 40-1102 (1)(a), 1(c) through 1(n),*  
39 *and amendments thereto, and to issue life, accident and health insurance*  
40 *policies provided that:*
- 41      (1) No pure captive insurance company ~~may~~ *shall* insure any risks  
42 other than those of its parent and affiliated companies *and, upon prior*  
43 *approval of the commissioner, any controlled unaffiliated business up to*

1 5% of total direct written premium;

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

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

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

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

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

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

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

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

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

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

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

40 (4) it authorizes the commissioner to accept service of process on its  
41 behalf in accordance with K.S.A. 40-218, and amendments thereto.

42 (c) ~~(1)~~ Before receiving a certificate of authority, ~~a~~ *an applicant*  
43 ~~captive insurance company shall file with the commissioner a certified~~



1 copy of its articles of incorporation and bylaws, a statement under oath of  
2 its president and secretary showing its financial condition, and any other  
3 statements or documents required by the commissioner:

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

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

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

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

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

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

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

32 (F) ~~a statement certifying that the applicant captive insurance~~  
33 ~~company's investment policy is in compliance with this act and specifying~~  
34 ~~the type of investments to be made;~~

35 (G) ~~a statement identifying the geographic areas in which the~~  
36 ~~applicant captive insurance company intends to operate;~~

37 (H) ~~a statement identifying the persons or organizations that will~~  
38 ~~perform the applicant captive insurance company's major operational~~  
39 ~~functions, including management, underwriting, accounting, asset~~  
40 ~~investment, claims adjusting and loss control and the adequacy of the~~  
41 ~~expertise, experience and character of such persons or organizations; and~~

42 (I) ~~whenever required by the commissioner, an appropriate opinion~~  
43 ~~by a qualified independent actuary regarding the adequacy of the~~

1 *applicant captive insurance company's proposed capital, surplus and*  
2 *premium levels;*

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

6 (4) *such other items deemed relevant by the commissioner in*  
7 *ascertaining whether the proposed captive insurance company will be able*  
8 *to meet its obligations; and*

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

11 (d) *Each captive insurance company not in existence on January 1,*  
12 *2018, shall pay to the commissioner a nonrefundable fee of ~~\$500~~ \$10,000*  
13 *for examining, investigating and processing its application for a certificate*  
14 *of authority. The commissioner is authorized to retain legal, financial,*  
15 *actuarial, analysis and examination services from outside the department,*  
16 *the reasonable costs of which shall be charged against the applicant. In*  
17 *addition, it shall pay a fee for the year of registration and a renewal fee for*  
18 *each year thereafter of ~~\$110~~ \$10,000.*

19 (e) *Each captive insurance company already in existence on January*  
20 *1, 2018, shall pay an annual renewal fee of \$110 until January 1, 2028,*  
21 *after which date the provisions of subsection (d) shall apply.*

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

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

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

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

37 (B) *the information sought is unavailable from other non-confidential*  
38 *sources; and*

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

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

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

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

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

11       Sec. 38. K.S.A. 40-4303 is hereby amended to read as follows: 40-  
12 4303. The word "captive" shall be incorporated into the name of every  
13 captive insurance company organized under the laws of this state, ~~except~~  
14 ~~that an aircraft captive insurance company incorporating the word "air" or~~  
15 ~~"aircraft" into its name shall not be required to incorporate the word~~  
16 ~~"captive" into its name.~~ No captive insurance company shall adopt a name  
17 that is the same, deceptively similar or likely to be confused with or  
18 mistaken for any other existing business name registered in the state of  
19 Kansas.

20       Sec. 39. K.S.A. 40-4304 is hereby amended to read as follows: 40-  
21 4304. (a) ~~No pure captive insurance company or industrial insured captive~~  
22 ~~insurance company incorporated as a stock insurer shall be issued a~~  
23 ~~certificate of authority unless it shall possess and thereafter maintain~~  
24 ~~unimpaired paid-in capital and surplus of:~~

25       (1) In the case of a pure captive insurance company, not less than  
26 ~~\$100,000~~ \$250,000; and

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

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

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

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

41       (e) *No pure captive insurance company shall make a loan or an*  
42 *investment in its parent company or affiliates without prior written*  
43 *approval of the commissioner, and any such loan or investment shall be*

1 *evidenced by documentation approved by the commissioner.*

2 Sec. 40. K.S.A. 40-4306 is hereby amended to read as follows: 40-  
3 4306. (a) ~~A pure captive insurance company shall be incorporated as a~~  
4 ~~stock insurer with its capital divided into shares and held by the~~  
5 ~~stockholders, as a nonstock corporation, or may be formed as a limited~~  
6 ~~liability company, partnership or limited partnership.~~

7 (b) ~~An industrial insured captive insurance company may be~~  
8 ~~incorporated. An association captive insurance company may be~~  
9 ~~incorporated as a stock corporation or as a nonstock corporation, or may~~  
10 ~~be formed as a limited liability company, partnership or limited~~  
11 ~~partnership.~~

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

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

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

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

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

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

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

41 (4) ~~formed as a limited partnership, with at least one general partner~~  
42 ~~or person in whom management of the limited partnership is vested or to~~  
43 ~~whom rights and powers to manage and control the business and affairs of~~

1 *the limited partnership have been delegated, shall be a resident of, or have*  
 2 *such partner's or person's principal place of business in Kansas.*

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

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

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

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

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

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

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

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

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

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

40 Sec. 41. K.S.A. 40-4307 is hereby amended to read as follows: 40-  
 41 4307. (a) *Prior to March 1 of each year, each captive insurance company*  
 42 *shall submit to the commissioner a report of its financial condition,*  
 43 *verified by oath of two of its executive officers. ~~Each captive insurance~~*

1 company shall file its report in the form required by K.S.A. 40-225, and  
2 amendments thereto

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

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

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

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

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

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

27 Sec. 42. ~~K.S.A. 40-4308 is hereby amended to read as follows: 40-~~  
28 ~~4308. At least once in three years, and whenever the commissioner~~  
29 ~~determines it to be prudent, the commissioner shall personally, or by some~~  
30 ~~competent person appointed by the commissioner, visit each captive~~  
31 ~~insurance company and thoroughly inspect and examine its affairs to~~  
32 ~~ascertain its financial condition, its ability to fulfill its obligations and~~  
33 ~~whether it has complied with the provisions of this act. The commissioner~~  
34 ~~upon application, in the exercise of discretion, may enlarge the aforesaid~~  
35 ~~three-year period to five years, if such captive insurance company is~~  
36 ~~subject to a comprehensive annual audit during such period of a scope~~  
37 ~~satisfactory to the commissioner by independent auditors approved by~~  
38 ~~such commissioner. The expenses and charges of the examination shall be~~  
39 ~~paid to the state by the company or companies examined~~

40 (a) *Whenever the commissioner deems it necessary, but at least once*  
41 *every three years, the commissioner may make, or direct to be made, a*  
42 *financial examination of any captive insurance company in the process of*  
43 *organization, or applying for admission or doing business in Kansas. The*

1 commissioner may engage in continuous analysis for the preparation of  
2 the examination. In addition, at the commissioner's discretion, the  
3 commissioner may make, or direct to be made, a market regulation  
4 examination of any insurance company doing business in Kansas.

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

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

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

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

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

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

38 (h) (1) No later than 30 days following completion of the examination  
39 or at such earlier time as the commissioner shall prescribe, the examiner  
40 in charge shall file with the department a verified written report of  
41 examination under oath. No later than 30 days following receipt of the  
42 verified report, the department shall transmit the report to the company  
43 examined, together with a notice that shall afford such company examined

1 *a reasonable opportunity of not more than 30 days to make a written*  
2 *submission or rebuttal with respect to any matters contained in the*  
3 *examination report.*

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

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

15 (B) *rejecting the examination report with directions to the examiners*  
16 *to reopen the examination for purposes of obtaining additional data,*  
17 *documentation or information; or*

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

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

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

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

41 (j) *All examination reports, preliminary examination reports or*  
42 *results, working papers, recorded information, documents and copies*  
43 *thereof produced by, obtained by, or disclosed to the commissioner or any*



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

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

32 Sec. 43. K.S.A. 40-4309 is hereby amended to read as follows: 40-  
33 4309. (a) The certificate of authority of a captive insurance company to do  
34 an insurance business in this state may be suspended or revoked by the  
35 commissioner for any of the following reasons:

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

40 (2) failure to meet the requirements of K.S.A. 40-4304 ~~or 40-4305,~~  
41 *and amendments thereto;*

42 (3) refusal or failure to submit the report, required by K.S.A. 40-  
43 4307, *and amendments thereto,* or any other report or statement required

1 by law or by lawful order of the commissioner;

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

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

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

10 (7) (6) use of methods that, although not otherwise specifically  
11 prohibited by law, nevertheless render its operation detrimental or its  
12 condition unsound with respect to the public or to its policyholders;

13 (8) (7) failure otherwise to comply with the laws of this state.

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

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

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

39 (e) *During the suspension period, the captive insurance company*  
40 *may not solicit or write any new business, but must file annual statements,*  
41 *pay fees and taxes as required under this act, and unless otherwise*  
42 *provided in the order of suspension, may service its business already in*  
43 *force as if the certificate of authority had continued in full force.*

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

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

11       (2) *such investment requirements as may otherwise be approved by*  
12 *the commissioner upon application by any such captive insurance*  
13 *company.*

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

19       Sec. 45. K.S.A. 40-4311 is hereby amended to read as follows: 40-  
20 4311. (a) ~~Any captive insurance company may provide reinsurance,~~  
21 ~~comprised in articles 9 and 11 of chapter 40 of the Kansas Statutes~~  
22 ~~Annotated as limited by subsection (a)(3) of K.S.A. 40-4302, and~~  
23 ~~amendments thereto on risks ceded by any other captive insurance~~  
24 ~~company organized under the laws of this state may, with the consent of~~  
25 ~~the commissioner, assume all or any part of an individual risk or all or~~  
26 ~~any part of a particular class of risks by affiliated insurers.~~

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

1 *security for its financial obligations. The commissioner may deny*  
2 *authorization or impose any limitation on the activities of a reinsurer that*  
3 *in the commissioner's judgment are necessary and proper to provide*  
4 *adequate security for the ceding captive insurance company and for the*  
5 *protection and consequent benefit of the public at large.*

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

14 Sec. 46. K.S.A. 40-4313 is hereby amended to read as follows: 40-  
15 4313. No captive insurance company shall be permitted to join or  
16 contribute financially to any plan, pool, association or guaranty or  
17 insolvency fund in this state, nor shall any captive insurance company, or  
18 its insured, or its parent or any affiliated company, receive any benefit  
19 from any such plan, pool, association or guaranty or insolvency fund for  
20 claims arising out of the operations of such captive insurance company.  
21 *Prior to insuring a risk or hazard of an association member, the*  
22 *association captive insurance company must notify the association*  
23 *member that it does not participate in any guaranty or insolvency fund in*  
24 *Kansas.*

25 Sec. 47. K.S.A. 40-4314 is hereby amended to read as follows: 40-  
26 4314. (a) Each captive insurance company shall, at the time it files the  
27 report required by K.S.A. 40-4307, *and amendments thereto*, pay a tax on  
28 all premiums received on risks located in this state ~~at the rate prescribed in~~  
29 ~~K.S.A. 40-252 A, and amendments thereto. Such taxes shall be subject to~~  
30 ~~the procedures and provisions of K.S.A. 40-252 G, 40-252b, 40-252e and~~  
31 ~~40-253, and amendments thereto.~~

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

38 (b) *Each captive insurance company shall pay the commissioner a*  
39 *tax at the rate of  $\frac{2}{10}$  of 1% on each dollar of direct premiums collected or*  
40 *contracted for, during the year ending December 31 next preceding, on*  
41 *policies or contracts of insurance written by the captive insurance*  
42 *company, after deducting from the direct premiums subject to the tax*  
43 *amounts paid to policyholders as return premiums with respect to such*

1 preceding year only, which amounts shall include only dividends or  
2 distributions of unabsorbed premiums or premium deposits returned or  
3 credited to policyholders, up to a maximum tax for such year of \$500,000,  
4 except that no tax shall be due or payable as a consideration received for  
5 annuity contracts.

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

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

25 Sec. 48. K.S.A. 40-4317 is hereby amended to read as follows: 40-  
26 4317. The commissioner may adopt such rules and regulations relating to  
27 captive insurance companies as are necessary to carry out the provisions of  
28 this act. *The commissioner, on a case-by-case basis, may by order, exempt*  
29 *a captive insurance company from the provisions of this act and any rule*  
30 *or regulation adopted by the commissioner that, as reasonably determined*  
31 *by the commissioner, based on such factors deemed relevant by the*  
32 *commissioner, consistent with the purposes of this act, are inappropriate*  
33 *to apply to such captive insurance company.*

34 Sec. 49. K.S.A. 40-4318 is hereby amended to read as follows: 40-  
35 4318. (a) No provisions of chapter 40 of the Kansas Statutes Annotated,  
36 and amendments thereto, other than those contained in this act or  
37 contained in specific references contained in this act or specific references  
38 contained in statutory sections cited in ~~subsection~~ subsections (b) and (c),  
39 shall apply to captive insurance companies.

40 (b) The provisions of K.S.A. 40-2209 and 40-2215, and amendments  
41 thereto, shall apply to captive insurance companies and to all contracts  
42 issued under the act of which this section is a part.

43 (c) *The provisions of article 33 of chapter 40 of the Kansas Statutes*

1 *Annotated, and amendments thereto, shall continue to apply to insurers, as*  
2 *applicable.*

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

7 Sec. 50. K.S.A. 40-4301, 40-4302, 40-4303, 40-4304, 40-4305, 40-  
8 4306, 40-4307, 40-4308, 40-4309, 40-4310, 40-4311, 40-4313, 40-4314,  
9 **40-4316**, 40-4317 and 40-4318 are hereby repealed.

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